



**MINISTRY OF DEFENCE**  
Government of India

# **DEFENCE PROCUREMENT MANUAL 2025** **(Volume-I)**

**Atmanirbhar Bharat**  
**आत्मनिर्भर भारत**



# DEFENCE PROCUREMENT MANUAL 2025

(Volume-I)

Short Title: DPM 2025 (Vol.-I)  
(Revenue Procurement)

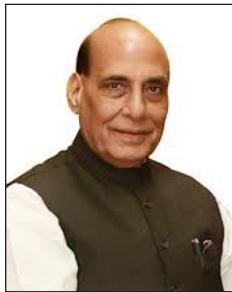


**MINISTRY OF DEFENCE**  
Government of India

राजनाथ सिंह  
RAJNATH SINGH



रक्षा मंत्री  
भारत  
DEFENCE MINISTER  
INDIA



## FOREWORD

Revenue Procurement in the Defence Services is undertaken for provisioning of goods and services (consumables) to maintain highest level of operational preparedness of Armed Forces. The procurement procedures are aimed at ensuring objective and fair dealings by resorting to e-Procurement, fostering healthy competition and efficiency in Defence Procurement.

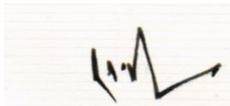
There have been significant changes in the operating philosophies, dynamics of modern warfare, threat perception and economic policies in recent past, necessitating revision of the 2009 version of the Defence Procurement Manual. Accordingly, the manual has been revised to cater to the emerging and unique requirements of the Defence Services whilst remaining within the overall framework of the procedures and policies of the Government of India. The manual will ensure transparency, fairness and accountability in Public Procurement. It will expedite decision making in revenue procurement for the Services and provide Indian industry, especially startups and MSMEs with more clarity in business transactions. It will also remove procedural delays, and avoid unnecessary penalties. The revision of the document has been made possible due to the unrelenting efforts of the Ministry of Defence (Finance) along with Headquarters Integrated Defence Staff and participation of all stakeholders.

As a major thrust to Atmanirbhar Bharat, a new chapter has been included to promote self-reliance in the field of Defence technology and manufacturing. I am sanguine that it will strengthen the domestic market and equip the armed forces with more indigenized defence items through in-house design and development in collaboration with public/private industries, academia, etc.

I firmly believe that the revised revenue procurement procedure, will meet the broader objectives of Make in India, enhancing ease of doing business and boosting economic growth.

**'Jai Hind'**

New Delhi  
14<sup>th</sup> Oct, 2025

  
(Rajnath Singh)

**Government of India  
Ministry of Defence (Finance)**

South Block, New Delhi  
Dated: 14<sup>th</sup> October, 2025

**Ministry of Defence Order**

**Subject: Issue of Defence Procurement Manual 2025 (DPM 2025).**

Defence Procurement Manual was last released in 2009. Its Supplement was issued in 2010. The revised Defence Procurement Manual 2025 has been approved by Hon'ble Raksha Mantri and will come into effect from November 01, 2025.

2. The revised Manual has been prepared under two Volumes. In Volume I, there are fourteen chapters, which include newly introduced three Chapters viz Chapter 10- Promoting Self-reliance through Innovation and Indigenization, Chapter 11- Information and Communication Technology (ICT) Procurement and Chapter 12- Consultancy and Non-Consultancy Services. All provisions guiding the procurement procedure are mentioned in Volume I. Volume II contains Govt. orders, Standardised Forms and Appendices which have been referred to in Volume I.

3. The newly introduced Chapter-10 i.e. "Promoting Self-reliance through Innovation and Indigenization" contains various special provisions related to LD, Contract Negotiation, Initial Order Quantity, Minimum Order Quantity, etc. which are applicable for processing of procurement proposals under this chapter only and will not be applicable to other procurement proposals.

4. In the revised Manual many existing provisions have been deleted/modified/amended and some new provisions have been incorporated. Some important provisions which have been altered, include 'Inter-Government Agreement'; 'Procurement through erstwhile Ordnance Factories'; 'Approval process in respect of extension of Delivery period, 'PAC validity'; 'Basis of Cost comparison', 'LD clause', etc.

5. Some key provisions such as 'Standardisation of Forms i.e. customised Model Tender Documents for Development Contracts, Fabrication Contracts, IC computation method, 'Conflict of Interest'; 'Bid Evaluation Methods', 'Preference to Make in India (MII)', 'MSE Product Reservation', etc. have now been introduced in the revised Manual for compliance.

6. All RFPs to be issued after November 01, 2025, will be governed by the provisions of DPM 2025. All cases, where RFP has already been issued/will be issued upto 31<sup>st</sup> October, 2025, will continue to be governed by the provisions of DPM 2009, amended upto date. In cases, where RFP has been issued in the past but that has been retracted/to be retracted and has to be reissued on or after November 01, 2025, will be governed by the provisions of DPM 2025.

7. Clarifications/amendments in respect of provisions contained in this Manual will be regulated as per para 1.7.1 of DPM 2025.



**(Subhash Kumar)  
Director**

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**ABBREVIATIONS AND ACRONYMS**

1	ABW	Army Base Workshop
2	ACL	Annual Consumption Limit
3	AD	Acknowledgement Due
4	Addl	Additional
5	ADG	Assistant Director General
6	AFMS	Armed Forces Medical Services
7	AFSQR	Air Force Staff Qualitative Requirements
8	AHSP	Authority Holding Sealed Particulars
9	AIP	Approval In Principle
10	AMC	Annual Maintenance Contract
11	AoN	Acceptance of Necessity
12	APBG	Advance Payment Bank Guarantee
13	APSO	Assistant Principal Staff Officer
14	ARC	Annual Refit Conference
15	ARPP	Annual Revenue Procurement Plan
16	ASA	Additional Support Agreement
17	ASD	Admiral Superintendent Dockyard
18	ASSOCHAM	Associated Chambers of Commerce of India
19	ASTM	American Society for Testing and Materials
20	AT	Accepted Tender
21	ATE	Advertised Tender Enquiry
22	AV	Audio-Visual
23	AWB	Air Waybill
24	BA	Business Analytics
25	BC	Bills for Collection
26	BE	Budget Estimates
27	BEU	Bulk Encryption Units
28	BG	Bank Guarantee
29	BIS	Bureau of Indian Standards
30	BMU	Base Maintenance Unit
31	BOI	Bought Out Items
32	BPC	Bulk Production Clearance Certificate
33	BPT	Battle Practice Targets
34	BQ	Budgetary Quote
35	BRD	Base Repair Depot
36	BS	British Standards
37	CAD	Computer-Aided Design

38	CAG	Comptroller and Auditor General
39	CAM	Computer-aided manufacturing
40	CAPEX	Capital Expenditure
41	CB	Contingent Bill
42	CBI	Central Bureau of Investigation
43	CCI	Competition Commission of India
44	CDA	Controller of Defence Accounts
45	CDEC	Custom Duty exemption certificate
46	CE	European Economic Area Standards
47	CEC	Consultancy Evaluation Committee
48	CEMILAC	Centre for Military Airworthiness & Certification
49	CERC	Cost Estimation & Reasonability Committee
50	CERT-In	Indian Computer Emergency Response Team
51	CFA	Competent Financial Authority
52	CFR	Cost and Freight
53	CFY	Current Financial Year
54	CGDA	Controller General of Defence Accounts
55	CIF	Cost Insurance and Freight
56	CII	Confederation of Indian Industry
57	C-in-C	Commanding/ Commander-in-Chief
58	CIP	Carriage and Insurance Paid To
59	CISC	Chief of Integrated Defence Staff to the Chairman Chiefs of Staff Committee
60	CMC	Comprehensive Maintenance Contract/ Contract Monitoring Committee
61	CMIE	Centre for Monitoring Indian Economy
62	CMMI	Capability Maturity Model Integration
63	CNC	Commercial Negotiation Committee /Contract Negotiation Committee
64	COA	Contract Operating Authority
65	COM	Chief of Materiel
66	COMCASA	Communications Compatibility and Security Agreement
67	COMDIS	Commander of Coast Guard District
68	COMSEC	Communications Security
69	COTS	Commercial off-the-shelf
70	CP	Central Procurement
71	CPO	Central Procurement Organisation
72	CPPP	Central Public Procurement Portal
73	CPSE	Central Public Sector Enterprises

74	CPT	Carriage Paid To
75	CPU	Central Processing Unit
76	CRV	Certified Receipt Voucher
77	CST	Comparative Statement of Tenders
78	CSY	Commodore Superintendent Yard
79	CTA	Competent Technical Authority
80	CV	Curriculum Vitae
81	CVC	Central Vigilance Commission
82	DA	Defence Attaché
83	DAP	Defence Acquisition Procedure/Delivery at Point
84	DAVP	Directorate of Advertising and Visual Publicity
85	DBT	Direct Bank Transfer
86	DCF	Discounted Cash Flow
87	DDO	Direct Demanding Officers
88	DDP	Department of Defence Production/ Delivered Duty Paid
89	Def Fin	Defence Finance
90	DePP	Defence e-Procurement Portal
91	Dept	Department
92	DFM	Directorate of Fleet Maintenance DFPDS
93	DG	Director General
94	DGAQA	Director General of Aeronautical Quality Assurance
95	DGFT	Directorate General of Foreign Trade
96	DGNAI	Director General of Naval Armament Inspection
97	DGQA	Director General Quality Assurance
98	DHQ	District Headquarter
99	DIN	<i>Deutsches Institut für Normung</i> (Germany)
100	DL	Defect List
101	DMA	Department of Military Affairs
102	DP	Delivery Period
103	DPIIT	Department for Promotion of Industry and Internal Trade
104	DPM	Defence Procurement Manual
105	DPMF	Defence Procurement Manual Form
106	DPR	Detailed Project Report
107	DPSU	Defence Public Sector Undertaking
108	DPU	Delivered at Place Unloaded
109	DRDO	Defence Research and Development Organisation
110	DS	Defence Services

111	DSC	Digital Signature Certificate
112	EAS	Expenditure Angle Sanction
113	e-BG	Electronic Bank Guarantee
114	ECS	Electronic Clearing Services
115	EMD	Electronic Earnest Money Deposit (also Bid Security)
116	EoI	Expression of Interest
117	EPF	Employees Provident Fund
118	ERP	Enterprise Resource Planning
119	ERV	Exchange Rate Variation
120	ESI	Employees State Insurance
121	ESIC	Employees' State Insurance Corporation
122	EXW	Ex Works
123	FA	Financial Advisor
124	FAS	Free Alongside Ship
125	FAT	Factory Acceptance Trials
126	FCA	Free Carrier
127	FDA	Food and Drug Administration (US)
128	FDI	Foreign Direct Investment
129	FDR	Fixed Deposit Receipt
130	FE	Foreign Exchange
131	FEMA	Foreign Exchange Management Act
132	FICCI	Federation of Indian Chambers of Commerce & Industry
133	FMS	Foreign Military Sales
134	FOB	Free On Board
135	FOL	Fuels, Oils and Lubricants
136	FOS	Follow-on-support
137	FP	Financial Proposal
138	FSMTC	Federal Service of Military-Technical
139	FY	Financial year
140	GCS	Green Channel Status
141	GeM	Government e-Marketplace
142	GeMAR & PTS	GeM Availability Report and Past Transaction Summary
143	GFR	General Financial Rules
144	GoI	Government of India
145	GOST	Gosudarstvennyy Standart (Russia)
146	Govt	Government

147	GoW	Growth of Work
148	GPF	General Provident Fund
149	GSQR	General Staff Qualitative Requirement
150	GST	Goods and Services Tax
151	GSTIN	GST Identification Number
152	GTE	Global Tender Enquiry
153	HAT	Harbour Acceptance Trials
154	HQ	Headquarter
155	HSN	Harmonized System of Nomenclature
156	HW	Hardware
157	IAF	Indian Air Force
158	IC	Indian Content
159	ICA	Indian Council of Arbitration
160	ICADR	International Centre For Alternative Dispute Resolution
161	ICC	International Chamber of Commerce
162	ICG	Indian Coast Guard
163	ICT	Information and Communication Technology
164	IEEE IFA	Institute of Electrical and Electronics Engineers Integrated Financial Advisor
165	IGA	Inter Government Agreement
166	IIT	Indian Institute of Technology
167	IMF	International Monetary Fund
168	IN	Indian Navy
169	Inco-terms	International Commercial Terms
170	Infosec	Information Security
171	INR	Indian Rupee
172	IP	Internet Protocol/Integrity Pact
173	IPBG	Integrity Pact Bank Guarantee
174	IPR	Intellectual Propriety Rights
175	IS	International Standards
176	ISO	Inter-Services Organization /International Organization for Standardization
177	IT	Information Technology
178	ITU	International Telecommunication Union
179	JAKLI	Jammu & Kashmir Light Infantry
180	JIT	Just –in-Time
181	JLG	Joint Liability Group
182	JRI	Joint Receipt Inspection

183	JS	Joint Secretary
184	JS & Addl FA	Joint Secretary & Additional Financial Advisor
185	JSG	Joint Service Guide
186	JSQR	Joint Staff Qualitative Requirements
187	JV	Joint Venture
188	KVIC	Khadi & Village Industries Commission
189	L1	Lowest Bid in Tender Evaluation Process
190	Lab	Laboratory
191	LAO	Local Audit Office
192	LC	Letter of Credit
193	LCS	Least Cost System
194	LD	Liquidated Damages
195	LEMOA	Logistics Exchange Memorandum of Agreement
196	LME	London Metal Exchange
197	LOA	Letter of Offer & Acceptance
198	LOI	Letter of Intent
199	LOR	Letter of Request
200	LP	Local Purchase
201	LPC	Local Purchase Committee
202	LPP	Last Purchase Price
203	LTBA	Long Terms Business Agreement
204	LTE	Limited Tender Enquiry
205	Meity	Ministry of Electronics and Information Technology
206	MET	Maintainability Evaluation Trials
207	MHR	Man-Hour Rate
208	MM19	Aerospace and electronic Cost Indices (UK)
209	MMR	Minerals & Metals Review
210	MoD	Ministry of Defence
211	MoF	Ministry of Finance
212	MOQ	Minimum Order Quality
213	MoU	Memorandum of Undertaking
214	MRLS	Manufactures Recommended List of Spares
215	MRO	Maintenance Repair Overhaul
216	MS	Market Survey
217	MSE	Micro and Small Enterprises
218	MSL	Minimum Stock Level
219	MSME	Micro, Small & Medium Enterprises
220	MT	Mechanical Transport

221	MYRR	Mid-Year Refit Review
222	NABL	National Accreditation Board for Testing and Calibration Laboratories
223	NAVSUP WSS	Naval Support Weapons Systems Support
224	NAY	Naval Aircraft Yard
225	NCNC	No-Cost- No-Commitment
226	NEFT	National Electronic Funds Transfer
227	NIC	National Informatics Centre
228	NICSI	National Informatics Centre Services Incorporated
229	NIT	Notice Inviting Tender
230	NIV	Not in Vocabulary
231	NMS	New Management Strategy
232	NOC	No Objection Certificate
233	NPV	Net Present Value
234	NRE	Non- Recurring Engineering
235	NSIC	National Small Industries Corporation
236	OBS	Onboard Spares
237	OEM	Original Equipment Manufacturer
238	OES	Original Equipment Supplier
239	OH	Overhaul
240	OHC	Overhauled Conditioned
241	OPEX	Operational Expenditure
242	OPM	Original Part Manufacturer
243	OSS	Operations Support System
244	OTE	Open Tender Enquiry
245	PA	Price Agreement (also RC)
246	PAC	Proprietary Article Certificate
247	PAN	Permanent Account Number
248	PBG	Performance Bank Guarantee (also Performance Security)
249	PBL	Performance Based Logistics
250	PC	Procurement Committee
251	PCDA	Principal Controller of Defence Accounts
252	PCIP	Pre-Contract Integrity Pact
253	PCM	Post Contract Management
254	PDD	Post Defection Demand
255	PDI	Pre-Dispatch Inspection
256	PIFA	Principal IFA

257	PL	Price Level
258	POC	Proof Of Concept
259	POV	Professional Officer's Valuation
260	PQB	Pre-Qualification Bid
261	PR	Provisioning Review
262	PSB	Public Sector Bank
263	PSE	Public Sector Enterprise
264	PSO	Principal Staff Officer
265	PSU	Public Sector Undertaking
266	PV	Price Variation
267	QA	Quality Assurance
268	QAP	Quality Assurance Plan
269	QC	Quality Control
270	QCBS	Quality and Cost Based Selection
271	QR	Qualitative Requirements
272	R&D	Research and Development
273	RBI	Reserve Bank of India
274	RC	Rate Contract (also PA)
275	RFI	Request for Information
276	RFP	Request for Proposal
277	RHQ	Regional Headquarter
278	RIC	Rough Indicative Cost
279	ROC	Repair Order Contract
280	ROH	Repair Overhaul
281	RoP	Roll-on Plan
282	RRC	Rate Repair Contract
283	RSVS	Resultant Single Vendor Situation
284	RTGS	Real Time Gross Settlement
285	SAT	Sea Acceptance Trials
286	SBI	State Bank of India
287	SCB	Scheduled Commercial Bank
288	SCOC	Standard Clauses of Contract
289	Secy	Secretary
290	SF	Financial Score
291	SHG	Self Help Groups
292	SI	System Integrator
293	SIDM	Society of Indian Defence Manufacturers
294	SLA	Service Level Agreement
295	SO	Supply Order

296	SoC	Statement of Case
297	SOP	Standard Operating Procedure
298	SoR	Schedule of Requirements
299	SoW	Scope of Work
300	Specs	Specifications
301	SPM	Strategic Partnership Model
302	SQR	Services Qualitative Requirements
303	SSI	Small Scale Industries
304	STE	Single Tender Enquiry
305	SW	Software
306	SWIFT	Society for Worldwide Inter Banking Financial Telecommunication
307	TEC	Technical Evaluation Committee
308	TIN	Tax Identification Number
309	TLBH	Top Level Budget Holder
310	ToR	Terms of Reference
311	ToT	Transfer of Technology
312	TPC	Tender Purchase Committee
313	TT&E	Teardown Testing and Evaluation
314	TTL	Total Technical Life
315	UCPDC	Uniform Customs and Practices for Documentary Credit
316	UK	United Kingdom
317	UO	Un-official
318	UPS	Uninterrupted Power Supply
319	US	United States of America
320	USB	Universal Serial Bus
321	USD/ US\$	US Dollar
322	VA	Vulnerability Assessment
323	VCAS	Vice Chief of Air Staff
324	VCNS	Vice Chief of Naval Staff
325	VCOAS	Vice Chief of Army Staff
326	VFM	Value for Money
327	WBG	Warranty Bank Guarantee
328	WESEE	Weapons and Electronics Systems Engineering Establishment

## **CHAPTER 1**

### **INTRODUCTION**

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

- 1.1.1** This Manual shall be called the Defence Procurement Manual, 2025 (DPM 2025, for short).
- 1.1.2** This Manual, containing principles and procedures relating to revenue procurement of goods and services for the Defence Services, Organisations and Establishments, laid down in terms of Rule 142 of the General Financial Rules (GFRs) 2017 shall come into force with effect from 1/11/2025.
- 1.1.3** All ongoing cases of procurement in which Requests for Proposal (RFP) have already been issued, may continue to be regulated by the provisions of the DPM 2009 as amended vide from time to time.

#### **1.2 Scope and Applicability**

- 1.2.1** The principles and procedures contained in this Manual are to be followed by all wings of the Ministry of Defence (MoD) and the Defence Services as well as all Organisations including the Indian Coast Guard (ICG) and Jammu & Kashmir Light Infantry (JAKLI), and all Headquarters and subordinate authorities in the Commands/equivalent in other Organisations, lower formations, establishments and units there under at all levels, and shall cover procurement of all goods and services including medical equipment, other than Entitled Rations, Works and Land, classified as Revenue Expenditure and booked under the Revenue Budget Heads, apart from any other type of purchases to which the provisions are made specifically applicable. The Defence Research and Development Organisation (DRDO) and the Defence Public Sector Undertakings (DPSUs) will, however, continue to follow their own procurement procedure.
- 1.2.2** The procedure laid down in this Manual shall also be applicable to the following:-
  - (a) Procurement of medical equipment under the Capital Budget Head (apart from medical equipment under the Revenue Budget Heads already covered under Paragraph 1.2.1 above).
  - (b) Procurements made by the Defence Services/ other

Organisations under MoD, from grants placed at their disposal by other Ministries/Departments like the Ministry of Home Affairs, Ministry of Environment and Forests, etc.

**1.2.3** The procedure laid down in this Manual shall be followed for Central Procurement as well as for Local Purchase under delegated financial powers of all authorities in the MoD, Service HQs and all Organisations, including subordinate authorities at all levels, covered by this Manual (as per Paragraphs 1.2.1 and 1.2.2).

### **1.3 Definitions**

**1.3.1** Unless the context requires otherwise, the terms used in this Manual shall have the meanings as described herein below.

**1.3.2 Authority Holding Sealed Particulars (AHSP)**. The authority responsible for collecting, collating, developing, amending, updating, holding and supplying sealed particulars/specifications of the Defence items in accordance with the laid down procedures. AHSP may be the Director General of Quality Assurance (DGQA), an authority in the Service Headquarters (HQs) for Service-specific items or any other agency designated by the Service HQs. Similar responsibility for the Naval and Air Force equipment rests with respective Service HQs. DGAQA is one of the AHSP for indigenously manufactured aviation stores of all the Services and the Coast Guard. Procurement officers, the Sellers and the Inspection Agencies are required to comply with the specifications drawn up by the AHSP.

**1.3.3 Capital Expenditure**. Significant expenditure incurred with the object of acquiring tangible assets of a permanent nature (for use in the organisation and not for sale in the ordinary course of business) or enhancing the utility of existing assets, is broadly defined as Capital expenditure. Classification of expenditure as Capital shall be as per criteria promulgated by MoD from time to time.

**1.3.4 Capital Procurement**. Refers to procurement of all goods and services as per the definition of capital expenditure given above. Capital procurement is undertaken in accordance with provisions of Defence Acquisition Procedure (DAP) -2020, as amended from time to time.

**1.3.5 Central Procurement (CP)**. Procurement undertaken centrally by the Central Provisioning Agency/Central Purchase Organisation of the Service HQs/ Organisations concerned under MoD against

indents resulting from planned provisioning process like the Annual Provision Review, refit planning, obsolescence planning, planned routines, etc., or Special Review as required. CP indents normally cover the entire requirement of the item for the duration of the provisioning period.

### **1.3.6 Competent Financial Authority (CFA).**

- (a) An authority duly empowered by the Government of India to sanction and approve expenditure from the organisation concerned's budget 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.
- (b) **Next Higher CFA**.
  - (i) Where financial powers are delegated to several authorities under one hierarchical chain within the same sub-schedule/ serial/ head of the respective Delegation of Financial Powers, authority with higher delegated financial powers shall constitute the 'Next Higher CFA'.
  - (ii) The 'Next Higher CFA' for the Top Level Budget Holder (TLBH) of an organisation shall be the lowest CFA in the corresponding sub-schedule/ serial/ head of Delegation of Financial Powers in MoD (DFPM).
  - (iii) If the highest CFA in a particular sub-schedule/ serial/ head is below the TLBH of an organisation and approval of 'Next Higher CFA' is required, then the TLBH shall be the 'Next Higher CFA'.
- (c) **Top Level Budget Holder (TLBH)**. The authority within an organisation to whom the budget of that organisation is allocated by the Government of India. The TLBH of an organisation has the freedom to manage the budget so allocated to achieve the objectives of the organisation in the most economic, efficient and effective manner, while remaining within the limits of the delegated authority.

**1.3.7 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. An agreement, if made with free consent of parties competent to contract, for a lawful consideration and with a lawful object, is a contract.

**1.3.8 Direct Demanding Officers (DDOs)**. The authorities in the Services/ Departments/ establishments/ units/ hospitals/ etc.,

who have been duly authorised to place purchase orders directly on the rate contract holding firms/ suppliers with whom Rate Contracts have been concluded for the particular items/ goods.

**1.3.9 Electronic Reverse Auction**. An online real-time purchasing technique utilised by the Procuring Entity to select the successful bid, which involves presentation by bidders of successively more favourable bids during a scheduled period of time and automatic evaluation of bids.

**1.3.10 e-Procurement**. The use of information and communication technology (especially the internet) by the Procuring Entity in conducting its procurement processes with bidders for the acquisition of goods (supplies) and services with the aim of open, non discriminatory and efficient procurement through transparent procedures.

**1.3.11 Financial Powers**. The powers to approve expenditure to be incurred for bonafide purposes in accordance with the laid down procedure and subject to availability of funds. The powers delegated by MoD to various authorities in the Service HQs and other organisations/establishments under them, as also to authorities in other organisations under the MoD, are vested in particular posts and shall not be further sub-delegated to any subordinate authority by the delegatee occupying such posts. However, on the strict understanding that the sole responsibility rests on them, the authorities to whom financial powers have been delegated, may authorise staff officer(s)/ subordinate officers to sign communications and financial documents on their behalf, provided they have given the requisite approvals/ orders on file and the name of the officer who is authorised to sign is communicated to the Audit Officer concerned.

**1.3.12 General Staff Qualitative Requirements (GSQRs)/Naval SQRs (NSQRs)/Air Force SQRs (AFSQRs)/ Joint SQRs (JSQRs)**. The GSQRs/ NSQRs/ AFSQRs lay down the technical parameters of the equipment/ items required by the Army/ Navy/ Air Force reflecting the user's requirements in terms of functional characteristics of the stores being procured. These also indicate the requirement of military grade, ruggedized or commercial off-the-shelf (COTS) items. JSQRs refer to specifications in cases where commonality of equipment exists and standardisation of Qualitative Requirements (QRs) between the three Services is merited. As a general rule, SQRs should be developed as per indigenous technologies/ capabilities.

**1.3.13 Goods**. The term 'Goods' used in this Manual includes all articles, material, commodity, livestock, furniture, fixtures,

raw material, spares, aggregates, instruments, machinery, equipment, industrial plant, vehicles, aircraft, ships, medicines, railway rolling stock, assemblies, sub-assemblies, accessories, a group of machineries comprising an integrated production process, IT hardware, consumables or such other category of goods or intangible products like software, technology transfer, licences, patents or other intellectual properties purchased or otherwise acquired for the use of Government (but excludes books, publications, periodicals, etc., for a library). The term 'goods' may also include certain small works and/ or services which are incidental or consequential to the supply of such goods, such as packaging, transportation, insurance, installation, commissioning, training, maintenance, repairs, and upgrades. The term 'Stores' has also been used at some places in this Manual to refer to 'Goods' and/or 'Services'.

**1.3.14 Indent**. A requisition placed by the provisioning authority on the Procurement Entity to procure an item. Indent is the authority for initiating procurement action and may contain one or more items, each with a distinct item code/ part number. All necessary details of the item, including quantity, denomination, estimated price, specification, drawing, scope of supply, budget code head, date by which required and inspection authority are to be indicated in the indent to enable prompt procurement of the item.

**1.3.15 Indenting Agency/ Indenter**. A logistics entity that places the requirement of stores in the form of an indent on a Procurement Entity to meet the requirement of stores based on periodic reviews or urgent unforeseen requirements. Normally, the indenting agency is a store holding agency and the indenter is a person authorised to raise indents on behalf of the indenting agency.

**1.3.16 Indian Vendor/ Bidder**.

(a) Unless specifically provided for in a clause/ section/ chapter or elsewhere in this Manual, an Indian Vendor/ Bidder by whatever nomenclature when referred to, means – for Defence products requiring industrial licence, an Indian entity, which could include incorporation/ ownership models as per Companies Act, Partnership Firm, Proprietorship and other types of ownership models, including Societies as per relevant laws, complying with, besides other regulations in force, the guidelines/ licensing requirements stipulated by the Department for Promotion of Industry and Internal Trade (DPIIT) as applicable. For Defence products not requiring industrial licence, an Indian entity registered under the relevant Indian laws and complying with all regulations

in force applicable to that industry will be classified as an Indian Vendor/ Bidder.

**Note :** “Definition of Indian Company/Entity/Vendor be adopted as per the provisions of Companies Act 2013 or any other Act/Rules/Regulations notified by Government of India, as amended from time to time”.

(b) The following additional conditions relating to ownership and control, will apply to Indigenous Design and Development categories covered in Chapter 10:-

- (i) **Ownership by Resident Indian Citizen(s)**. A company is considered as ‘Owned’ by resident Indian citizens if more than fifty percent (50%) of the capital in it is directly or beneficially owned by resident Indian citizens and/ or Indian companies, which are ultimately owned and controlled by resident Indian citizens. This implies that the maximum permitted Foreign Direct Investment (FDI) shall be forty-nine percent (49%). No pyramiding of FDI in Indian holding companies or in Indian entities subscribing to shares or securities of the Applicant Company shall be permitted. Indirect foreign investment shall be accounted for in counting the forty-nine percent (49%) FDI.
- (ii) **Control by Resident Indian Citizen(s) (As defined in the Companies Act 2013)**. ‘Control’ shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by person/s directly or indirectly including by virtue of their shareholding or management rights or shareholder’s agreements or voting agreements.

**1.3.17 Inspecting Agency**. The Inspecting Authority nominates the Inspecting Agency and the Inspecting Officer, based on the type of items and geographical location of the purchaser and supplier. The Inspecting officer need not necessarily be from the organisation of the Inspecting Authority.

**1.3.18 Inspecting Authority**. Authority, which promulgates inspection methodology and nominates suitable Inspection or Inspecting Agency for specific contracts. Normally, AHSP is designated as the Inspecting Authority. This may be DGQA/DGAQA/DGNAI or Government authorised QA organisation as nominated by CFA for Defence related items.

**1.3.19 Integrated Finance**. Finance Division of the MoD functions as Integrated Finance for CFAs in the Ministry, and officers designated as Principal Integrated Financial Advisors (PIFAs)/ Integrated Financial Advisors (IFAs) constitute integrated finance for the CFAs in the Service HQs, Inter-Service Organisations, Command HQs, lower formations and units thereunder. The term 'IFA' used in this Manual includes the Finance Division and vice versa.

**1.3.20 Inter-Government Agreement (IGA) Procurements**.

Procurements made from friendly foreign countries through IGAs entered into by MoD, which follow the procurement process based on mutually agreed provisions between the Governments of both the countries, such as Logistics Exchange Memorandum of Agreement (LEMOA), Communications Compatibility and Security Agreement (COMCASA), Foreign Military Sales (FMS) programme, Naval Support Weapons Systems Support (NAVSUP WSS), Standard Clauses of Contract (SCoC), Umbrella contracts, etc. In all such cases, the terms and conditions of the agreement concerned shall supersede the corresponding standard clauses of DPM. All other relevant provisions of the DPM may be applicable, if not affected by IGA's and other such special arrangements. During the currency of the IGA, the CFA as per delegated financial powers shall carry out procurement strictly as per the terms of the IGA.

**1.3.21 L1**. 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.

**1.3.22 Local Purchase (LP)**. Procurement undertaken within the LP powers of various authorities as per the delegated financial powers in the following circumstances :-

- (a) To meet the short-term, ad hoc or urgent requirements of units/ establishments when supplies are not available through the Central Provisioning Agency/Central Purchase Organisation. Intimation regarding such purchases is to be sent to the Central Provisioning Agency so that the latter may take the quantities procured through local purchase into account.
- (b) To meet the normal requirements of units/ establishments for stores which are not within the purview of Central Purchase Organisations.

**1.3.23 Not in Vocabulary (NIV)**. Items which are NIV of stores, are those that have not been formally introduced and allotted a unique cat/part number in the central approved list of inventory items of the Service/Organisation concerned, as applicable.

**1.3.24 Original Equipment Manufacturer (OEM)**. The only firm actually manufacturing the specified item/equipment of a specific make based on Intellectual Property Rights (IPR) owned by the firm, as distinguished from the stockists/distributors or suppliers of such items/equipment. OEM may also be any other firm subsequently manufacturing the item after acquiring the know-how through transfer of technology (ToT), etc.

**1.3.25 Paying Authority**. Any of the following authorities: -

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

**1.3.26 Procurement**. Refers to the entire gamut of activities involved in and the procedures to be adopted for acquiring goods (both scaled, NIV and non-scaled) and services by Procuring Entities, whether directly or through Procuring Agencies, by entering into contracts/ purchase orders with Sellers/ Vendors, etc., through procedure prescribed for procurement.

**1.3.27 Procurement/ Procuring Entity/ Agency**. The Entity/Agency responsible for undertaking the procurement as per the prescribed procedure, to meet the requirements of the indenter.

**1.3.28 Categorisation of procurements**

**1.3.28.1 Categories**. Categorisation of Procurements helps prepare guidelines for Procurements and Model Tender Documents, which cater to peculiar contractual conditions of the categories of procurements. These categories may be further sub-categorised, e.g., Capital Equipment procurement in Goods. Following are the categories of procurements (please refer to their definitions in the 'Procurement Glossary' section):

- (a) Goods.
- (b) Services
  - (i) Consultancy Services and
  - (ii) Non-consultancy services
- (c) Works

**1.3.28.2 Distinctive Features:** Normally, such categorisation is evident from their definition, and Procurement should be done accordingly, following the relevant guidelines and Model Tender Documents. The boundaries between such categorisation may not be clear-cut and may overlap. It may neither be possible nor necessary to distinguish between the categories in overlapping areas precisely. Though simplistic, the main distinguishing factors between these are :-

- (a) While both goods and works lead to tangible outputs (with some exceptions like IPR materials), the main difference between goods and works is that the manufacture of goods is done on the supplier's own premises (other than installation/ commissioning). In contrast, 'Works' is executed on the premises of the procuring entity (other than prefabricated components). Works may include incidental 'Goods' and vice-versa.
- (b) The main difference between 'Goods' or 'Works' on the one hand and 'Services' on the other is the intangibility of the outputs of Services.
- (c) The main difference between Consultancy and Non-consultancy services is the level of intellectual input, which is predominant in Consultancy and not central to Non-consultancy. Another difference is that non-consultancy services are repetitive routines with measurable and standardised outputs, while consultancy services are one-off and non-routine, with outputs that are neither precisely measurable nor standardized

**1.3.28.3 In case of Doubt:** Procurement in cases of doubts about categorisation may be handled as follows :-

- (a) A simpler procurement procedure should be followed in the case of blurred border lines and grey areas. In case of doubt between :-
  - (i) **Goods and Works/ Services/ Consultancy**. It should be processed as Procurement of goods.
  - (ii) **Works and Service/ Consultancy**. It should be processed as Works.
  - (iii) **Between Non-consultancy and Consultancy Services**. To be processed as Non-consultancy services.
  - (iv) **Procurement of IT Projects**. To be processed as procurement of Consultancy services.

**1.3.29 Procurement Committee (PC)**. A suitably composed committee of stakeholders/ nominated members and headed by a Chairperson, constituted by CFA, to process procurement proposals in an expeditious manner and with minimum movement of files, as per details given at Paragraph 4.6 (Chapter 4).

**1.3.30 Procurement Contract**. A 'Procurement Contract' (including the terms 'Purchase Order', or 'Supply Order', or 'Work Order', or 'Consultancy Contract', or 'Contract for Services' under certain contexts), means a formal legal arrangement in writing relating to the subject matter of procurement, entered into between the Procuring Entity/ Buyer/ Purchaser/ Customer and the Supplier/ Seller/ Vendor/ Service Provider/ Contractor/ Consultant on mutually acceptable terms and conditions, and which are in compliance with all the relevant provisions of the laws of the country. The term 'Contract' will also include 'Rate Contract' and 'Framework Contract, etc.

**1.3.31 Purchaser**. The President of India acting through the authority issuing the Purchase/ Supply Orders (SO) or signing the Contracts/ Memorandum of Understanding (MoU)/ Agreement, is the Purchaser in all cases of procurement on behalf of the Government of India. Where the context so warrants, other terms, such as the Buyer or Customer, have also been used interchangeably in this Manual.

**1.3.32 Rate Contract (RC)**. An agreement between the Purchaser / Buyer/Customer and the Seller/ Supplier to supply stores at specified prices during the period covered by the contract. An RC is in the nature of a standing offer from the supplier and no minimum drawal need to be guaranteed. Within an RC, a contract comes into being only when a formal order is placed by the CFA or the DDOs on the Supplier. In cases relating to procurement of services and consultancy, RC is commonly known as a 'Framework Contract'.

**1.3.33 Request For Proposal (RFP)**. RFP [including the terms 'Tender Enquiry' or 'Notice Inviting Tender' (NIT) or "Bidding Document"] means a document issued by the Procuring Entity, including any amendments thereto, that sets out the technical, operational, quality requirements and other terms and conditions of the given procurement and includes the invitation to bid. A Standard (Model) RFP Document is the standardised template to be used for preparing Bidding Documents after making suitable changes for specific procurement.

**1.3.34 Revenue Expenditure**. Charges/expenditure on maintenance, repair, replacement, upgrades, upkeep and all working expenses,

which are required to maintain the existing assets in a running order, including all expenditure on working, upkeep of the project, renewals, replacements, additions, improvements, extensions, etc., as also all other expenses incurred for day-to-day running of the organisation, including hiring of services, establishment and administrative expenses, that is revenue in nature as per rules made by the Government, is classified as Revenue Expenditure.

**1.3.35 Revenue Procurement.** Procurement of items, equipment, services, including replacement equipment (functionally similar) assemblies/ subassemblies and components, by incurring revenue expenditure to maintain and operate already sanctioned assets in the service, the necessity of which has been established and accepted by the Competent Authority.

**1.3.36 Services.** The term 'Services' used in this Manual means any subject matter of procurement other than goods or works, except those incidental or consequential to the service, and includes physical, maintenance, professional, intellectual, training, consultancy and advisory services or any other service classified or declared as such by a Procuring Entity but does not include appointment of an individual made under any law, rules, regulations or order issued in this behalf. Services can also be segregated into Consultancy and Other (Non-Consultancy) Services, which are covered in Chapter 12 of this Manual.

**1.3.37 Supplier.** The entity which enters into a contract to supply goods and services. The term includes employees, agents, assigns, successors, dealers, stockists and distributors authorised by such an entity. Where the context so warrants, other terms, such as the Seller, Vendor, Service Provider, Contractor, Firm or Consultant, have also been used interchangeably in this Manual.

**1.3.38 Stores.** The term 'Stores' would include all types of 'Goods' and/ or all types of 'Services' mentioned in Paragraphs 1.3.13 and 1.3.36 respectively, of this Manual.

**1.3.39 Tender.** An offer to supply goods or services made in accordance with the terms and conditions set out in a document inviting such offers. Where the context so warrants, other terms, such as the 'Bid', 'Offer', 'Quotation' or 'Proposal' have also been used in this Manual.

**1.3.40 Tenderer/Bidder.** Tenderer/ Bidder (including the terms 'Consultant', 'Contractor' or 'Service Provider' in certain contexts) means any eligible person or firm or company, including a consortium (i.e. an association of several persons or firms or companies), participating in a procurement process with a procuring entity in terms of a RFP/ tender document.

#### **1.4 Terms and Expressions not Defined in the Manual**

**1.4.1** Any terms and expressions not defined herein shall have the same meaning as defined/assigned to them, if any, in the General Financial Rules GFR-2017 (updated upto 2024); the 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. Manual for Procurement of Goods 2024 and Manual for Procurement of Consultancy & Other Services 2017 (updated till Jun 2022) as amended from time to time, may also be referred to.

#### **1.5 Conformity of the Manual with other Government Orders, etc**

**1.5.1** The provisions contained in this Manual are in conformity with GFR - 2017 as amended from time to time, as also other instructions issued by the Government and the Central Vigilance Commission (CVC) from time to time, though some changes have been made to meet the specific requirement of Defence Services and other Defence organisations under MoD, without violating the spirit of basic rules/ regulations/ instructions, which forms the basis of this Manual. If any instance of variance between the provisions of this Manual and other Government rules, regulations, instructions, policy, etc. comes to notice, the matter should be immediately referred to the MoD for clarification, as mentioned in Paragraph 1.7.

#### **1.6 Validity of Internal Orders and Instructions**

**1.6.1** The provisions of this Manual supersede any procurement related instructions contained in Defence Financial Regulations. Further, internal orders and instructions, including Standard Operating Procedures (SOPs), issued by various Wings of the MoD, the Services and other Organisations may be deemed to have been modified by the provisions of this Manual, to the extent the former are not in conformity with this Manual. This is necessary for ensuring uniformity among the procurement practices followed by various Wings of the Ministry, the Services and other Organisations. The Wings of the Ministry, the Services and other Organisations concerned may take necessary action to suitably modify their internal instructions and orders accordingly.

#### **1.7 Removal of Doubts and Modifications**

**1.7.1** There could be occasions where instances of variance between the provisions of this Manual and any other Government rules, regulations, instructions, policy, etc. come to notice, or a doubt arises as to the interpretation of any provision of this Manual. All such matters should be referred through Deputy Assistant Chief of Integrated Defence Staff (Financial Planning) DACIDS (FP), who will be the nodal agency appointed for Service HQs/Coast guard to the JS & Addl FA of the Department concerned of MoD, who, in turn,

will take up the matter with the designated JS & Addl FA, to ensure uniformity and consistency in handling issues. After examination by the designated JS & Addl FA, these cases will be submitted to FA(DS). Issues pertaining to interpretation of any provisions of the Manual will be finalised by FA(DS). However, approval of Hon'ble RM may be sought through Secretary DMA and Defence Secretary before issuing any clarification or issuing any amendment on variation between the provisions of this Manual and other Government rules, regulations, instructions, policy, etc. In such cases, the ongoing procurement need not be stopped pending resolution of the issue, if the requirement is operationally urgent or delay is likely to have any adverse implications. The decision of the Competent Financial Authority (CFA) in regard to continuing with ongoing procurement shall be final. In case the CFA decides to continue with the ongoing procurement proposal, the proposal shall be processed as per the provisions of DPM. Suggestions for improvements/amendments, if any, may also be sent to the JS & Addl FA concerned.

### **1.8. Deviation from Procedure**

**1.8.1** There shall normally be no occasion to deviate from the procedure spelt out in this Manual, as sufficient flexibility exists in the provisions of this Manual. However, if such a need arises, the matter shall be referred through the Administrative Department/ Ministry concerned to the designated JS & Addl FA (to maintain uniformity), for approval of Secretary (Defence Finance) {S D F}/ Financial Advisor (Defence Services) {FA (DS)} and the Defence Secretary (Def Secy). Depending on the merit of a case, the matter may be submitted for approval of the Raksha Mantri (RM), before issuing approval orders for any such deviation.

### **1.9 Limitations/ Restrictions**

**1.9.1** The limitations and restrictions pertaining to various conditions/ clauses including financial limits specified in this Manual are subject to revision/amendments based on Government orders/instructions issued/ promulgated from time to time.

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## **CHAPTER 2**

### **PROCUREMENT PRINCIPLES AND POLICY**

#### **2.1 Procurement Principles**

**2.1.1 Fundamental Principles of Public Buying.** General Financial Rules, 2017 (Rule 144) lay down the Fundamental Principles of Public Procurement. Rule 144 states that every authority delegated with the financial powers for procuring goods in public interest shall have the responsibility and accountability to bring efficiency, economy and transparency in matters relating to public procurement and for fair and equitable treatment of suppliers and promotion of competition in public procurement. These principles can be organised into five fundamental principles of public procurement, as given below, which all procuring authorities must abide by and be accountable for.

**2.1.2 Transparency Principle.** All procuring authorities are responsible and accountable to ensure transparency, fairness, equality, competition and appeal rights. This involves simultaneous, symmetric and unrestricted dissemination of information to all likely bidders, sufficient for them to know and understand the availability of bidding opportunities and actual means, processes and time limits prescribed for completion of registration of bidders, bidding, evaluation, grievance redressal, award and management of contracts. It implies that such authorities must ensure that there is consistency (absence of subjectivity), predictability (absence of arbitrariness), clarity, openness (absence of secretiveness) and equal opportunities (absence of discrimination) in processes. In essence, Transparency Principle also enjoins upon the Procuring Authorities to do only that which it had professed to do as pre-declared in the relevant published documents and not to do anything that had not been so declared. As part of this Principle, all Procuring Entities should ensure that offers should be invited following a fair and transparent procedure and also ensure publication of all relevant information on either Central Public Procurement Portal (CPPP) or Defence e-Procurement Portal (DePP), organisations' website (if available), or any other authorised websites, except where exemption from the mandatory e-publishing requirement has been granted by the Secretary of the Ministry/ Department with the concurrence of the Financial Advisor concerned on grounds of national security.

**2.1.3 Professionalism Principle:** The procuring authorities have a responsibility and accountability to ensure professionalism,

economy, efficiency, effectiveness and integrity in the procurement process. They must avoid wasteful, dilatory and improper practices violating the Code of Integrity for Public Procurement (Please see Paragraph 2.1.8) They should, at the same time, ensure that the methodology adopted for procurement should not only be reasonable and appropriate for the cost and complexity but should also effectively achieve the planned objective of the procurement.

**2.1.4 Procedural Propriety**. In reference to the above two Principles, the procedure to be followed in making public procurement must conform to the following yardsticks: -

- (a) The description of the subject matter of procurement, to the extent practicable, should be objective, functional, generic and measurable and specify technical, qualitative and performance characteristics. It should not indicate a requirement for a particular trademark, trade name or brand.
- (b) The specifications in terms of quality, type, etc., as also quantity of goods and services to be procured, should be clearly spelt out, keeping in view the specific needs of the procuring organisations. The specifications so worked out should meet the basic needs of the organisation without including superfluous and non-essential features, which may result in unwarranted expenditure.
- (c) Where applicable, the technical specifications shall, to the extent practicable, be based on the national technical regulations or recognised national standards or building codes, wherever such standards exist, and in their absence, be developed as per India's capabilities, and in the meantime, where unavoidable, be based on the relevant international standards.
- (d) Care should also be taken to avoid purchasing quantities in excess of requirement to avoid inventory carrying costs.
- (e) Offers should be invited following a fair, transparent and reasonable procedure.
- (f) The procuring authority should be satisfied that the selected offer adequately meets the requirement in all respects.
- (g) The procuring authority should satisfy itself that the price of the selected offer is reasonable and consistent with the quality required.

- (h) At each stage of procurement, the procuring authority concerned must place on record, in precise terms, the considerations which weighed with it while taking the procurement decision.
- (i) All Organisations/ Formations shall prepare Annual Procurement Plan before the commencement of the year and the same should also be placed on their website, except on grounds of confidentiality, national security or classified nature of items, etc.

**2.1.5 Extended Legal Responsibilities Principle.** Procuring authorities must fulfil additional legal obligations, over and above conformity to commercial laws (which even private sector procurements have to comply with). The Constitution of India has certain provisions regarding fundamental rights and public procurement. Courts have over time, interpreted these to extend the responsibility and accountability of public procurement authorities. Courts thus exercise additional judicial review (beyond contractual issues) over public procurement in relation to the manner of decision making in respect of fundamental rights, fair play and legality. Similarly, procuring authorities also have the responsibility and accountability to comply with the laws relating to governance issues like the Right to Information Act and the Prevention of Corruption Act and so on.

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

- (a) Documents pertaining to determination of need for procurement.
- (b) Description of the subject matter of the procurement.

- (c) Statement of the justification for choice of a procurement method other than open competitive bidding.
- (d) Documents relating to pre-qualification and registration of bidders, if applicable.
- (e) Particulars of issue, receipt, opening of the bids and the participating bidders at each stage.
- (f) Requests for clarifications and any reply thereof, including the clarifications given during pre-bid conferences.
- (g) Bids evaluated, and documents relating to their evaluation.
- (h) Contracts and Contract Amendments.
- (i) Complaint handling and all correspondence with stakeholders.

**2.1.7 Financial Propriety.** Public Procurement, like any other expenditure in Government, must also conform to Standards (also called Canons) of Financial Propriety. Rule 21 of GFR-2017 has prescribed that every officer incurring or authorising expenditure from public moneys should be guided by high standards of financial propriety. Every officer should also enforce financial order and strict economy and see that all relevant financial rules and regulations are observed, by his own office and by subordinate disbursing officers. Among the principles on which emphasis is generally laid are the following: -

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

Law; or

- (ii) The expenditure is in pursuance of a recognised policy or custom.
- (e) While discharging the duties of financial concurrence of any public expenditure, such authorities subsequent to such decision, shall not be involved in any future financial/ audit/ payment responsibilities which may create conflict of interest.

#### **2.1.8 Code of Integrity for Public Procurement.**

- (a) Public procurement is perceived to be prone to corruption and ethical risks. To mitigate this, officials of the Procuring Entities involved in procurement and the bidders/suppliers must abide by the following Code of Integrity for Public Procurement. Procuring officials may be asked to sign declarations to this effect periodically, and the bidders/suppliers should be asked to sign a declaration to abide by the Code of Integrity in registration applications and in bid documents.
- (b) **Code of Integrity.** Procuring authorities as well as bidders/ suppliers/ contractors/consultants should observe the highest standards of ethics and should not indulge in the following prohibited practices, either directly or indirectly, at any stage during the procurement process, or during execution of resultant contracts: -
  - (i) **Corrupt Practice.** Making offers, solicitation or acceptance of bribe, rewards or gifts or any material benefit, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process or contract execution.
  - (ii) **Fraudulent Practice.** Any omission or misrepresentation that may mislead or attempt to mislead, so that financial or other benefits may be obtained, or an obligation avoided. This includes making false declaration or providing false information for participation in a tender process, or to secure a contract, or in execution of the contract.
  - (iii) **Anti-Competitive Practice.** Any collusion, bid rigging or anticompetitive arrangement, or any other practice coming under the purview of The Competition Act, 2002, between two or more bidders, with or without

the knowledge of the procuring entity, that may impair the transparency, fairness and the progress of the procurement process or to establish bid prices at artificial, non-competitive levels.

- (iv) **Coercive Practice**. Harming or threatening to harm, persons or their property to influence their participation in the procurement process or affect the execution of a contract.
- (v) **Conflict of Interest (COI)**. Participation by a bidding firm or any of its affiliates that are either involved in the consultancy contract to which this procurement is linked, or if they are part of more than one bid in the procurement, or if the bidding firm or their personnel have relationships or financial or business transactions with any official of procuring entity who are directly or indirectly related to tender or execution process of contract, or improper use of information obtained by the (prospective) bidder from the procuring entity, with an intent to gain unfair advantage in the procurement process, or for personal gain.
- (vi) **Interpretation of Conflict of Interest**. would depend on the organisational structure and its unique circumstances and cannot be laid down universally. However, some illustrative examples are given below to provide context. Officers that can be considered to be related to the tender or execution process would depend on the organisational structure and sensitivity of their role in procurement. It may cover key officials (and any external consultants/ advisors) involved in making a recommendation, various approvals, or making a major decision at any stage in procurement – i.e., during need determination/ indenting, Tender Document preparation/ preparation of comparative tabulation; Technical and Financial evaluation of Bids; negotiation/ signing of Contract; execution of the contract; payments to the contractor.
- (vii) **As an illustration**. - COI (actual, potential, or perceived) can arise if such officers (or his close family) have: Substantial business interests in the firm (e.g., shares more than 0.1% of market cap), taken a loan or other financial obligation (say discounts) from the firm or its personnel), etc. Business relationships with the firm - say previously worked for the firm or availed hospitality/ gifts beyond the limits laid down in the Code of Conduct of the

organisation, etc. Familial relationship with the personnel of the firm, close personal friendships or regular (say, more than once in a quarter) social interactions (e.g., clubs, games, social associations) with the Firm's personnel, etc.

(viii) **Resolution of COI.** It shall be the responsibility of such officials to declare COI (to the extent he is aware of, in normal course) with reference to a procurement process to the Competent Authority/ next higher officer. The competent officer may evaluate the level of COI and the sensitivity of the function assigned to the official. He may either determine that COI is insignificant enough to influence the type of function performed by the official and ask the officer to continue his function, or, if COI or the type of function is significant, nominate any alternative officer to perform the function (partly or fully) of this official in that procurement process.

(ix) **Obstructive Practice.** Materially impede the procuring entity's investigation into allegations of one or more of the above mentioned prohibited practices either by deliberately destroying/ falsifying/ altering, or by concealing of evidence material to the investigation, or by making false statements to investigators, and/ or by threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or by impeding the procuring entity's rights of audit or access to information.

(x) **Undue Advantage.** Improper use of information obtained by the bidder from the procuring entity with an intent to gain an unfair advantage in the procurement process or for personal gain. This also includes if the bidder (or his allied firm) provide services for the need assessment/ procurement planning of the tender process in which he is participating.

#### **2.1.9 Obligations for Proactive Disclosures.**

(a) Procuring authorities as well as bidders/ suppliers/ contractors/ and consultants, are obliged under the Code of Integrity for Public Procurement to, suo-moto, proactively declare any conflict of interest (pre-existing, or as soon as it arises at any stage) in any procurement process or execution of contract. Failure to do so would amount to violation of this Code of integrity.

- (b) Any bidder must declare, whether asked or not in a bid document, any previous transgressions of such a code of integrity with any entity in any country during the last three years, or of being debarred by any other procuring entity. Failure to do so would amount to violation of this code of integrity.
- (c) To encourage voluntary disclosures, such declarations would not mean automatic disqualification for the bidder making such declarations. The declared conflict of interest may be evaluated and mitigation steps, if possible, may be taken by the procuring entity. Similarly, voluntary reporting of previous transgressions of Code of Integrity elsewhere may be evaluated, and an alert watch may be kept on the bidder's actions in the tender and subsequent contract.

**2.1.10 Broader Obligations Principle**. Procuring authorities also have the responsibility and accountability to conduct public procurement in a manner to facilitate achievement of the broader objectives of the Government. These could be in areas like preferential procurement from Micro and Small Enterprises (MSEs)/ locally manufactured goods or services, reservation of procurement of specified class of goods from nominated agencies, promoting 'Aatmanirbhar Bharat' and 'Make in India' campaigns to boost self-reliance, besides facilitating administrative goals of other Departments of the Government like ensuring tax/ environment compliances, etc. Accordingly, in the context of Ministry of Defence, special emphasis is to be placed on promoting 'Aatmanirbhar Bharat' and 'Make In India' in Defence production and procurement in addition to providing reservation and purchase preference to certain categories of goods and services in Defence procurement. These are discussed below.

- (a) **Aatmanirbhar Bharat in Defence Sector**. Self-reliance in Defence manufacturing is an important pillar of India's strategic autonomy and one of the important objectives of the Government towards promotion of indigenisation of Defence requirements. Aatmanirbhar Bharat Abhiyan aims at gainfully utilising the emerging dynamism of the Indian industry to build indigenous capabilities for designing, developing and manufacturing state-of-the-art Defence equipment. With a view to promoting self-reliance in areas of Defence equipment, ammunition, spares, etc., enabling provisions have been instituted to provide a focused approach towards self-reliance by creating an environment for the Indian industry to actively participate in indigenous development projects by absorbing higher or complex technologies, and to facilitate procurement

of Defence requirements from indigenous sources. Towards this end, MoD has taken several measures to promote indigenous manufacturing and production. These include notifying lists of Defence items (as amended from time to time) that are banned for import. All procuring entities should ensure that no item figuring in these lists, are procured through imports. In fact, all stakeholders may take an in-principle call that there will be no import of Defence equipment going forward. This and other details regarding steps for promoting Aatmanirbhar Bharat are brought out in Chapter 10.

(b) **Restrictions under Rule 144 (xi) of the General Financial Rules (GFR) 2017.** Government of India may impose restrictions from time to time, including prior registration and/ or screening, on procurement from a country or countries or a class of countries, on grounds of Defence of India, or matters directly or indirectly related thereto including national security; no procurement shall be made in violation of such restrictions. The restrictions that are currently imposed and amendments made till date are placed at **Appendix A**.

(c) **Purchase/ Price Preference, Product Reservation and Other Facilities.** As mentioned in Paragraph 2.1.10 relating to the responsibility of procuring entities to facilitate achievement of broader objectives of the Government, the Central Government may, by notification, provide for mandatory procurement of any goods or services from any category of bidders, or provide for preference to bidders on the grounds of promotion of locally manufactured goods or locally provided services. Before considering any purchase/ price preference and product reservation, the Procuring Entity shall check the latest directives in this regard for necessary action. Such provisions shall invariably be part of the Notice Inviting Tender (NIT)/ RFP. Current directives/ provisions are briefly discussed below.

(i) **Public Procurement (Preference to Make in India) Order, 2017:** To encourage 'Make in India' and promote manufacturing/ production of goods and services in India with a view to enhance income and employment, DPIIT, Min of Commerce and Industry has issued Public Procurement (Preference to Make in India) Order, 2017 (PPP-MII Order, 2017) vide Order No. P45021/2/2017-PP (BE-II)-part(4) vol-II dated 19th July 2024, as amended from time to time. A copy of the DPIIT Order is placed at **Appendix- B** for reference. As per this Order, purchase preference shall be given to local suppliers who meet the minimum local content requirements,

in all procurements undertaken by procuring entities. Purchase preference shall be given to 'Class-I Local Suppliers' (as defined in DPIIT's Order and also indicated below) in all procurements undertaken by procuring entities as per DPIIT's Order No. P-45021/2/2017PP (BE-II) dated 19<sup>th</sup> July 2024, as amended from time to time. The salient features of the Order are as under: -

- (aa) Where the Nodal Ministry (identified for the purpose of this Order) for a particular good or service has communicated that there is sufficient local capacity and local competition, only 'Class-I local supplier' shall be eligible to bid, irrespective of purchase value ('Class-I local supplier' is the one who meets the local content requirement of minimum 50%, if Ministry of Defence has not prescribed a higher percentage to be qualified as Class-I local supplier).
- (ab) In all other procurements, except where GTE has been issued, both 'Class-I local supplier' and 'Class-II local supplier' shall be eligible to bid irrespective of value ('Class-II local supplier' is the one who meets the local content requirement of minimum 20%, if Ministry of Defence has not prescribed a higher percentage to be qualified as Class-II local supplier).
- (ac) In GTE cases, 'Non-local supplier' shall also be eligible to bid along with 'Class-I local supplier' and 'Class-II local supplier'. ('Non-local supplier' whose local content is below 20%).
- (ad) In procurement cases by procuring entities, 'Class-I local supplier' will get a purchase preference of 20%, i.e. in case a 'Class-I local supplier's quoted price is within a margin of 20% of the L1 price (in other words, the quoted price of a 'Class-I local supplier' is higher than the L1 price by a maximum of 20% over L1), the 'Class-I local supplier' will be considered for awarding tender quantity, either in full or in part, as per details given in DPIIT Order, subject to matching the L1 price.
- (ae) 'Class-II local supplier' will not get any purchase preference in any procurement undertaken by procuring entities.

- (af) Notwithstanding anything contained above, procurements where the estimated value to be procured is less than ₹5 lakh, will be exempt from this Order.
- (ag) 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 forms of procurement solicitation. Imported items sourced locally from resellers/ distributors, Procurement/ Supply of repackaged/ refurbished/ rebranded imported products; shall not qualify as local content. Bidders are to provide the cost of such locally-sourced imported items (inclusive of taxes) along with break-up on license/ royalties paid/ technical expertise cost, etc. sourced from outside India/ for items sold by bidder as reseller.
- (ah) The 'Class-I local supplier' and 'Class-II local supplier' at the time of bidding, shall be required to indicate percentage of local content and provide self- certification that the item offered meets the local content requirement for Class-I or Class-II local supplier, as the case may be.
- (ai) In procurement cases where value is in excess of ₹10 crore, 'Class-I local supplier' and 'Class-II local supplier' will be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practising cost accountant or a practising chartered accountant (in case of suppliers other than companies) giving the percentage of local content.
- (aj) False declarations will be in breach of the Code of Integrity (Paragraph 2.1.8) for which the bidder or his successors can be debarred for not less than six months and upto two years as, along with such other action as may be permissible under law.
- (ak) There should be no restrictive or discriminatory conditions against domestic suppliers in bid documents. In case such conditions are included, Administrative Department may conduct an enquiry to fix responsibility.

(al) Special provision may be made for exempting suppliers from meeting minimum local content, if a product is being manufactured in India under licence from a foreign manufacturer who holds IPR or where a technology collaboration agreement/ TOT agreement for indigenous manufacture exists with clear phasing of increase in local content.

(ii) **Product Reservation and Other Facilities for Micro and Small Enterprises (MSEs)**. To enable wider dispersal of enterprises in the country, particularly in rural areas, the Central Government Ministries/ Departments/ Central PSUs shall continue to procure at least 25% of their annual procurement from MSEs. Presently, 358 (three hundred and fifty eight) items, including 08 (eight) items of Handicraft, have been reserved for exclusive purchase from MSEs. The website of the Ministry of Micro, Small & Medium Enterprises (MSME) <https://msme.gov.in> may be referred to for the latest list of reserved items. Salient features of the Public Procurement Policy for MSEs are placed at **Appendix C**. MSEs registered under Udyam (an online registration portal by the Ministry of MSME, free of cost for all MSEs) are eligible to avail the benefits under the Policy. Through the Procurement Policy for MSEs (mentioned above), Government of India has extended the following facilities to the MSEs:-

- (aa) Issue of Tender sets free of cost.
- (ab) Exemption from payment of Bid Security/ Earnest Money Deposit (EMD).
- (ac) Purchase/ Price Preference up to 15% ( $L1 + 15\%$ ) where  $L1$  price is from someone other than MSEs. Such MSEs will be allowed to supply up to 25% of total tendered value subject to bringing down their price to  $L1$  price. In case the tender item cannot be split or divided, the MSE quoting a price within the band  $L1+15\%$  may be awarded full tendered value. The 25% quantity is to be distributed proportionately among these bidders, in case there are more than one MSEs within such price band.

*Note:- If the procuring entity negotiates with the non-MSE  $L1$  bidder, the price band ( $L1+15\%$ ) should be calculated based on the original  $L1$  price, not the lower negotiated price, and*

*such eligible MSE bidders shall be called to match the new negotiated L1 price as per procedure mentioned above for placement of 25% quantity.*

- (ad) **Exemptions from the Public Procurement Policy for MSEs.** Given their unique nature, Defence armament imports shall not be included in computing 25% goal for MoD. In addition, Defence equipment like weapon systems, missiles, military equipment spares, etc., shall remain out of purview of such policy of reservation.
- (ae) Further, if a subcontract is given to MSEs, it will be considered as procurement from MSEs.

- (iii) **Facilities for Start-ups recognised by DPIIT.** Following relaxations shall be provided to Start-ups recognised by DPIIT subject to the entity complying with the eligibility conditions as notified by the Government from time to time:-

- (aa) Condition of prior turnover and prior experience may be relaxed for Start-ups subject to meeting of Qualitative Requirements/ technical specifications.
- (ab) Exemption from payment of Bid Security/ EMD.
- (ac) Relaxation/facilities towards ease of doing business, under iDEX scheme and other such schemes, approved for inclusion in DAP-2020 (and amendment thereof), shall be automatically extended for procurements from such entities under this manual.

- (iv) **Product Reservation for Khadi Goods/ Handloom Textiles.** The Central Government has reserved all items of handspun and hand-woven textiles (Khadi goods) for exclusive purchase from Khadi & Village Industries Commission (KVIC). Of all items of textiles required by Central Government departments, it shall be mandatory to make procurement of at least 20% from amongst items of handloom origin for exclusive purchase from KVIC and/ or Handloom Clusters such as Cooperative Societies, Self-Help Group (SHG) Federations, Joint Liability Groups (JLGs), Producer Companies,

Corporations, etc., including Weavers having Pehchan Cards. The website of Development Commissioner (Handlooms), Ministry of Textiles <<http://handlooms.nic.in>> may be referred to for the latest list of reserved items. The handloom textile items are to be purchased from KVIC to the extent of their capacity and the balance from the Handloom Clusters up to their capacity. The goods are to be procured from KVIC/ Handloom Clusters on the basis of samples/ specifications approved by the Procuring Entity on mutually agreed terms and conditions. Left over quantity, if any, may be purchased from other sources on same conditions.

(v) **Pharmaceuticals Purchase Policy for Products of Pharma Central Public Sector Enterprises (CPSEs) and their Subsidiaries.** The Pharmaceuticals Purchase Policy is a facility, which may be availed by Government Institutions to procure quality drugs at reasonable prices. This Policy for products of pharma CPSEs and their subsidiaries (as laid down by the Ministry of Chemicals and Fertilisers, Department of Pharmaceuticals Office Memorandum No. 50(9)/2010-PI-IV dated 10th December 2013, as amended from time to time) shall be followed while procuring medical stores from these pharma CPSEs. As per Sub-Paragraph 1 (vii) of the referred OM, in case pharma CPSEs and their subsidiaries fail to supply the medicines, the procuring entity would be at liberty to make purchases from other manufacturers.

## **2.2 Policy Guidelines**

**2.2.1 Economy.** Purchases of stores must be made in the most economical manner and in accordance with the definite requirements of the Defence Organisations. Stores should not be purchased in small quantities. Periodical indents should be prepared covering the requirement for one year or more, except where for reasons of short life or for other recorded reasons, it is necessary to procure lesser quantities. Care should also be taken not to purchase stores much in advance of actual requirements or in excess of requirements, if such purchase is likely to prove unprofitable to the Government due to reasons such as unwarranted carrying costs, and thus locking up of capital in stock should be minimised. Factors such as procurement lead time, Minimum Stock Level (MSL), Annual Consumption Limit (ACL), economies of scale and criticality shall also be core determinants of quantity to be procured.

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

**2.2.3 Splitting.** Purchase order should not be split to avoid the necessity for obtaining the sanction of the higher authority required with reference to the total amount of the orders.

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

**2.2.5 Overhauled Conditioned (OHC) Items.** At times, specifically in case of weapon systems being phased out in the near future, availability of brand new spares may become difficult. In such cases, with the approval of the appropriate CFA, OHC spares may be procured from their authorised repair agents/ DPSUs based on Certificate of Conformity issued along with the item. Life of such OHC items shall be based on their residual life and certified by the vendor along with budgetary quote. Quality certification for OHC items will be carried out by the OEM/designated certification agency as the case may be.

**2.2.6 Applicability of Bank Guarantees for DPSUs.** For procurements being undertaken on ab initio Single Vendor/ nomination basis, DPSUs are exempt from submitting all Bank Guarantees, and shall, in lieu, submit an indemnity bond of equivalent amount. DPSUs shall, however, furnish all Bank Guarantees, as applicable, while participating in multi-vendor/ competitive tendering cases.

**2.2.7 Decentralisation and Delegation of Powers.**

(a) **Decentralisation**. The Government has decentralised the decision making process so as to enhance efficiency and expedite decision-making. The procurement function has also been decentralised and most of the Defence organisations undertake bulk of the central procurement and local purchase themselves. It shall be ensured that all procurement officers meticulously follow the laid down procedures.

(b) **Delegation of Powers**. With the objective of decentralising powers to enable effective use of resources by the actual operators, financial powers have been delegated to various authorities in the Defence establishments down to the units/ establishments. These powers are to be used within the

framework of laid down procedures, canons of financial propriety and amplificatory instructions issued by Government from time to time. The financial powers so delegated also imply accountability and the CFAs must ensure that financial propriety and probity are observed in all cases and integrated finance consulted wherever prescribed in the delegations.

(c) **Greater Capacity Building.** Service HQs/ Other Organisations and their Procurement Agencies may undertake efforts to build greater expertise for negotiations, drafting and vetting of tender/ contract documents, to ensure more efficient procurement processing.

## **2.3 Types of Revenue Procurement**

**2.3.1 Indigenous Procurement.** Procurement from Indian vendors, as defined in Paragraph 1.3.16 (a) (Chapter 1) is called indigenous procurement. Payment for such procurements is made in Indian Rupees. It is the policy of the Government to encourage procurement from indigenous vendors through inter-alia greater indigenisation in the field of Defence, so as to achieve greater self-reliance in the Defence sector.

**2.3.2 Foreign Procurement (Import).** Procurement from foreign sources/ vendors is referred to as foreign procurement, and payment for the same is usually made in foreign currency. With a view to promoting self-reliance in the Defence Sector, MoD has taken steps to place certain restrictions on foreign procurements. Any import of Defence equipment, irrespective of value, will require explicit approval of Hon'ble Raksha Mantri or any competent authority as may be designated by MoD from time to time. This will apply to all categories of procurement under this Manual. The procedure for foreign procurement is laid down in Chapter 7 of this Manual.

**2.3.3 Procurements under Inter-Government Agreements (IGAs).** As defined in Paragraph 1.3.20 (Chapter 1).

**2.3.4 Central Procurement (CP).** As defined in Paragraph 1.3.5 (Chapter 1).

**2.3.5 Local Purchase (LP).** As defined in Paragraph 1.3.22 (Chapter 1).

**2.3.6 Procurement of Books and Print Media.** The procurement of print media encompasses various categories such as books, journals, magazines, and newspapers, each serving distinct purposes like knowledge dissemination and education. While books are often acquired for libraries or educational curricula, newspapers, magazines, etc., have a wider applicability. Decisions regarding the

procurement of print media involve careful consideration of factors such as author, publisher, subject matter, content quality, edition, and market availability. Once the category and specifications are determined, quotations may be solicited from vendors in the form of Net Discount over the (published) Price. The vendor offering the most competitive discount, referred to as L1, is typically chosen. Additionally, the onboarding of the vendor should be for at least 1 year to ensure stability and continuity in the procurement process. Rate Contracts can be utilized for these procurements, providing a framework for consistent pricing and terms over the specified duration. This process ensures that the procuring entity obtains the desired print media at the best possible price, balancing considerations of quality, content, and vendor stability.

**2.3.7 Purchase of Goods and Services through Government e-Market place (GeM)**. An online marketplace (or e-commerce market place) is a type of ecommerce site where products or services are offered by a number of sellers and all the buyers can select the product/ services offered by any one of the sellers, based on buyers' own criteria. In an online marketplace, purchaser's transactions are processed by the marketplace operator and then product/ services are delivered and fulfilled directly by the participating retailers. Ministry of Commerce has developed an online Government e-Market place (GeM) for common use goods and services. The procurement process on GeM is end-to-end from placement of supply order to payment to suppliers. This is to ensure better transparency and higher efficiency. All the processes are electronic and online. As per Rule 149 of GFRs – 2017, procurement of goods and services by Ministries/ Departments and organisations under them, is mandatory for goods and services that are available on GeM. Details of GeM Procurement and procedures involved therein, are given at Paragraph 5.2 (Chapter 5).

**2.3.8 Non-GeM Procurements**. These procurements may be undertaken through various modes as brought out below:-

**2.4 Modes of Non-GeM Procurements**. Various modes of tendering that can be employed for undertaking Non-GeM procurements are covered below. Further details regarding each mode of tendering is given in Chapter 5.

**2.4.1 Purchase of Goods and Services without Quotation**. Purchase of goods and services up to the value of ₹ 50,000/- (as revised from time to time by the Government) on each occasion, may be made without inviting quotations or bids, on the basis of a certificate to be recorded by the CFA as per **DPMF 1**.

**2.4.2 Purchase of Goods and Services by Local Purchase Committee (LPC)**

(LPC). In case a certain item is not available on the GeM portal and it is also not feasible to procure such goods/ services through the bidding modules of GeM, such as 'Custom'/ 'BoQ Based' [please refer Paragraph 5.2.1(f) (Chapter 5)], as included/ amended from time to time, purchase of goods costing above ₹ 50,000/- and up to ₹ 5,00,000/- (as revised from time to time by the Government) on each occasion, may be made on the recommendations of a duly constituted LPC consisting of three members of an appropriate level, as decided by the CFA. The Committee shall be required to survey the market to ascertain the reasonableness of rate, quality, specifications and identify the appropriate supplier. Before recommending placement of the purchase order, the members of the Committee shall jointly record a certificate as per **DPMF 2**.

**2.4.3 Obtaining Quotations by the LPC**

The CFA may direct the LPC responsible for carrying out the market survey, to obtain quotations as a part of the market survey. Where no such direction has been given, it shall be up to the LPC to decide whether or not to obtain quotations as a part of documentation of market survey. In either case, however, details of the market survey (suppliers contacted and the rates quoted by them) shall be recorded by the LPC.

**2.4.4 Limited Tender Enquiry (LTE)**

LTE is a restricted competition procurement process, where a pre-selected list of vendors is directly approached for bidding. Bids from uninvited bidders are treated as unsolicited and are normally not entertained, except in special circumstances. LTE procedure may be resorted to for procurement when the estimated value of procurement is between ₹ 5 lakh upto ₹ 50 lakh (as amended from time to time) but not as a default mode of tender.

**2.4.5 Open Tender Enquiry (OTE)**

In OTE, an attempt is made to attract the widest possible competition by publishing the NIT simultaneously on the designated websites. This is the default mode of procurement and gives the best value for money. However, since the procedure is relatively complex and prolonged, the systemic cost of this procedure may be high enough to be unviable for smaller value procurements.

**2.4.6 Global Tender Enquiry (GTE)**

GTE is similar to OTE but, through appropriate advertising and provision for payment in foreign currencies through Letter of Credit (LC)/Direct Bank Transfer. It is aimed at inviting the participation of, inter alia, foreign firms. The cost and complexity involved is even higher than OTE.

**2.4.7 Proprietary Article Certificate (PAC)**

In this mode, certain items are procured only from Original Equipment Manufacturers (OEM) or

manufacturers having proprietary rights (or their authorised dealers/ stockists) against a PAC signed by the appropriate authority.

**2.4.8 Single Tender Enquiry (STE)/Nomination basis without PAC.** A tender invitation to one firm only without a PAC, is called a single tender.

## **2.5 Purchase of Goods/Services Directly under Rate Contract**

**2.5.1** Goods/Services for which Central Procurement Agency or MoD/ Service HQs/ other Organisations/ DG AFMS/ Command HQs/ Depots/ etc., have Rate Contracts, may be procured directly by the DDOs/ units/ formations using such Rate Contracts. Procedures for procurement of goods/ services through Rate Contracts are covered in Chapter 8 of this Manual.

## **2.6 Cash Purchase from Imprest**

**2.6.1** Cash purchase is a type of LP resorted to in case of urgent requirement or when the supplier is not willing to supply the required item on credit. Cash and carry powers are very limited, as such procurement is made only in exceptional cases when cash payment is made from the imprest of the unit, and the same is claimed from the paying authority who reimburses the amount after due audit of the transaction. Afloat units authorised money warrant may undertake payment from imprest for procurement against LP under delegated financial powers.

## **2.7 Procurement of Goods/Services Developed/Produced Domestically with ToT or through Indigenous Design & Development**

**2.7.1** The following guidelines should be followed for procurement of goods/ services developed/ produced either with ToT or through Indigenous Design & Development, from the Indian industry:-

(a) Goods and Services may be procured from the industry by following the normal tendering procedure. However, any item developed/ manufactured domestically, specifically for the Defence Services, with ToT or through indigenous design and development, shall be procured from the industry/ supplier concerned only, up to the committed period from the date of commissioning of the manufacturing unit/ facility setup for the purpose. Similarly, the industry/vendor concerned shall be approached for providing any service, such as repairs and overhauling, if the facility for providing such services has been set up exclusively for the Defence Services.

(b) Cases falling under above Sub-Paragraph, shall not be treated as Single Tender Enquiry (STE)/ PAC procurements.

**2.7.2** Further details regarding procurement of goods/ services developed/ produced with ToT or through Indigenous Design & Development from the Indian industry, are brought out in Chapter 10.

## **2.8 Emergency Procurements**

**2.8.1** Emergency Procurements are procurements made under delegated financial powers of certain specified authorities in the Defence Services, which are exercisable by them during periods preparatory to war, hostilities, special operations, natural calamities and disasters. Such procurements are to be undertaken as and when the aforesaid eventualities are notified by the Government. The proposal related to procedure to be followed for exercising Emergency Powers shall be routed through FA (DS) to Secretary DMA and Defence Secretary, for approval of Raksha Mantri. However, emergency procurements by the Defence Services may only be undertaken for indigenous stores/ spares/equipment, etc. and exception if any, irrespective of value, will require specific approval of the RM. In such cases of import, the requirement for alternate product development/ procurement from indigenous sources may be dispensed with temporarily on case to case basis. Further, care may be taken to ensure that services, repairs and maintenance of existing assets taken up through the emergency procurement route, are not disproportionate with procurement of armaments, equipment, etc. The proposals for emergency procurement of stores/spares, etc. must be accompanied with initiatives taken and timelines towards indigenisation. The matter may be reviewed at all CFA levels concerned, whenever emergency procurements are proposed/undertaken.

**2.8.2** MoD's SoP on Emergency Procurement, issued from time to time, may be referred in this regard.

**2.8.3 Special Financial Powers**. The process of tendering/conclusion of contract while exercising special financial powers as provided for in the DFPDS shall be in accordance with the norms specified in the DFPDS and guidelines/provisions of this Manual and/or relevant directive/orders of MoD issued from time to time.

## **2.9 Time Limit for Procurement & Accountability**

**2.9.1** The effect of delay in processing and clearance of various procurement activities needs no emphasis. The decentralisation of decision making mechanism and delegation of financial powers are aimed at facilitating faster decision making and obtaining the

best value for money. However, delegation of powers also implies 'authority with accountability'. Every individual in the chain of the procurement process is accountable for taking action in a specified time period so that the requirements of the Defence Departments are met on time. An indicative time frame for procurement is placed at **Appendix D**.

## **2.10 Procedures and Modalities - Procurement Process**

**2.10.1** The various departments, wings of the MoD and organisations thereunder may have specific requirements, intricacies and procedures to streamline and standardise the procurement process within their respective organisations and may, therefore, formulate detailed procedures and modalities to effect expeditious procurement. However, these procedures shall not violate or modify the basic provisions/ principles of GFRs - 2017 and this Manual.

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## **CHAPTER 3**

### **SOURCING AND QUALITY**

#### **3.1 General**

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

**3.1.2 Registration of Suppliers and Service Providers.** The Joint Services Guide on Assessment and Registration of Suppliers/ Manufacturers for Defence (JSG 015: 2018) is applicable mainly for registration by DGQA of manufacturing firms as suppliers. The guidelines and procedures laid down therein may, therefore not apply in totality and they may not be applied, mutatis mutandis, by the Registering Agencies (as defined in 3.2.5 and 3.2.6) to other suppliers and service providers. The DGQA/ DGAQA/ Other QA agencies may assist Central Procurement Agencies at Service HQs and other organisations under MoD in registration of indigenous vendors, as per their request. Service HQs/ Organisations concerned shall evolve detailed procedures and regulations for registration of suppliers and service providers in accordance with Paragraph 2.10 (Chapter 2) and also keeping in view the instructions in the succeeding paragraphs.

#### **3.2 Registration of Firms/ Suppliers**

##### **3.2.1 Basic Guidelines.**

- (a) There shall not be registration of firms for the COTS (Commercial off the Shelf) items whether to be procured

through e-procurement or through other modes and also for the items available on the GeM. However, for goods and services not available on GeM and Non COTS in nature, Heads of Ministry/ Department may also register suppliers of goods and services, which are specifically, required by that Department/ Ministry periodically. Registration of the supplier should be done at regular intervals (at least once in 2 years) following a fair, transparent and reasonable procedure and after giving due publicity. Such registered suppliers should be boarded on GeM as and when the item or service gets listed on GeM. The Ministry/ Department shall notify the authorities competent to deal with the applications and grant registrations, along with their jurisdictions.

- (b) Credentials, manufacturing capability, quality control systems, past performance, after-sales service, financial background, business ethics and their market standing, etc. of the firms/ supplier(s) should be carefully verified before registration.
- (c) The firm(s)/ supplier(s) will be registered for a fixed period of one to three years depending on the nature of the goods. At the end of this period, the registered firm(s)/supplier(s) willing to continue with registration are to apply afresh for renewal of registration. New firm(s)/supplier(s) may also be considered for registration at any time, provided they fulfil all the required conditions.
- (d) Performance and conduct of every registered firm/supplier is to be watched by the Department/ Organisation concerned. The registered firm(s)/supplier(s) are liable to be removed from the list of approved suppliers if they fail to abide by the terms and conditions of the registration or fail to supply the goods on time or supply substandard goods or make any false declaration to any Government agency or on any other ground which, in the opinion of the Government, is not in public interest.
- (e) The list of registered suppliers for the subject matter of procurement be exhibited on the websites of the Procuring Entity/ e-Procurement portals.

### **3.2.2 Eligibility for Registration of Firms/ Suppliers**

Following eligibility criteria may also be considered: -

- (a) Where registration is granted based on partly outsourced arrangements/ agreements, it shall be the responsibility of the registered unit, to keep such arrangements/ agreements renewed/ alive at all times, to keep their registration valid for

the period for which it has been granted. Any failure in this regard may make the registration null and void or ineffective retrospectively from any such date, which the registering authority considers appropriate.

- (b) Suppliers should possess valid Digital Signature Certificate (DSCs) Class III with the company name at the time of registration/ renewal, so as to enable them to participate in e-Procurements.
- (c) Firms, against whom punitive action has been taken, shall not be eligible for re-registration during the currency of punitive action. Registration requests may not be entertained from such firms, stakeholders, etc. who have any interest in deregistered/ debarred firms.
- (d) The Firm should also have good internal governance, such as whistleblower policy, commitment to ESG (Environmental, Social, and Governance) code of conduct, code of business ethics, etc.

**3.2.3 Procedure for Registration.** Procedure for registration of suppliers is as follows:-

- (a) Registration shall be done ensuring fundamental principles of public procurement (especially the transparency principle- transparency, fairness, equality, competition and appeal rights) with the approval of Competent Authority after carefully assessing and verifying credentials, capability, quality control systems, past performance, after-sales service facilities, financial background, and so on, of the supplier/ contractor/ service provider(s). The Registering Agency may also co-opt a representative of the User.
- (b) Registration shall be done after giving due publicity. Details of the procedure for registration of new firms may be uploaded on the website and also published in the form of a booklet for information of the suppliers. Time frames and criteria for registration of new suppliers may be clearly indicated.
- (c) Possible sources for any category/ group of requirements may be identified based on internal and external references. Data of new suppliers may be obtained from the responses received from suppliers, open tender advertisements, pre-qualification bids, Expression of Interest (EoI), against various enquiries on the website, dedicated websites, exhibitions, buyer-seller meets, various publications of National Small Industries Corporation (NSIC), trade journals, and so on. The

e-Procurement portal does pre-registration of suppliers online. Such data may also be a source of information on prospective suppliers.

- (d) New supplier(s) may be considered for registration, provided they fulfil all the required conditions. For any larger scale or critical registration or development of new suppliers, Procuring Entity shall call for EoI by publicising its need for development of sources.
- (e) While registering the firms, an undertaking may be obtained from them that they shall abide by the Code of Integrity {Paragraph 2.1.8 (Chapter 2)} enclosed with the application with a clear warning that, in case of transgression of the Code of Integrity, their names are likely to be deleted from the list of registered suppliers, besides any other penalty or more severe action as deemed fit.
- (f) In cases where the firm(s) are not considered capable and registration is not granted, the authority concerned shall communicate the deficiencies and shortcomings directly to the firm(s). Where a request for re-verification and review is made by the firm(s), along with any fee as prescribed and within the period prescribed by the Department, review shall be undertaken. Requests for re-verification after expiry of the said period shall be treated as a fresh application and processing fee, if any prescribed, charged accordingly.
- (g) Registration shall be for specific trade groups of goods/ services as well as for the monetary categories for which firm/ supplier shall be eligible to quote. For this purpose, all goods/ services shall be divided into trade groups and the information published on the relevant portals/ websites. Purchase Organisations may also decide the monetary categories for the purpose of registration.
- (h) All registered suppliers shall be allocated a unique registration number. Once the firms are registered, a circular shall be issued by the registration agency indicating the names and addresses of the registered suppliers with details of the requirements and monetary value they shall supply as well as the validity period, and so on, for which they are registered. The list of registered suppliers for the subject matter of procurement be exhibited on the Central Public Procurement Portal (CPPP)/ Defence e-Procurement Portal (DePP) and websites of the Procuring Entity/ e-Procurement portals. List of debarred suppliers may also be uploaded onto these portals.

(i) Registration shall be done by grading the firms in appropriate fashion (e.g. Grade A, B and so on) based on their capability for executing contract orders of different monetary limits in the relevant category of requirements. The monetary limits are to be carefully fixed keeping in view the banker's reports, capacity and capability of the firm and other financial information indicated in the balance sheets, profit and loss statements, pledged financial instruments, etc. Suppliers of services may be graded based on user determined criteria, which may include, inter-alia the firm's financial capability, past experience, successful/satisfactory completion of similar services and managerial capability. The grade of suppliers who are eligible to quote, may also be indicated in the RFP as required. An example of grading for goods' suppliers is given below:-

- (i) Grade A. Above ₹ 25 lakh.
- (ii) Grade B. ₹ 5 lakh to ₹ 25 lakh.
- (iii) Grade C. Below ₹ 5 lakh.

(j) Within the monetary limits so prescribed, as also for the category of registration, the registered firm may be exempted from depositing the EMD. In other categories and higher monetary limits, the supplier shall be treated as any unregistered supplier and not be entitled to the privileges of a registered supplier. The monetary limit or category, so laid down, does not, however, debar a firm from getting orders in excess of the monetary limit or for other categories, provided the Procuring Entity is satisfied about the capacity and capability of the firm but a requisite security deposit shall be obtained, as is being done in the case of unregistered firms.

**3.2.4 Assessment of Capabilities**. The technical and financial capabilities of the firms, including their past performance, shall be carefully evaluated and verified by a Board of Officers constituted by CFA/ Registering Agencies for the purpose of considering registration/ renewal of registration. The Registering Agency may also co-opt a representative of the User. IFA shall be associated with assessment of the financial capabilities of the firm. Format of capacity/ capability report on firms is placed at **DPMF 3**, which is to be submitted along with details of stores under production or development by the firms, format of which is placed at **DPMF 4**.

**3.2.5 Registration at Service HQs/Other Organisations under MoD**. Registering Agencies shall carry out Capacity Assessment/ Registration as per the provisions elaborated in the preceding Paragraphs.

**3.2.6 Registration by Agencies at the Command HQs/ Corps HQs/ Area HQs and Other Levels.** Apart from the Departments of the Ministry, Central Procurement Agencies at the Service HQs, etc. as per the provisions of Para 3.2.1 (a) above, firms may also be registered by the Command/ Corps/ Area HQs, Depots, Workshops and Naval Dockyards, etc., as per the provisions contained in this Chapter.

**3.2.7 Registration at the Unit Level.** It is not necessary to register the firms at the unit level for the purpose of carrying out LP. However, the reputation, capacity and credibility is to be ascertained before obtaining quotations from or placing supply orders on a particular firm.

**3.2.8 Inter-Service/ Inter-Departmental Acceptability of Registration.** A firm/ supplier registered with any department of the MoD, the Central Procurement Agencies in Service Headquarters, DRDO Headquarters may be considered as a registered firm for procurement by other departments of the MoD or the other Services/ establishments and all lower formations for the same range/ category of products/ goods/ services/ specifications for which the firm is registered with any of the aforesaid organisations. However, a firm registered with a field formation/ unit for LP may not be accepted as registered for procurement by higher headquarters/ formations. Vendors who are registered/ empanelled through a pre-qualification process by Other Sector Specialist Ministries/ Departments of the Government of India, e.g. National Informatics Centre (NIC)/ National Informatics Centre Services Incorporated (NICSI)/ Ministry of Electronics and Information Technology (MeitY) for Information and Communications Technology (ICT) Procurements/ Projects or Ministry of Health for Medical Equipment/ Stores may be used by various procuring entity under MoD for procurement of same range of goods/ services as registered/ empaneled vendors. The Deptt. of Defence Production (DDP)/ MoD has created an online portal 'Indian Defence Mart' for central registration of all Defence sector vendors, so to act as an extended vendors' pool for all Defence Organisations and minimise duplication of efforts made for vendor registration, thereby facilitating ease of doing business. The system, which can be accessed through <https://www.idm.gov.in>, will create a database that will work as a single source of information across the Defence industry and provide visibility to all Defence suppliers, including small vendors/ players registered therein. Wherever physical verification/ validation of vendor's facility is required, each Organisation shall get it done by engaging their own resources and share the findings on the portal so that all Defence Organisations are benefited.

**3.2.9 SOPs for Registration of Vendors.** Ministry of Defence may consider promulgating detailed SOP in due course duly considering the registration process of GeM portal as well as factors like transparency in the process, time lines, assessment and performance, monitoring and review of registered vendors, suitable registration fee and appropriate security deposit, pledging of financial instruments to invoke responsiveness of registered vendors and system of weeding out non-performers, etc.

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

**3.3.1 Criteria for Assessment of Performance.** Performance of the registered firms shall be reviewed by the Procurement Entities periodically and reported to the Registering Agency in those cases where the registering agency and the procuring entity are different. The general criteria for assessing the performance of the registered firms are as follows: -

- (a) **Quality.** Quality has to be assessed from the inspector's report as well as the feedback from the actual users.
- (b) **Delivery.** Delivery compliance has to be assessed from the delivery data against purchase orders placed on the firm. The purchaser may generate the data from the computer records to determine the percentage of orders in which delivery was completed within the original delivery date as per the Contract/ Supply Order (SO).
- (c) **Price.** Price competitiveness of a firm has to be assessed against its ability to secure orders on competitive basis. Orders secured as percentage of quotes shall indicate the price competitiveness of the supplier. This data may be generated from the records maintained by the procuring entity.
- (d) **Response.** The response analysis of the firms may be carried out in terms of number of quotes submitted against the number of RFPs sent to them. Computer generated data for quotes received as a percentage of RFPs sent may be one of the valid criteria for response analysis.
- (e) **Product Support.** Product support record of a firm may be determined on the basis of response to enquiries for spare parts and maintenance services for the equipment originally supplied by that firm.
- (f) **Rating of Vendors.** A rating system may be adopted to assess the performance of the registered firms based on the above criteria by the registering agency.

### **3.4 Renewal and Additional Registration**

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

### **3.5 Inviting Capable Unregistered Firms for Registration**

**3.5.1** When on capacity verification of an unregistered manufacturer (identified in response to Open Tender Enquiry (OTE)/ EoI tendering), it is observed that the firm possesses necessary capability and is suitable for registration, shall be invited to apply for registration with the Registering Authority concerned. The application in the prescribed form with necessary documentation and processing fee shall be processed as per prescribed procedure and registration granted as in the case of initial registration.

### **3.6 Registration of Small Scale Industries (SSI) units with National Small Industries Corporation Limited (NSIC)**

**3.6.1** Under the single point registration scheme of NSIC, under Ministry of Micro, Small & Medium Enterprises (MSME), the SSI units may also apply for registration to the NSIC. The units registered under single point registration scheme of NSIC are eligible to get the benefits under Public Procurement Policy for Micro & Small Enterprises (MSEs) Order 2012 as notified by the Government of India, Ministry of MSME, New Delhi vide Gazette Notification dated 23 Mar 12. MSEs having Udyam Registration shall also be provided all the benefits available for MSEs under Public Procurement Policy for MSEs Order 2012 as notified. Paragraph 2.1.10 (Chapter 2) is also relevant.

### **3.7 Guidelines of the Ministry of Defence for penalties in Business Dealings with Entities.**

#### **3.7.1 Introduction**

- (a) It is imperative that the highest standards of propriety be maintained throughout the process of procurement of Defence equipment.
- (b) 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 acts of impropriety.

- (c) 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.
- (d) In applying the measures provided for under the guidelines, the authorities concerned shall be guided by the need to ensure probity, transparency, propriety and compliance in the Defence procurement process. Equally, the authorities concerned shall also ensure fairness, impartiality, rigour and correctness in dealing with entities, keeping in view the overall security interests of the country.

### **3.7.2 General**

- (a) Ministry of Defence will include Department of Military Affairs, Department of Defence, Department of Defence Production, Department of Defence Research & Development, Department of Ex-Servicemen Welfare, HQ IDS, Armed Forces Headquarters and their attached/ subordinate offices.
- (b) "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.
- (c) 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.
- (d) 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 the competent authority also apply when an entity participates in the procurement process as member of consortium.

- (e) The competent authority for the purpose of these guidelines will be Raksha Mantri.
- (f) The Competent Authority may constitute Committees as necessary, to examine and make recommendations on any matter provided for under the guidelines.
- (g) Suspension/Banning/Debarment of Entities within Ministry, shall be governed by guidelines issued by D (Vigilance) from time to time. As regards debarment across Ministries/ Departments, guidelines mentioned in Para 3.7.2 (5) of Manual for Procurement of Goods, 2024, issued by Ministry of Finance may be followed.

**3.7.3 Causes for Suspension and Banning of Business Dealings with Entities.** 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 agents/agency commissions.
- (d) If national security considerations so warrant.
- (e) Non-performance or under performance under the terms and conditions of contact(s) or agreements(s) not covered in grounds listed in (a) to (c) above in accordance with provisions in contract or agreement.
- (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.

**3.7.4 Suspension.**

- (a) Suspension of business dealing with an entity may be ordered by the competent authority pending a full proceeding into allegations or facts related to any grounds enumerated in paragraph 3.7.3(a) to (f) above.

- (b) 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.
- (c) 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 or 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.

### **3.7.5 Effect of Suspension of Business Dealings with an Entity: -**

- (a) 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.
- (b) 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 after excluding such an entity.
- (c) 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 the 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.

- (d) Order of suspension of business dealings with an entity may be extended to its allied firms by specific order of the competent authority.

**3.7.6 Banning of Business Dealings with an Entity/Debarment of an Entity**

- (a) 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 3.7.3(a) to (f) above by the entity or establishment of such misconduct by a competent court/tribunal/ authority.
- (b) 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.
- (c) 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 3.7.3(a) to (d) above, the period of banning of business dealings with an entity shall not be less than five years. For the grounds listed in paragraph 3.7.3(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 dealing 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 act. In exceptional cases and those involving national security consideration the competent authority may order a longer period of banning of business dealings with an Entity, as deemed appropriate.

**3.7.7 Effect of Banning of Business Dealings with an Entity/ Debarment of an Entity**

- (a) 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.
- (b) 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 after excluding such an entity.

- (c) 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.
- (d) Orders of banning of business dealings with an entity may be extended to its allied firms by specific order of the competent authority.

#### **3.7.8 Employees/Agents of an Entity**

- (a) 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, any time in the future.
- (b) 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 the entity.

#### **3.7.9 Miscellaneous**

- (a) 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.
- (b) In cases wherein Transfer of Technology (ToT)/Licensed 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/Licensed production has been taken.

- (c) 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 contrary is taken by the competent authority, on a case by case basis.
- (d) 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 system, the Competent Authority will be approached for approval of issuance of RFP or conclusion of contract with such an entity. Certificates 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.
- (e) 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.
- (f) 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.

### **3.7.10 Minor Punitive Action**

**3.7.10.1** As mentioned in the preceding paragraph the competent authority in case of suspension/banning of business dealings with entities will be Hon'ble RM. However, CFAs not below Brigadier (equivalent in other services) may declare tender holiday for a particular firm debarring it for a period not exceeding six months from bidding to that unit. Such power will be exercised only after giving reasonable opportunity to the firm defending its position before a committee constituted by the CFA and to be chaired by the penultimate CFA, rep of IFA will invariably be part of the committee. Decision of CFA in this regard will be intimated to the next higher CFA, for information.

The ground such as- (i) supply of defective item and not entertaining request of the buyer for its replacement by the supplier, (ii) violation of express provisions of the contract (iii) repeated non-response to the communication sent by the buyer to the supplier towards obligation of the firm as per the contract, etc. may warrant temporary debarment of the firm. This will be in addition to forfeiture of PBG as deemed fit by the CFA.

### **3.7.11 Debarment across All Ministries/Department**

- (a) Debarment of firms across all the ministries/Departments will be governed by the guidelines/orders issued by MoF and as amended from time to time. As on date the subject matter is being dealt by the guidelines enumerated in para 11 to 16 of MoF letter no F.1./20/2018-PPD ,dated 2.11.2021 which is reproduced below to be followed by the organizations under Ministry of Defence.
- (b) Where a Ministry/Department is of the view that business dealings with a particular firm should be banned across all the Ministries/Department 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 GFR, 2017. This scrutiny is intended to ensure uniformity of treatment in all cases.
- (c) 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.
- (d) Ministry/Department before forwarding the proposal to DoE must ensure that reasonable opportunity has been given to the firm concerned 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.
- (e) 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.

- (f) 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.
- (g) DoE will maintain list of such debarred firms, which will be displayed on Central Public Procurement Portal.

### **3.8 Specifications**

**3.8.1** Items bought by the defence department, particularly the defence services, shall be manufactured as per or conform to the specifications. The specifications are the detailed QRs of the item being procured and shall indicate the material composition, physical, dimensional and performance parameters, tolerances, manufacturing process, test schedule, Quality Assurance Plan (QAP), preservation, packing, etc., where applicable. AHSP/ Specifications Promulgating Authority is to forward copies of specifications/ amendments periodically to all the Procurement Entities concerned. Various types of specifications relevant to the defence items are as follows:-

- (a) **Proprietary Article Certificate (PAC) Specifications**. These are available only with the proprietary firms. Hence, PAC specifications are normally not available with the purchaser and firm's certificate of quality is accepted. However, essential characteristics required for inspection should be available with the procuring and inspecting agencies.
- (b) **Branded Product**. The specification for branded commercial product is not available with the purchaser or the inspecting agency and these are to be accepted on the firm's guarantee conforming to standard specifications.
- (c) **Industrial Specifications**. There are Indian Standards issued by Bureau of Indian Standards (BIS) and other relevant bodies for various goods, including for food items and medical stores, which should invariably be specified in the bid documents. Foreign certification may be considered in cases of non-availability of applicable Indian Standards. In this regard, there are standard industrial specifications like the International Standards (IS), British Standards (BS), Deutsches Institut für Normung (Germany) (DIN) and Gosudarstvenny Standart (Russia) (GOST). In the case of medical stores, standard international specifications are issued by World Health Organisation (WHO), Food and Drug Administration (US)

(FDA), European Economic Area Standards (CE), American Society for Testing and Materials (ASTM) International, etc.

- (d) **Defence Specifications.** There are defence specifications for specialist items for use by the defence departments, particularly the Defence Services. These are Joint Services Specifications, Military Specifications, etc. Copies of such specifications are to be available with the Procuring Entity, Quality Assurance (QA) authority, Directorate of Standardisation and the AHSP.
- (e) **Indigenised Items.** The manufacturing agency, QA agency, DRDO, Service HQs and other organisations involved in indigenisation efforts, often successfully indigenise 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 manufacturing firms/ QA agency/ Design agency/ Service HQs, as the case may be, to guide future production. Such specifications shall be available with the Procuring Entity as well as the inspecting authority so as to ensure conformity with the required quality standards of the items being supplied.
- (f) **Ad Hoc Specifications.** There are items for which neither industrial nor defence specifications are available. In such cases, the indenter shall indicate the general parameters, normally the dimensional and performance parameters to enable procurement and inspection. Such ad hoc specifications shall be broad enough to permit wider participation by the suppliers and shall not be restrictive so that adequate competition is not obviated.
- (g) **As per Sample.** There are occasions when items, normally PAC products, are not procured from the original manufacturer but are 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 drawings. The purchaser and the inspecting authority shall acquire such specifications and drawings and retain with them to guide future production and inspection.
- (h) **Common Use Items.** There are a large number of items in use by the defence departments and defence services, which are common use items, freely available in the open market. As in the case of ad hoc specifications, specifications of common use items shall also be broad enough to permit wider participation by local suppliers and shall not be restrictive so that they do not pre-empt competition.

**3.8.2 Formulation of Specifications.** The procuring authority should ensure that specifications are developed to ensure Value for Money (VfM), level playing field and wide competition in procurement as per Rule 173 (ix) of GFR 2017. The specifications constitute the benchmarks against which the procuring entity will verify the technical responsiveness of bids and, subsequently, evaluate the bids. Therefore, well-defined specifications will facilitate the preparation of responsive bids by bidders as well as examination, evaluation and comparison of the bids by the procuring entity. It would also help in ensuring the quality of the supplied goods. The procuring authority should ensure that the specifications:-

- (a) As a general rule, be developed as per available indigenous technology/ capability.
- (b) Provide a level playing field and ensures the widest competition.
- (c) Are unambiguous, precise, objective, functional, broad based/ generic, standardised (for items procured repeatedly) and measurable; be broad enough to avoid restrictions on workmanship, materials and equipment commonly used in manufacturing similar kinds of goods.
- (d) Set out the required technical, qualitative and performance characteristics to meet just the bare essential needs of the procuring entity without including superfluous and non-essential features, which may result in unwarranted expenditure.
- (e) Normally be based on standards set by the BIS or other relevant bodies in India, wherever such standards exist. Preference should be given to procure the goods/services which carry the BIS mark/conform to relevant Indian standards. In the absence of Indian standards, the specifications may be based on the relevant International standards. For any deviations from Indian standards or for any additional parameters for better performance, specific reasons for deviations/modifications should be duly recorded with the approval of the CFA. Where the technical parameters are only marginally different, Indian standards may be specified and the Departmental specifications could cover only such additional details as packing, marking, inspection, and so on, as are specially required to be complied for a particular end use.
- (f) Indicate all dimensions in metric units. If due to some unavoidable reasons, dimensions in Foot-Pound-Second (FPS) units are to be mentioned, the corresponding equivalents in the metric system must also be indicated.

- (g) Comply with sustainability criteria and legal requirements of environment or pollution control and other mandatory and statutory regulations, or internal guidelines, if any, applicable to the goods/ services to be purchased.
- (h) Make use of best practice; examples of specifications from successful similar procurements in other organisations or sector may provide a sound basis for drafting the specifications.
- (i) Commensurate with VfM, avoid procurement of obsolete goods and require that all goods and materials be new, unused and of the most recent or current models and that they incorporate all recent improvements in design and materials, unless provided for otherwise in the bidding documents.
- (j) Should have emphasis on factors such as efficiency, optimum fuel/ power consumption, use of environmental-friendly materials, reduced noise and emission levels, low maintenance cost, and so on.
- (k) Purchase in accordance with a Sample: Purchase in accordance with a sample should not be usually undertaken. Calling for a sample along with the tender and deciding on the basis of evaluation of the sample may not be done, except on a case-by-case basis, with the approval of CFA at the AoN stage and consultation of IFA, where required as per delegation of financial powers, along with full justification in cases where indeterminable parameters assume significance and are of importance [Paragraph 5.12 (Chapter 5) on Tender/ Advance Samples refers in this regard].

**3.8.3 Essential Particulars.** The essential particulars to be specified in the tender document shall include *inter alia* the following, to the extent applicable for a particular purchase:-

- (a) Scope of supply and also end use of the required goods.
- (b) All essential technical, qualitative, functional, environmental and performance characteristics and requirements (such as material composition, physical, dimensions/ tolerances, workmanship/ manufacturing process wherever applicable, test schedule, etc.), including guaranteed or acceptable maximum or minimum values, as appropriate. Whenever necessary, the user may include an additional format for guaranteed technical parameters (as an attachment to the bid submission sheet), where the bidder shall provide detailed information on such technical performance characteristics

in reference to the corresponding acceptable or guaranteed values.

- (c) Drawings.
- (d) Requirement of the BIS mark or relevant Indian standards, where applicable, mentioning all parameters where such a specification provides options.
- (e) Requirement of an advance sample, if any, at the post contract stage before bulk production.
- (f) Special requirements of preservation, packing and marking, if any.
- (g) Inspection procedure for goods ordered and criteria of conformity.
- (h) Requirements of special tests or type test certificate or type approval for compliance of statutory requirements with reference to pollution, emission, noise, if any.
- (i) Related work and/ or related services required to achieve full delivery/completion, installation, commissioning, training, technical support, after-sales service and Annual Maintenance Contract (AMC) requirements, if any.
- (j) Warranty requirements.
- (k) Qualification criteria of the bidders, if any.
- (l) Any other aspects peculiar to the goods/services in question such as shelf life of the equipment, and so on.

### **3.9 Inspection Note**

**3.9.1 Issue of Inspection Note.** Inspection Note shall be issued by the inspection agency after satisfying that the products comply with specifications as per the contract. Paragraph 6.29 (Chapter 6) is also relevant in this regard.

**3.9.2 Waiver of Inspection Note.** The waiver for requirement of Inspection Note shall be ascertained by the user/ Indenter, in respect of items procured against specifications mentioned at Sub-Paragraphs 3.8.1 (f), (g) & (h) above or for items available COTS or in respect

of items for which testing facilities do not exist with AHSP/ DGQA. Such items may be accepted based on self-certification by the firm and inspection by a Board of Officers at the user's end. Relevant certificate from the firm shall be enclosed with the bill by the Procurement Entity. The waiver of Inspection Note, is however, not applicable to airborne stores dealt by DGAQA.

3.9.3 **Green Channel Status.** DDP/ MoD has formulated a Green Channel Policy to promote ease of doing business. The grant of Green Channel Status (GCS) to firms provides deemed registration status, waiver of Pre-Dispatch Inspection (PDI) and acceptance of stores under supplier's guarantee/ warranty against contracts concluded by various Procurement Agencies under MoD. The procedure for obtaining GCS shall be as per policy promulgated by DDP from time to time and available at DGQA web portal  
<<https://www.dgqadefence.gov.in/greenchannel-policy>>.

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## **CHAPTER 4**

### **STAGES IN PROCUREMENT PROCESS**

#### **4.1. Procurement of Goods and Services**

**4.1.1** The need for procurement of goods and services may arise due to the following reasons:-

- (a) Make up the deficiency of equipment, spares, consumables, stock, inventory, goods and services in accordance with the scales laid down, or specific authorisation made, by an authority competent to do so.
- (b) Meeting any ad hoc need for non-scaled/ not authorised/ NIV items, if considered necessary by the user. Maintenance of any equipment/ asset held on charge.
- (c) Outsourcing of any task that may be performed more economically and/ or efficiently by an outside agency, or to overcome capacity constraints.
- (d) Engagement of consultants (covered in Chapter 12).
- (e) Any other reason identified by the user.

#### **4.2 Stages in Procurement Process**

**4.2.1 Broad Stages in Processing a Procurement Proposal.** The broad stages involved in processing of a procurement proposal are indicated below:-

- (a) Formulation of a Statement of Case (SoC).
- (b) Accord of Acceptance of Necessity (AoN) and constitution/ nomination of Procurement Committee (PC) and Technical Evaluation Committee (TEC) by the CFA.
- (c) Framing of draft RFP.
- (d) Vetting and issue of RFP.
- (e) Pre-Bid conference (where required).
- (f) Submission of Bids.
- (g) Opening of Bids/ Technical Bids and Technical Evaluation by TEC.
- (h) Trials (where required, and incorporated in RFP with full justification) and in accordance with the provisions of Paragraph 5.12 (Chapter 5). Trial reports to be ratified by the TEC.

- (i) Approval of TEC Report (including the report on the trials) by CFA. Determination of reasonable price/ Benchmarked price before opening of commercial bids/quotations on expiry of the last date of submission of bids.
- (j) Opening of Commercial Bids/ Preparation & vetting of Comparative Statement of Tenders (CST) (wherever required).
- (k) Negotiation by PC/ Contract Negotiation Committee (CNC) (where required) and submission of recommendations.
- (l) Formulation and Vetting of Draft Supply Order (SO)/ Contract.
- (m) CFA's approval for the CNC/ PC recommendations / purchase decision [Expenditure Angle Sanction (EAS)] with or without IFA consultation as per delegation of financial powers.
- (n) Issue of CFA Sanction.
- (o) Signing and Dispatch of Contract/Supply Order (SO).

#### **4.3 Processing of Procurement Proposals**

**4.3.1 Processing of Proposals for CFA's Approval at AoN stage.** All Procurement proposals shall be initiated in the form of a Statement of Case (SoC), which clearly brings out all aspects of the proposal, including the justification/ reason for procurement, quantity, estimated cost, likely sources of supply, mode of tendering, etc. Expedited processing of the proposal depends on the comprehensibility and quality of the SoC. A simplified SoC may be prepared in case of small value local procurements of stores/ services valuing up to 5 lakh particularly for Commercial off-the-shelf (COTS) items, items with standard/ ad hoc specifications, etc. However, it shall contain all essential details, which are relevant for taking the purchase decision. A sample format of SoC is placed at **DPMF 5**. A simplified version of the SoC is placed at **DPMF 6**.

**4.3.2 Provisioning Review (PR).** PR is the primary method to establish necessity and determine quantity in respect of goods at AoN stage. Procurement of equipment, stores, spares, supplies is an ongoing process to meet the needs of the Services for their normal day-to-day sustenance and the Defence specific requirements relating to equipment, weapon systems, platforms, etc., that need to be maintained and kept in a state of op-readiness. In order to assess the need, a periodical review of the inventory has to be undertaken by the Services for each category/ type of item authorised to various units/ establishments, based on prescribed scales and for other items where scaling has not been done (non scaled items) and new/ NIV items proposed to be procured to meet specific requirements arising occasionally. Special reviews of inventory are also undertaken periodically pertaining to various classes of ships,

aircrafts, weapon systems, platforms, as and when necessitated, to meet additional requirements for spares, unplanned refits/overhaul and operational commitments. PRs are dictated by factors like system of working out gross requirements including the consumption pattern, procurement cycle, maintenance philosophy, source of supply, lead time required and other such issues. The exercise of carrying out PRs shall be done with reference to the relevant instructions issued by Services /other organisations concerned and on Enterprise Resource Planning (ERP) platform where available. Each PR shall then be converted into Schedule of Requirements (SoRs) based on the source of supply for seeking AoN. Based on the PR, AoN is to be sought from CFA for the requirement revealed. Procurements covered by Sub-Paragraph 4.1.1(a) shall be based on the annual PR to be carried out by the authorities concerned as per the procedures laid down by the respective Service HQs/other organisations.

#### **4.3.3 Indents.**

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

- (i) Complete details like part numbers and specifications of the spares/equipment indented.
- (ii) A realistic estimate of the cost with basis of assessment to avoid seeking repetitive clarifications from the indenters.
- (iii) Where a demand is being indented for the first time, an indication to this effect.
- (iv) When an item has been purchased before, the indent shall indicate the price at which it was purchased and also provide the contract/ Supply Order (SO) number and date, and the source of supply.
- (v) Names of likely sources of supply, wherever available, with indication of foreign sources, if any.
- (vi) Reference to the Page Number of publication where the item is described.
- (vii) Code Head to which the expenditure is debitible.
- (viii) Consignee depot.
- (ix) Desired delivery schedule.
- (x) Normally, items of similar or allied nature are to be indented in one indent.

- (xi) Mode of tendering, Single/ Two Bid.
- (xii) Availability on GeM/ Exemption from e-Publishing/ e-Procurement taken from CFA, if applicable.

(b) **Documents Furnished Along with Indents.** Every Indent shall be accompanied by the following in the form of documents/ records/ inputs or endorsement in the case of automated inventory management system:-

- (i) SoRs of the indent.
- (ii) Complete technical specifications of the items.
- (iii) A certificate of provision of funds to meet proposed expenditure.
- (iv) A copy of the financial concurrence to the indent.
- (v) A copy of CFA's approval of the indent.
- (vi) A certificate of necessary import clearance, wherever applicable.
- (vii) PAC given in the prescribed format, where applicable.
- (viii) Priority of the indent, i.e. whether normal or urgent.

#### 4.4 AoN Steps

##### 4.4.1 Quantity Vetting.

(a) **Scaled Items.** Purchasing quantities in excess of the requirement is to be avoided to minimise inventory carrying costs. The IFA shall vet the quantity indented/ projected for procurement of scaled items to ensure timely provisioning. In order to ensure that there is no infructuous provisioning, the IFA shall have access to all inputs required to assess the basis of the projection of indented quantity. The calculation sheet showing the authorised scales, dues in, dues out, reserves, etc., shall be made available to the IFA.

(b) **Non-Scaled or NIV Items.** While no fixed guidelines are laid down for vetting of quantities of non-scaled or NIV items, it has to be ensured that purchase proposals of such items are based on not only on the bare minimum inescapable requirement but with due regard to economy of scales. Where financial powers are to be exercised with the concurrence of Integrated Finance, IFA shall vet the quantity of such items. If requirement of such items is found to be arising repeatedly, central procurement agencies are to be intimated about the requirement.

(c) In both the above cases at Sub-Paragraphs 4.4.1 (a) and (b), the quantity of stores/ equipment required by the DGQA/ Inspection Agency for proof activity, trials, testing, etc., shall be included for procurement.

#### **4.4.2 Costing of Procurement Proposals.**

(a) **Cost Estimation.** Correct estimation of rates/ cost is vital for determining the CFA. It is important that the rates/ cost are worked out in a realistic, objective and professional manner on the basis of the prevailing market rates, Last Purchase Price (LPP), procurement done by other departments/ organisations, economic indices for raw material/ labour, Budgetary Quote (BQ) obtained from one or more prospective suppliers, other input costs and assessment based on complexity of the product, etc. Computation of break up of costs of various components/ parts/ processes involved by technical/ costing experts may also be considered, if available, in specific cases. The complete and comprehensive cost of a procurement proposal is to be worked out to determine availability of funds to meet the expected cash outflow and the level at which it is to be approved. The basis of cost estimation and the element-wise break up shall be mentioned in the SoC. The manner in which the indicative cost has been arrived at is to be explained in the SoC, e.g. if it is based on BQ, the source of BQ and the reason for obtaining the quote from that particular prospective bidder (in multi-bidder situation) is to be indicated. Similarly, if the cost estimation is based on LPP, the year of procurement, the escalation factor applied, the basis of applying the escalation factor, Exchange Rate Variation (ERV) from LPP to the year of procurement, etc., is to be clearly indicated in the SoC. Detailed provisions on cost estimation are provided in Chapter 5.

(b) **Mode of Tendering.** Mode of tendering is to be decided at AoN stage. Details regarding modes of tendering, as well as procedures involved therein, are given in Chapter 2 and Chapter 5.

(c) **Determination of CFA.** The determination of CFA shall depend on the entire cost of a proposal (i.e. the combined value of original contract and extended contract/ Option Clause/ Repeat Order/ AMC/ CMC/ etc., as applicable), inclusive of all taxes, levies and other charges with reference to ceiling of powers given in relevant serial number of Schedules of Delegated Financial Powers.

**4.4.3 Format for Estimating Quantity and Cost.** A sample format for estimating quantity and cost of proposal is placed at **DPMF 7**.

**4.4.4 AoN by CFA.**

- (a) **Scaled Items.** In case of scaled items, AoN implies vetting of quantities, assessment of physical requirement of various resources with respect to targets fixed.
- (b) **Scaled Items having Computerised Inventory.** In case of scaled items where inventories are maintained through automated systems and IFAs have been provided with a Data Terminal Equipment for the same, IFA shall vet the quantity on the system itself based on the data available on such automated systems.
- (c) **Non-Scaled or NIV Items.** AoN in respect of non-scaled or NIV items would depend entirely on the justification provided for their procurement. It is to be ensured that procurement of such items do not introduce a new practice and do not have the effect of changing the existing scales or policy unless the requirement is repetitive in nature and entails amendment to existing scales.
- (d) **Items Included in Procurement Plans.** The system of Annual Revenue Procurement Plan (ARPP) shall be followed by each Service HQ/ Command HQ/ other Organisations, for each FY, where feasible. However, it is desirable that all users and Procuring Entities prepare ARPP for their respective organisations for each FY. PR & Special Review in respect of scaled items may also be considered as ARPP. Though, ARPP/ Reviews include items and quantities, their approval shall be for the items only and not for the quantities required. However, Integrated Finance shall be consulted on individual procurement proposals for AoN, vetting of quantity, mode of tendering, identification of vendors in case of Limited Tender Enquiry (LTE)/ STE/ PAC and vetting of draft RFP, where financial powers are to be exercised with the concurrence of Integrated Finance, provided that if in any such case, where the office of Integrated Finance wishes to make any observation regarding necessity, it may be done with the specific approval of the IFA concerned. Further processing of the proposal shall, however, not be deferred pending resolution of the issue raised by Integrated Finance, unless the Procuring Entity considers it desirable to resolve the issue before proceeding further. Where it is decided not to defer further processing of the proposal, the observations made by Integrated Finance shall

be brought to the notice of the CFA while seeking approval for the proposal. In the case of non-scaled items, which do not figure in approved ARPP, AoN of the CFA shall be taken in consultation with the IFA, where financial powers are to be exercised with the concurrence of Integrated Finance.

**4.4.5 Validity of AoN.** AoN will remain valid for six months even if this period extends to the next Financial Year. AoN would lapse for all cases where the RFP is not issued within the original validity period of AoN. In such cases, the procuring entity would need to either seek re-validation of AoN or obtain a fresh AoN with due justification for not processing the case in time. For cases where the original RFP has been issued within the original validity period of AoN and later retracted for any reason, the AoN would continue to remain valid, as long as the original decision remain unchanged, provided the subsequent RFP is issued within a time period not exceeding the original validity period of the AoN, from the date of retraction of original RFP.

**4.4.6 Combining Various Stages of Processing.** It is not necessary that a proposal is to be processed sequentially for AoN, quantity vetting, financial concurrence, etc. A proposal, when initiated, is to be complete in all respects so that all the aspects relating to AoN, quantity vetting, costing, vetting of NIT/ RFP, etc., may be examined simultaneously by the IFA, where required as per the delegation of financial powers. Various stages of processing up to accord of Expenditure Angle Sanction (EAS) may be combined in case of Local Purchase (LP).

**4.4.7 Processing of Proposals Subject to Availability of Funds.** A procurement proposal is normally processed only if it figures in the ARPP (wherever such Plans are being prepared, irrespective of the nomenclature of the Plan) and subject to availability of funds. Availability of funds shall be determined only after accounting for cash outgo during the relevant FY on account of committed liabilities and other proposals as per sample format for determining availability of funds placed at **DPMF 9**.

**4.4.8 Processing of Proposals without Linking them With Availability of Funds.** Subject to the general rule that purchase proposals shall be processed with due regard to availability of funds, a procurement proposal may be processed without linking it with actual availability of funds, if it is certified by the budget holder that there is reasonable certainty of funds becoming available by the time the proposal reaches the final stage of contracting/ placing of Supply Order (SO). In such cases, however, availability of funds shall be determined after taking into account cash outgo on account of the

committed liabilities and other proposals as per sample format for determining availability of funds placed at **DPMF 9**.

**4.4.9 Processing of Proposals with long lead time.** In the case of stores having a long lead time, a purchase proposal may be processed without linking it with actual availability of funds. In case where it becomes necessary to issue a sanction to expenditure before funds are communicated, the sanction should specify that such expenditure is subject to funds being communicated in the budget of the year. The SO, against which delivery is to take place in the ensuing FY(s), may be placed, when there is a reasonable certainty of availability of funds in the budget of that/ those year(s), taking into account the anticipated cash outgo against the committed liabilities for the FY(s). However, payments against the SO shall only be made after confirmation of availability of funds in the FY in which it falls due.

**4.4.10 Prior Concurrence of Integrated Finance.** CFA's approval is subject to prior concurrence of Integrated Finance, if required, as per the delegation of financial powers and shall be obtained before accord of CFA's approval. AoN proposal shall be forwarded to the IFA by an authority not below the penultimate CFA.

**4.4.11 Ex Post Facto Financial Concurrence.** There is no provision under the delegated financial powers to obtain ex post facto concurrence of Integrated Finance. Such cases where prior concurrence is not obtained, though required as per the delegation of financial powers, shall be treated as cases of breach of rules and regulations and referred to the Next Higher CFA for regularisation. Such regularisation shall be with financial vetting and advice of IFA to the Next Higher CFA as per para 1.3.6 (b) of this manual.

**4.4.12 Ex Post Facto Approval of the CFA.** Where a proposal is approved, with or without the concurrence of Integrated Finance, by an authority not competent to sanction that proposal as per the delegation of financial powers, ex post facto sanction may be accorded by the appropriate CFA with or without the concurrence of the IFA, as the case may be, as per delegation of financial powers. This shall be treated as a case of breach of rules and regulations and details of all such cases shall be reported to service HQs and CGDA through appropriate CFA at the end of the Financial Year.

**4.4.13 Disagreement with the IFA.** At any stage of procurement, the CFA may overrule the advice of the IFA by a written order giving reasons for overruling the IFA's advice on file. A copy of the order overruling IFA's advice shall be provided to IFA for information within 15 days from the date of overruling. If such overruling of

IFA is done at AoN stage or at an interim stage of procurement, action in procurement process shall be taken as per the decision of CFA and IFA shall continue to participate in this process as Finance member. At the time of Expenditure Angle Sanction (EAS) stage, IFA may either concur the final proposal or record their dissent to the final proposal. CFA may agree with IFA's advice or overrule the advice of the IFA by a written order giving reasons for overruling the IFA's advice on file at EAS stage. The sanction letter issued in latter cases shall not contain UO Number of IFA but shall clearly indicate that the advice of the IFA was taken but the same was overruled by CFA and copy of relevant notings of IFA & CFA shall be endorsed along with the CFA sanction to paying authority. A quarterly report on such overruling cases shall be submitted by the IFAs to CGDA. These overruling cases shall also be reported by CGDA to FA(DS) on quarterly basis, starting from QE April, July and so on. FA(DS) may consider issuing appropriate directives to all the stakeholders or bring to the notice of Defence Secretary/ Raksha Mantri for suitable directions. There shall be no requirement for CFA to report the overruling cases to Next Higher CFA. Even in case of overruling of IFA by CFA at any stage of the procurement process the case will continue to be processed as per the financial power of CFA in consultation with IFA as per the DFPDS.

#### **4.5 Processing of Proposals after AoN**

**4.5.1** After accord of AoN by the CFA, the Procuring Entity is required to go through the tendering action as per the provisions of Chapter 5 of this Manual and obtain CFA's approval for the proposed procurement at Expenditure Angle Sanction (EAS) stage, in consultation with Integrated Finance, where required as per the delegation of financial powers. The tendering action may be initiated/ facilitated by a Procurement Committee constituted by the CFAs at their discretion, as brought out in the succeeding paragraph.

#### **4.6 Procurement Committee (PC)**

**4.6.1** A collegiate-based decision mechanism speeds up procurement cycle. This helps in avoiding delays in procurement and also facilitates more informed decision making during various stages of procurement. All CFAs at their discretion may form PC within their domain on a case-by-case basis. Following activities as decided by the CFA will be performed by PCs at various stages of procurement after AoN has been accorded:-

- (a) Activities of PC post AoN: -
  - (i) Finalisation of RFP & NIT.

- (ii) Issue of RFP.
- (iii) Pre-bid conference (if required)
- (iv) Amendments to/ Withdrawal of RFP.
- (v) Extension of Bid opening date.

(b) Activities of PC post TEC evaluation and recommendations (Para 5.32 refers) :-

- (i) Establishing benchmarking cost for Price Bids.
- (ii) Opening of Price Bids.
- (iii) Vetting/Evaluation of Comparative Statement of Tenders (CST) and Declaration of L1 Bidder. Cost analysis of quoted rates and holding negotiations with L1 bidder/ nomination/ STE/ PAC cases, if required.
- (iv) Submission of Report containing final recommendations to IFA/ CFA.
- (v) Preparation and finalisation of draft EAS, Contract/ Supply Order (SO).

**Note:-** As the Statement of Case while seeking AoN approval will contain detailed technical particulars in Schedule of Requirement and draft RFP, the Procurement Committee shall only finalise/ vet the RFP as per the decisions/remarks of the CFA and IFA. PC shall also amend those clauses of the draft RFP which are not in conformity with DPM.

**4.6.2** The above-mentioned activities shall be performed by PC in collegiate manner. All relevant documents including the remarks of CFA and IFA in the AoN stage, Statement of Case, Draft RFP, Schedule of Requirement, etc. shall be made available to the members of the PC at least five working days in advance before the first meeting of the PC in those cases wherein IFA or IFA rep is a member of the PC. In those cases wherein IFA or IFA rep is not a member of the PC, the documents must be made available to the PC members at least two working days before the first meeting of the PC. No movement of files shall be done within PC. Only in exceptional circumstances, the issues may be processed on file by PC for consulting IFA and taking decision of CFA. These may be for reasons like differences of opinion within the Committee on substantive issues or PC on its own seeking guidance from IFA and/ or CFA on important issues. Even in these exceptional situations, this may be done preferably by holding meetings with IFA/ CFA and processing on file shall be done, only if considered essential. Otherwise, PC is empowered to take decisions on above mentioned activities on its own. The decisions taken by PC shall be carefully recorded in Minutes with detailed justification for purposes of record. 'PC Report' shall

contain their final recommendations for decision on Expenditure Angle Sanction (EAS), concurrence by IFA and approval of CFA.

**4.6.3 Composition**. CFA can nominate any official, either up to two levels, or up to one rank below in their organisation as Chairperson of the PC. In those cases, where officers of requisite rank/level are not available, CFA will have the discretion to chair the PC.

**Explanatory Note:**

- (a) In Army HQ, if CFA is the VCOAS, PC could be chaired either by MGS/ DG OS (viz. up to two levels), or by an Addl DG level officer (viz. up to one rank).
- (b) Similarly, if the CFA is the Corps Cdr, PC could be chaired either by COS (viz. up to one rank), or by a Brig level officer (viz. up to two levels).
- (c) IFA/ IFA rep shall be the compulsory Finance rep of PC in those cases where the delegated financial powers are being exercised in consultation with IFA.
- (d) Other members may be QA rep, Tech rep, User rep or any other member as co-opted/ nominated by CFA.
- (e) In case the cost of proposal exceeds the financial powers delegated to the original CFA, decision with regard to constitution of a fresh PC or continuation with the existing PC shall be decided by the CFA commensurate with the final contract value, in consultation with IFA, where required as per delegation of financial powers.

**4.6.4 Standing PC**. Standing PCs, if considered necessary, may be formed by CFAs for dealing with different kinds of procurement. It is desirable to constitute a Standing PC in the beginning of Financial Year (FY) by each CFA, so that necessity of taking concurrence of IFA and approval of CFA for its constitution on each occasion is avoided. In case if it is not feasible to do so, it shall be ensured that proposal for constitution of PC is included in AoN proposal as a subset, for concurrence of IFA to nominate IFA rep and approval of CFA to constitute PC.

**4.6.5** For all cases having financial implications of more than Rs. 50 (Rupees Fifty) lakhs, a Procurement Committee to evaluate the bids should normally comprise three members, including a finance member (nominated by the Financial Advisor) and a representative of the user. In case a PC is constituted to purchase or recommend the procurement, no member of the PC should preferably be reporting directly to any other member of such Committee, to the extent feasible.

#### 4.7 **Responsibility of the CFA**

**4.7.1 Purchase Decision/Expenditure Angle Sanction (EAS)**. The CFA shall consider all aspects of the case, including the quoted terms and conditions of the contract, delivery period, taxes and duties applicable, freight, insurance and other charges and the compliance to the specification before a purchase decision is taken. One of the important responsibilities of the CFA is to ensure proper ranking of all offers so that the decision making process is totally transparent. Conditional offers and those with specifications not in conformity with the tendered specifications (Essential QRs) shall not be considered. Before according Expenditure Angle Sanction (EAS), concurrence of Integrated Finance shall be taken, wherever the powers are exercisable subject to such concurrence. The proposal of EAS must be forwarded to the IFA by an authority not below the penultimate CFA.

**4.7.2 Compliance with Procedures**. The CFA shall satisfy himself that proper procedures have been followed at various stages of procurement, purchase policies of the Government have been complied with and capacity and financial status of the firm have been checked. Purchase decisions shall be taken through a formal order in a written form or on Enterprise Resource Planning (ERP) platform having full electronic trails.

**4.7.3 Accountability**. The decentralisation of decision making mechanism and delegation of financial powers to various CFAs are aimed at facilitating faster decision making and obtaining best value for money. However, the delegation of powers also implies 'authority with accountability'. The CFA approving the expenditure shall ensure financial propriety and probity, transparency and fair play as well as optimum utilisation of resources. The designated CFA is accountable for all decisions taken while approving any measure involving Government funds. This accountability is unconditional and absolute.

#### 4.8 **Time Frame**

**4.8.1 Need for Expeditious Processing**. It is imperative that the procurement process is fully responsive to the need of the Defence Services and other departments and facilitates expeditious procurement so that requirements are met on time. It is, therefore, essential that all prescribed activities are undertaken expeditiously and advice rendered within a specified time frame. An indicative time frame to perform various activities for undertaking procurement is placed at **Appendix D** (as also brought out in Paragraph 2.9 of this Manual).

#### **4.9 Documentation**

**4.9.1** The Procuring Entity shall maintain documents relating to AoN stage as mentioned in above Paragraphs. The SoC/ indent, PR Sheets, notings on file, concurrence of IFA, PC proceedings/ recommendations, approval of CFA, etc., shall be preserved, for easy future reference and audit. In case of utilisation of Automated Inventory Management/ERP software applications, all e-documents related to AoN and EAS are to be retained for posterity.

#### **4.10 Enhancing Transparency through usage of Digital Platforms**

##### **4.10.1 Automated Budget/ Inventory/ Procurement Management Systems**

**Systems.** Organisations must develop and employ digital platforms for automating budget/ financial/ inventory management systems and procurement procedures encompassing the entire process from raising an indent to release of payment, including online vetting/ concurrence of the proposal by IFA, where required as per delegation of financial powers, accord of approval/ sanction by CFA and issue of Supply Order, etc. This will ensure greater transparency and faster processing of procurement proposals from the initial stages to the final payment stage.

#### **4.11 Tendering and Evaluation**

**4.11.1** Among the various stages involved in the processing of procurement proposals, the tendering process and evaluation of the tenders are important steps, before a contract/supply order can be finalised. Accordingly, the procedure relating to tendering and evaluation is brought out in Chapter 5, followed by conditions of contract/ supply order in Chapter 6.

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## **CHAPTER 5**

### **TENDERING AND EVALUATION**

#### **SECTION I - TENDERING**

##### **5.1 General**

**5.1.1** After accord of AoN by the CFA (as per the processes given in the previous Chapter), tendering action will be initiated. Offers from prospective bidders shall be invited according to a procedure that achieves a balance between the need for the widest competition on one hand and complexity of the procedure, on the other. Different modes of procurement and bidding systems are used to suit various procurement circumstances to achieve this balance. Since procurement of goods and services through GeM is mandatory for items available on GeM and various types of tendering are considered for other items that cannot be procured through GeM, the succeeding paragraphs first provide details of procedure to be followed for procurement through GeM, followed by procedure to be followed for non GeM procurement, including tendering and evaluation process.

##### **5.2 Government e-Marketplace (GeM)**

**5.2.1** A brief introduction to GeM is given in Paragraph 2.3.7(Chapter- 2). As indicated therein, procurement of goods and services through GeM is mandatory for goods or services available on GeM as per Rule 149 of GFR 2017. The credentials of suppliers on GeM are certified by GeM. The procuring entities will certify the reasonability of rates prior to undertaking the procurement from GeM. In GeM, the onus of certifying reasonableness of rates lies with the buyer. For goods and services not available on GeM, other bidding modules of GeM, such as 'Custom'/'BoQ Bidding', as included/ amended from time to time, are to be used prior to attempting procurements through CPPP/ DePP etc. The GeM handbook, available at <<https://gem.gov.in>>, may be referred to understand the design and procurement process on the GeM portal.

- (a) The GeM portal shall be utilised by the Government buyers for direct on-line purchases as per financial limits laid down from time to time, with the present limits being as under:-
  - (i) Up to ₹ 50000 through any of the available suppliers on GeM, meeting the requisite quality, specification and delivery period.

- (ii) Above ₹ 50000 and up to ₹ 10 lakh through the GeM seller having lowest price amongst the available sellers, of at least three different manufacturers, on GeM, meeting the requisite quality, specification and delivery period. The tools for online bidding and online reverse auction available on GeM may be utilised by the buyer even for procurements under ₹ 10 lakh.
- (iii) Above ₹ 10 lakh through the supplier having lowest price meeting the requisite quality, specification and delivery period after mandatorily obtaining bids, using online bidding or reverse auction tool provided on GeM.
- (iv) Further, in case of specific provisions including monetary ceilings with regard to purchase of certain items (e.g. automobiles) through GeM, those provisions shall be applicable.

(b) The above-mentioned monetary ceilings are applicable for purchases made through GeM only. For goods/ services not available on GeM, other bidding modules of GeM (referred in Paragraph 5.2.1) are to be utilised. Only if it is not feasible to procure such goods/services through these modules of GeM, procurement is to be undertaken by other modes of procurement, as per procedure spelt out in Paragraph 5.3.1(f).

(c) A demand for goods/services shall not be divided into small quantities to make piecemeal purchases to avoid procurement through L-1 Buying / bidding / reverse auction on GeM or the necessity of obtaining the sanction of higher authorities required with reference to the estimated value of the total demand.

(d) The organisations/ formations shall work out their procurement requirements of Goods and Services at the time of preparation of Budget Estimates (BE) and project their Annual Procurement Plan of goods and services on GeM portal.

(e) The organisations / formations may ascertain the reasonableness of prices before placement of order using the Business Analytics (BA) tools available on GeM, including the Last Purchase Price (LPP) on GeM, organisations' own LPP, etc.

(f) Non-availability of an item on GeM shall be indicated by GeM Availability Report and Past Transaction Summary

(GeMAR & PTS), to be obtained by the Indenting Agency/ Procurement Entity with their Unique ID on GeM Portal using login credentials on GeM. It is mandatory for a buyer to generate a "GeM Availability Report and Past Transaction Summary" (the GeMAR & PTS) for procurement outside GeM (for example for procurement through the Central Public Procurement Portal). The Past Transaction Summary will be provided, where available. "GeMAR & PTS" shall, therefore, be a prerequisite for arriving at a decision by the competent authority for procurement of required goods and services by floating a bid outside GeM and its unique ID would be required to be furnished on the publishing portal along with the tender proposed to be published. However, in case it is not possible to extract GeMAR & PTS report due to urgency and non-functioning of GeM at that time, the tender publishing portal will automatically confirm from GeM in real-time as to whether GeM Portal is available and if available, will direct the buyer to obtain GeMAR & PTS from the GeM Portal. If not available, the tender publishing portal may proceed without the GeMAR & PTS. Screenshots in such cases shall be placed in procurement files, along with details/ reasons/ circumstances. Further, in these circumstances, furnishing of Unique ID on publishing portal will not be insisted.

- (g) Where an item is available on GeM and Ministry/ Department/ Organisation wants to buy outside the GeM in view of any compelling circumstances, the approval of Standing Committee on GeM (SCoGeM) and Defence Secretary shall be required.

### **5.3 Tendering Process and Types of Tendering**

#### **5.3.1 e-Publishing & Publicity**

- (a) It is mandatory for all Organisations/ Formations, to publish their tender enquiries (other than procurement of goods and services initiated through GeM), corrigenda thereon and details of bid awards on Central Public Procurement Portal (CPPP) <https://eprocure.gov.in/eprocure/app> and Defence e-Procurement Portal (DePP) <https://defproc.gov.in> and the organisations' own web portal (if available). To ensure competition, attention of all likely tenderers, for example, registered suppliers, past suppliers and other known potential suppliers, should be invited to the tender enquiries through electronic means / letters. In case of procurement through a limited tender, the tender enquiries may be uploaded on DePP/ CPPP Portal and Procuring Entity's website with a note saying

"This notice is being published for information only and is not an open invitation to quote in this limited tender. Participation in this tender is by invitation only and is limited to the selected Procuring Entity's registered suppliers. Unsolicited offers are not to be accepted. However, suppliers who desire to participate in such tenders in future may apply for registration with Procuring Entity as per procedure and apply in the next round of tendering".

- (b) Individual cases, where confidentiality is required, for reasons of national security, would be exempted from the mandatory e-Publishing requirement. The decision to exempt any case on the said grounds should be approved by the Secretary of the Department concerned with the concurrence of the FADS . Statistical information on the number of cases in which exemption was granted and the value of the contracts concerned should be intimated on a Quarterly basis to the Ministry of Finance, Department of Expenditure through the Finance Division of the MoD.
- (c) The decision on exemption from mandatory e-Publishing, if considered necessary for reasons of confidentiality, may be exercised by the CFA concerned (at Service HQ Level) for a maximum of next two occasions with concurrence of the respective IFA, in case the initial procurement of the item was exempted from publishing on CPPP/ DePP/ organisations' own web portal due to reasons of confidentiality with the approval of Secretary concerned issued in consultation with Financial Advisor.
- (d) In cases where e-Publishing has been exempted, copies of the bidding document shall be sent directly by speed post/ registered post/ courier/ e-mail to the registered suppliers for the goods/services in question.
- (e) The above instructions apply to all Tender Enquiries, Requests for Proposals (RFP), Requests for Expressions of Interest (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 to a single party.
- (f) In case of non-availability of an item/ service on GeM, e-Publishing of advertisements on CPPP/ DePP/ organisations' own web portal (if available), is mandatory.

- (g) In the case of procurements made through Rate Contracts concluded by Central Procurement Organisations (CPOs), only award details need to be published.
- (h) These instructions on e-publishing would not apply to procurements made in terms of provisions for purchase of goods without quotations or purchase of goods by Local Purchase Committee (LPC).
- (i) In case organisations/ formations, for reasons to be recorded, require the advertisements to be published in newspapers, a request to the Directorate of Advertising and Visual Publicity (DAVP) shall be sent in a signed letter, stating that Competent Authority has approved publication of newspaper advertisement(s) despite GFR 2017 provisions {Rules 161(i) & (ii), 183(ii) and 201(ii) which provide for use of advertisements for procurement values above prescribed thresholds}. In such cases too, only window advertisement shall be published in newspapers. The advertisement for invitation of tenders shall include the complete web address from where the bidding documents may be downloaded.

### **5.3.2 e-Procurement**

- (a) It is mandatory for Organisations/ Formations to receive all bids through e-Procurement portals in respect of all procurements.
- (b) Organisations/ Formations, which do not have a large volume of procurement or carry out procurements required only for day-to-day running of offices and also have not initiated e-Procurement through any other solution provided so far, may use e-Procurement solution developed by the National Informatics Centre (NIC)/ DePP.
- (c) These instructions on e-Procurement will not apply to procurements made by Organisations/ Formations through Rate Contracts.
- (d) In individual cases where national security and strategic considerations demand confidentiality, Organisations/ Formations may exempt such cases from e-Procurement after seeking approval of Secretary concerned with concurrence of Financial Advisor.
- (e) In case of tenders floated by Indian Missions abroad, Competent Authority to decide the tender, may exempt such case from e-Procurement.

**5.3.3 Procurement of Goods and Services by Obtaining Bids.** Except in cases covered by purchase of goods/services without obtaining quotations [Paragraph 2.4.2 (Chapter 2)], purchase of goods/services through Local Purchase Committee (LPC) [Paragraph 2.4.3 (Chapter 2)], purchase of goods/services against Rate Contracts [Paragraph 2.5 (Chapter 2)] and purchase of goods/services through GeM (Paragraph 5.2 above) goods/services shall be procured under the delegation of financial powers, where required, by adopting one of the following standard modes of obtaining bids:-

- (a) Open Tenders: Advertised Tender Enquiry (ATE), which includes Open Tender Enquiry (OTE) and Global Tender Enquiry (GTE).
- (b) Tenders to Selected Suppliers: Limited Tender Enquiry (LTE).
- (c) Single Tender Enquiry (STE) without Proprietary Article Certificate (PAC)/ PAC procurement cases.

#### **5.4 Advertised Tender Enquiry (ATE)**

**5.4.1 Open Tender Enquiry (OTE).** This mode shall be adopted in all cases where the estimated value of the tender is more than ₹ 50 lakh, except purchase through Single Tender Enquiry (STE)/ PAC. The organisation should also post the complete bidding document on its website (if available) and CPPP/ DePP to enable prospective bidders to make use of the document by downloading from the website. Open online tendering shall be the default method to ensure efficiency in procurement. This mode may be adopted even for procurements below ₹ 50 lakh, when requirements are not available from known sources or sources are presently limited or to expand the vendor base. In other words, OTE procedures through e-procurement or through traditional tendering should be adopted in the following situations:-

- (a) Procurements exceeding the threshold of ₹ 50 lakh.
- (b) All common use requirements with clear technical specifications.
- (c) For requirements that are ordinarily available in the open market, but it is necessary to evaluate competitive offers to decide the most suitable and economical option available.
- (d) When requirements are not available from known sources, or sources are presently limited and need to be broad based. In such situations, even for procurements below ₹ 50 lakh, OTE mode may be used, if warranted.

#### **5.4.2 Global Tender Enquiry (GTE).**

- (a) This mode shall be adopted, where it is ascertained that the goods/ services of the required quality, specifications, etc., are not available in the country and alternatives available in the country are not suitable for the purpose. Hence, it may be necessary to look for suitable competitive offers from abroad. GTE may also be required in case there is a requirement for compliance to specific international standards in technical specifications, non-existence of a local branch of the global principal of the manufacturer/vendor/contractor, and in case of suspected cartel formation among indigenous bidders.
- (b) In the interests of developing indigenous industry, it has been decided not to invite any GTE for procurement values up to ₹ 200 crore (as may be amended from time to time), except with specific prior permission of the competent authority in MoD and following the due procedure, as laid down by MoD, amended from time to time. However, exemption has been granted for certain specific categories of import, till development of indigenous capabilities, as provided below:-
  - (i) For procurement on nomination basis from the Original Equipment Manufacturer (OEM), Original Equipment Suppliers (OES), Original Part Manufacturers (OPM), including procurement of services like AMC and auxiliary/ add-on components for existing equipment/ plant and machinery, etc., as no competitive tenders are invited in such cases.
  - (ii) For procurement of specialised equipment required for research purposes, and spares and consumables for such equipment, up to ₹ 200 crore, for the use of Educational and Research Institutes, Secretary of Ministry/ Department concerned shall be the competent authority to approve issue of Global Tender Enquiries for such requirements. The equipment should be of specialized nature required for research purposes and not the routine equipment used in offices.
  - (iii) Based on exemptions provided by the Ministry of Health & Family Welfare (MoHFW), GTE can be floated for Medical Devices for the period for which exemptions are applicable.
- (c) Whenever any GTE is issued, copies of the Global tender enquiry may be sent to the Indian Embassies abroad as well

as the foreign embassies in India. The selection of embassies would depend on the possibility of availability of the required goods/ services in such countries. The tender enquiries may also be sent through the Defence Attachés wherever they are posted in the Embassies and High Commissions. The tender documents must contain technical specifications, which are in accordance with national requirements or else based on an international trade standard. In such cases, e-Procurement may not be mandatorily insisted upon [Paragraph 5.3.2(e) refers].

- (d) While undertaking any imports, full efforts may be made to develop indigenous vendors/ capability, so as to avoid imports in future, as brought out in Paragraph 7.1 (Chapter 7).

**5.4.3 Preparation of the Notice Inviting Tender (NIT).** The NIT shall be carefully drafted. It shall contain salient features of the requirement in brief to give a clear idea to the prospective tenderers about the requirements. Superfluous or irrelevant details shall not be incorporated in the tender notice. The tender notice shall contain the following information: -

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

**5.4.4 Time for Submission of Bids:** Ordinarily the minimum time to be allowed for submission of bids is three weeks from the date of publication of the tender notice. A reduced, but reasonable time frame for submission of bids may be given, as deemed appropriate by the CFA or PC, in cases of retendering, operational requirements and emergent procurement. Where the Department

also contemplates obtaining bids from abroad, the minimum period shall be kept as four weeks for both domestic and foreign bidders. In case of any urgent requirement, the period may be reduced by the CFA or PC, if constituted.

**5.4.5 Pre-Qualification.** In OTE/ GTE cases, where considered necessary, a pre-qualification process may be followed to identify, the bidders that are qualified to participate in the bidding process for the specified goods/ services, prior to inviting quotations.

**5.4.6 Unregistered Firms Claiming Compliance.** In OTE cases, where an unregistered firm claiming compliance of technical specifications meets the laid down technical parameters detailed in the RFP, before opening the commercial bid of such firm, assessment of capability of the firm by procuring/ registering agency would be mandatory. This capability verification (as per Paragraph 3.2.4) shall, however, not amount to automatic registration of the firm by the Registering Authority. However, in the case of specialised and critical medical equipment/ stores, where DGQA/ DGAQA and Central Procurement Agency are presently not registering the firms on the grounds that Qualitative Requirements (QRs) are not formulated by them but by the users, manufacturers of national repute or their authorised agents, may be considered, based on financial status and market reputation/ past performance of the firm, as at present.

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

**5.5.1** This mode may be adopted when estimated value of the goods to be procured is above ₹ 5 lakh up to ₹ 50 lakh. Normally, the number of supplier firms in LTE should be more than three. In case less than three approved vendors/contractors are available, LTE may be sent to the available approved vendors/contractors with the approval of CFA duly recording the reasons. Efforts should be made to identify a higher number of approved suppliers to obtain more responsive bids on competitive basis. Paragraph 2.4.4 (Chapter 2) is also relevant in this regard.

**5.5.2 Special Circumstances.** LTE method may also be adopted where the estimated value of the procurement is more than ₹ 50 lakh, in the following circumstances, subject to approval by the CFA and in consultation with the IFA, where required as per delegation of financial powers:-

(a) The Indenter certifies that the demand is urgent and additional expenditure involved, if any, by not procuring through ATE mode is justified in view of urgency. The nature of urgency and reasons as to why the procurement could not be anticipated, should also be placed on record.

- (b) There are sufficient reasons, to be recorded in writing by the competent authority, indicating that it shall not be in the public interest to procure the goods through ATE mode.
- (c) The sources of supply are definitely known and possibility of fresh source(s) beyond those being tapped, is remote.
- (d) The nature of item to be procured is such that pre-verification of the competence of the firms and their registration is essential.

**5.5.3 Unsolicited Bids**: Unsolicited bids are not to be accepted. However, Organisations/ Formations shall evolve a system by which interested firms may be registered as covered in Chapter 3 to enable bidding in future.

**5.5.4** Related to the ATE and LTE modes of procurement, are the Single/ Two Bid Systems and Two-Stage Bidding System, which are discussed below, followed by STE and PAC modes of procurement.

## **5.6 Single and Two Bid Systems**

**5.6.1 Single Bid System**. For COTS stores and LP items, where QRs and technical specifications are clear, capability of source of supply is not critical and value of procurement is low or moderate, the single bid system, where eligibility, technical, commercial and financial details are submitted together, may be followed. The lowest responsive price bid that meets the eligibility criteria, technical and commercial requirements laid down in the bid documents, is declared as successful. No sample shall be called for in single bid system at the RFP stage.

**5.6.2 Two Bid System**. For purchasing high value plant, machinery, equipment, IT and communication systems and for turnkey projects, etc., which are of a complex and technical nature, bids are normally obtained in two parts as follows: -

- (a) Technical/ Techno-commercial bid, containing the eligibility, technical quality and performance aspects, commercial terms and conditions and documents sought in the tender, except the price and relevant financial details.
- (b) Financial bid, containing the price quotation, indicating item wise price for the items mentioned in the technical bid, along with other financial details.

**5.6.3 Two Bid System Procedure**. The technical bid and the financial bid shall be submitted separately, but concurrently. In case of manual tendering, both the bids shall be sealed by the bidder in separate covers duly superscribed and both these sealed covers are to be put

in a bigger cover, which shall also be sealed and duly superscribed. The e-Procurement Portal facilitates separate submission and opening of technical and financial bids. The technical bids are to be opened and evaluated in the first instance. At the second stage, financial bids of only the technically acceptable offers shall be opened after intimating the bidders the date and time of opening the financial bids, for further evaluation and ranking, before awarding the contract.

### **5.7 Two-Stage Bidding System**

**5.7.1** In Two-Stage Bidding, bids are obtained in two stages with receipt of financial bids after receipt and evaluation of technical bids. This method may be followed for any of the under-mentioned reasons:-

- (a) It is not feasible to formulate detailed specifications or identify specific characteristics for the subject matter of procurement, without receiving inputs regarding its technical aspects from bidders.
- (b) The character of the subject matter of procurement is subject to rapid technological advances or market fluctuations or both.
- (c) Organisation seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of items in quantities sufficient to establish their commercial viability or to recover research and development costs.
- (d) The bidder is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, costs and obligations associated with the particular procurement.

**5.7.2 Two-Stage Bidding Procedure.** The procedure for two-stage bidding is as follows:-

(a) **First Stage.**

- (i) In the first stage of the bidding process, the Organisation shall invite bids through ATE, containing the technical aspects and contractual terms and conditions of the proposed procurement, but without a bid price.
- (ii) All first stage bids, which are otherwise eligible, shall be evaluated through PC or by an appropriate committee constituted by the Organisation with IFA or his

representative as one of the members of the committee if the concurrence of IFA was taken during AoN stage as per the delegation of financial powers.

- (iii) The committee may hold discussions with the bidders and if any such discussion is held, equal opportunity shall be given to all bidders to participate in the discussions.
- (iv) In revising the relevant terms and conditions of the procurement, the Procuring Entity shall not modify the fundamental nature of the procurement itself, but may add, amend or omit any specification of the subject matter of procurement or criterion for evaluation.

(b) **Second Stage.**

- (i) In the second stage of the bidding process, the Procuring Entity shall invite bids from all those bidders whose bids at the first stage were not rejected, to present final bid with bid prices in response to a revised set of terms and conditions, if any, of the procurement.
- (ii) **Withdrawal of Bidder from the Two-Stage Bidding Proceedings.** Any bidder, invited to bid but not in a position to supply the subject matter of procurement due to modification in the specifications or terms and conditions, may withdraw from the bidding proceedings at any time before opening of the financial bids, without forfeiting any bid security that he may have been required to provide or being penalised in any way, by declaring his intention to withdraw from the proceedings with adequate justification.

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

**5.8.1 PAC Tendering.** In procurement of goods, certain items are procured only from Original Equipment Manufacturers (OEMs) or manufacturers having proprietary rights against a PAC certificate (**DPMF 10**) signed by the appropriate authority specified at Paragraph 5.8.6. While PAC is issued only in respect of the OEM concerned, the item may be bought from any authorised dealer, subsidiary, stockist or distributor specified in that particular PAC on the basis of authorisation provided by the OEM, provided the purchase is accompanied by a proper manufacturer certification. For the purpose of PAC tendering, the powers of procurement are the same as that for competitive tendering. Since this mode is not aligned with the transparency principle as there is no competitive

tendering, it should be used only in justifiable situations, and the RFP and award of contract shall also be put on the website of CPPP/ DePP and organisations' own web portal (if available), subject to security considerations.

**5.8.2 Validity of PAC.** PAC, once issued, shall be valid for two years from the date of issue unless cancelled earlier by the CFA. The PAC may be re-issued for one more year with the approval of CFA, during which OTE mode may be exercised to explore the market. If, during the extended one year, OTE mode does not result in a success, a certificate from a PSO level officer at SHQ would be required to validate that the equipment for which PAC has been sought, is still in service and no substitute/alternative source(s) has been identified. Based on such certification, PAC may be re-issued for a further period of two years, at a time, in accordance with the provisions of this paragraph, till the identification of a suitable source(s) as per the requirement of the services. In parallel, such efforts to identify suitable source(s) through OTE may be continued and once such source(s) is identified, PAC may not be issued further. In case, a suitable alternative source(s) of supply is identified and approved by SHQ during the currency of the PAC, the PAC may be cancelled.

**5.8.3 Repairs/ Servicing/ Upgrades on the Basis of PAC.** The provisions of PAC shall also apply to repairs, servicing and upgrades of equipment through the OEM or through the sole dealer/ subsidiary/ servicing agency authorised by the OEM.

**5.8.4 Caution while Granting PAC.**

- (a) PAC bestows monopoly and obviates competition. Hence, PAC status shall be granted after carefully considering factors such as fitness, availability, standardisation and value for money. Many OEMs do not manufacture assemblies, sub-assemblies and components but outsource these items. Hence, such items may be available at cheaper prices with the actual manufacturers. The Procurement Entities shall, therefore, keep abreast of the proper source knowledge and procure items from the right sources to protect the interest of the State. However, spares have to be sourced from OEM or OEM approved/ recommended manufacturers only, in order to make the OEM responsible for the malfunctioning of the main equipment under warranty/ AMC/ Comprehensive Maintenance Contract (CMC) period in which the spares have been fitted.
- (b) In cases where OEM has more than one authorized dealers/ stockists/ distributors/Service providers, order would be placed on them on competitive basis.

**5.8.5 Fall Clause.** The firm should be asked to accept a 'Fall Clause' undertaking that in case it supplies or quotes a lower rate to other Governments, public sector or private organisations, under the same terms and conditions, it shall reimburse the excess amount Paragraph 6.40 (Chapter 6) also refers.

**5.8.6 Concurrence of IFA.** Concurrence of IFA is mandatory at the time of grant of PAC, even in cases falling under inherent powers of CFA. The PAC certificate shall be signed at the level of PSO/ Controller/ APSO/ DG/ ADG (equivalent) at Service HQs and by the C-in-C/ Corps Commander/ Area Commander and Heads of Establishments/ Formations or Units not below the rank of Brigadier and equivalent in the Command HQs and below, and by equivalent authorities in other Organisations.

**5.8.7 Format of PAC.** The format of the PAC Certificate is placed at DPMF 10.

**5.8.8 Withdrawal/ Cancellation of PAC Status.** In case at any time, an authority at any level becomes aware of an alternative source that is manufacturing a specific PAC item or an acceptable substitute, the information should be sent to the higher level/ Service HQs/ appropriate authority to review the grant of PAC for such item/ service. Once the PAC is withdrawn/ cancelled based on the review, subsequent procurement shall be undertaken through competitive tendering. However, existing supply orders/ contracts, if any, placed on the basis of the PAC, shall not be affected.

## **5.9 Single Tender Enquiry (STE) without PAC (on nomination basis)**

**5.9.1** A tender invitation to one vendor only without a PAC certificate is called a single tender. Since this mode is not aligned with the transparency principle as there is no competitive tendering (similar to PAC), STE may be resorted to only under following conditions:-

- (a) In a case of existing or prospective emergency relating to operational or technical requirements to be certified by the indenter, the required goods/ services may be purchased from a particular source subject to the reason for such decision being recorded and approval of the competent authority obtained.
- (b) 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/ services may be purchased only from a selected firm.

**5.9.2 Reasons for Recommending STE Mode:** Wherever applicable, the indenter should communicate the reasons for recommending STE to the Procuring Agency. Also, the reasons for resorting to STE and selection of a particular firm must be recorded and approved by the CFA as per the delegation of powers, prior to undertaking single tendering.

**5.9.3** Under STE, the powers of procurement will be as per the laid down norms of the DFPDS. Further, the RFP and award of contract shall be put on the website of CPPP/ DePP and organisations' own web portal (if available), subject to security considerations.

**5.9.4** All works/purchase/ consultancy contracts awarded on STE Mode should be brought to the notice of the Secretary of the Department concerned.

## **5.10 Dispatch of RFP under PAC/STE**

**5.10.1** The RFP under PAC/STE mode shall be sent to the OEM concerned or to a registered/ authorised vendor.

## **5.11 Electronic Reverse Auction.**

**5.11.1** Electronic Reverse Auction means an online real-time purchasing technique utilised by the procuring entity to select the successful bid, which involves presentation by bidders of successively more favourable bids during a scheduled period of time and automatic evaluation of bids. A procuring entity may choose to procure a subject matter of procurement by the electronic reverse auction method under any of the following circumstances: -

- (a) It is feasible for the procuring entity to formulate a detailed description of the subject matter of the procurement.
- (b) There is a competitive market of bidders anticipated to be qualified to participate in the electronic reverse auction, so that effective competition is ensured.
- (c) The criteria to be used by the procuring entity in determining the successful bid are quantifiable and can be expressed in monetary terms.

**5.11.2** Electronic reverse auctions can drive cost savings, they should be used judiciously, considering the broader implications beyond price alone. Therefore, e-RA should not be used indiscriminately or as a default mode of procurement.

**5.11.3 Procedure for Electronic Reverse Auction.** The procedure for electronic reverse auction shall include the following:-

- (a) The procuring entity shall solicit bids through an invitation to the electronic reverse auction to be published or communicated in accordance with the provisions similar to e-Procurement.
- (b) The invitation shall, in addition to the information as specified in e-Procurement, include details relating to access to and registration for the auction, opening and closing of the auction and norms for conduct of the auction.
- (c) In case where pre-qualification of bidders is considered necessary, reverse auction may be carried out after a separate PreQualification Bid (PQB) (electronic or otherwise) among the successful bidders only.

**5.11.4** Items (goods/ services) for electronic reverse auction may be selected carefully. Items of strategic, critical and vital nature, items in short supply in market and where there are only a few suppliers, are not good items for this mode of procurement. COTS items, items having large number of suppliers and high value procurements may be more amenable to electronic reverse auction.

**5.11.5** Currently, electronic reverse auction is available on GeM.

## **5.12 Tender/ Advance Sample**

**5.12.1 Tender Sample:** In case an organisation has, as part of specifications, certain indeterminable parameters such as shade, tone, make-up, feel, finish and workmanship, etc., the submission of tender sample at the time of technical evaluation may not be insisted upon. In such cases, the procurement entity may consider procurement of such items on the basis of other detailed specifications. If required, provision for submission of an advance sample by successful bidder(s), as mentioned in Paragraph below, may be stipulated for such indeterminable parameters before giving clearance for bulk production of the supply. However, in case the indeterminable parameters assume significance and are of importance, eg. in the case of uniforms, etc., tender sample, at the time of submission of technical quotation, may be allowed on a case-by-case basis, with the approval of CFA at the AoN stage and consultation of IFA, where required as per delegation of financial powers. Recommendations on acceptability of Technical Bids based on specifications and tender sample(s) submitted by the bidders, would be made by the TEC/ BOO with one representative

of Quality Assurance Agency (as applicable), and approved by the CFA, before opening the Price Bids. Cases calling for submission of tender samples are to be fully justified and recorded on file, and the CFA shall take a decision in this regard at AoN stage and suitable clause in this regard may be incorporated in RFP. No tender sample should be called for in single bid system at the RFP stage.

**5.12.2 Advance Sample.** An organisation may consider provision for submission of an advance sample by the successful bidder while procuring items on the basis of detailed specifications, before giving clearance for bulk production. Advance sample is mandatory in procurement of life saving equipment and ballistic items. Other conditions are as follows:-

- (a) Time for submitting advance sample is to be included within the time frame of total Delivery Period. The date of passing of Advance Sample is to be treated as date for bulk production clearance.
- (b) After placement of order, fixed number of opportunities (predefined in the RFP) shall be provided to the Seller for advance sample approval prior to issuing Bulk Production Clearance (BPC) certificate. If the Seller is unable to obtain advance sample approval within the said number of opportunities, the contract may be cancelled without any further notice. The time period, however, whilst being included in the Delivery Period, shall be admissible for the first opportunity only. Time period and other aspects governing the conduct of lab test/ trials (where necessary) up to which the responsibility shall be of the Seller, are also to be indicated in the RFP.

**5.12.3 Cost of Samples/ Lab Tests/ Trials.** The cost of samples/ lab tests/ trials are to be borne by the firms/ sellers who have quoted/ been awarded the contract. However, in case of field/ validation trials for any item(s) or component(s) such as ammunition, etc., necessary facilities/ materials/ components etc., as assessed by the buyer and included in the AoN approval and RFP, may be provided free of cost by the buyer.

**5.12.4** The above provisions are to be suitably incorporated in the RFP.

**5.12.5 Performance Parameters.** The performance parameters shall be verifiable and provide for the minimum essential military requirements. Fulfilment of essential parameters mentioned in the RFP shall be the basis for further consideration by the TEC.

### **5.13 Cost of Tender, Bid Security and Integrity Pact**

**5.13.1 Cost of Tender Document.** Tender sets in respect of OTE/GTE shall be sold on payment of the prescribed price tabulated below (as amended from time to time by the Government):-

<b>Ser.</b>	<b>Estimated Value of Tender</b>	<b>Price of Tender Set</b>
(a)	Up to ₹ 25 lakh	₹ 500/-
(b)	More than ₹ 25 lakh but up to ₹ 2 crore	₹ 1,500/-
(c)	More than ₹ 2 crore but up to ₹ 25 crore	₹ 2,500/-
(d)	More than ₹ 25 crore but up to ₹ 50 crore	₹ 5,000/-
(e)	Above ₹ 50 crore	₹ 10,000/-

**Notes:-**

- (a) *Cost of drawings and specification shall be extra. This may be decided in consultation with Integrated Finance as per the delegation of Financial Powers at the time of issuing the RFP.*
- (b) *No cost of tender documents would be charged in case of e-publishing/ downloading of tender documents by the bidders.*
- (c) *Normally, no cost of tender documents is charged in STE/ PAC/LTE cases.*
- (d) *No cost of tender documents is to be charged from MSEs and Procuring Entity Registered Units (for relevant items and monetary limits). Such units have to submit relevant documents in support of this exemption.*

**5.13.2 Bid Security/ EMD.** To safeguard against bidders withdrawing or altering their bid during the bid validity period in the case of advertised or limited tender enquiry, Bid Security/Earnest Money Deposit (EMD) is to be obtained from the bidders. The bidders shall be asked to furnish the bid security along with their bids.

**5.13.3 Amount of Bid Security/EMD.** Amount of Bid Security shall ordinarily range between two percent to five percent of the estimated value (including taxes and duties) of the goods/services to be procured. The exact amount of bid security shall be determined judiciously and appropriately while processing the proposal for CFA's approval or by PC during RFP vetting and indicated in the RFP.

**5.13.4 Form of Bid Security.** The Bid Security may be accepted in the form of Account Payee Demand Draft, Fixed Deposit Receipt (FDR), Banker's Cheque, Insurance Surety Bonds, Bank Guarantee (BG)/ Electronic BG (e-BG) or Electronic EMD (e-EMD) from any of the Indian Public or Private Sector Scheduled Commercial Banks or payment online in an acceptable form, safeguarding the purchaser's interest in all respects. The Bid Security is to be in favour of the Paying Authority/ CDA concerned or as specified in the RFP.

**5.13.5 Validity of Bid Security.** The Bid Security is normally to remain valid for a period of 45 days to 90 days beyond the final bid validity period, as decided by the CFA in consultation with Integrated Finance

**5.13.6 Return of Bid Security to Bidders.** Bid Securities of the unsuccessful bidders shall 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 or from the date of the decision of CFA to re-tender/ close the case, whichever is earlier. However, in the case of two packet or two-stage bidding, Bid Securities of the unsuccessful bidders during the first stage, i.e. technical evaluation etc., shall be returned within 30 days of declaration of result of the first stage, i.e. technical evaluation etc. In the case of the successful bidder(s), the Bid Securities shall be returned, without any interest whatsoever, after the receipt of Performance Security from them, as called for in the contract.

**5.13.7 Exemption from Submission of Bid Security.** Bid security is not required to be obtained from Micro and Small Enterprises (MSEs) as defined in MSE Procurement Policy issued by Ministry of Micro, Small and Medium Enterprises (MSME)/ MSEs registered with NSIC/ firms having Udyam Registration/ Start-ups recognised by DPIIT [as also mentioned in Paragraph 2.1.10 (c)(Chapter 2)] and those firms who are registered with the Central Purchase Organisations of Departments/ Ministries of the Government of India for the same item/ range of products/ goods or services for which the tenders have been issued. Further, Bid Security is not to be asked for if the value of the tender is ₹ 5 lakh or less. DPSUs are exempt from Bid Security only for procurements being undertaken on ab initio Single Vendor/ nomination basis.

**5.13.8 Forfeiture of Bid Security.** The Bid Security is liable to be forfeited if the bidder withdraws or amends, impairs or derogates from the tender in any respect during the period between the deadline for submission of bids and expiry of the bid validity period. No separate order is required for forfeiture of Bid Security,

which follows on default and should be credited at once to the Government Account.

**5.13.9 Bid Securing Declaration.** In exceptional cases, in place of a bid security, the Organisations/ formations may, after seeking approval of the CFA in consultation with IFA, where required as per delegation of financial powers, require bidders to sign a bid securing declaration, accepting that if they withdraw or modify their bids during the period of validity, or if they are awarded the contract and they fail to sign the contract, or to submit a performance security before the deadline defined in the request for bids document, they shall 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.

**5.13.10 Integrity Pact (IP).** RFPs for all procurements exceeding ₹ 5 crore are to include the requirement for all vendors to submit a pre-contract IP along with their bids (technical or commercial bids, whichever is earlier) as per format at **DPMF 14**. For this Pact, Independent Monitors are appointed by MoD in consultation with CVC. The buyers are required to include the names and addresses of the nominated Independent Monitors (subject to updates/ changes) in **DPMF 11** and **DPMF 14**, at the time of issue of RFP. Bid Security/ Earnest Money Deposit will act as security for IP till signing of contract. Post signing of contract, IP will be covered by the Performance Bank Guarantee/ Warranty Bank Guarantee (PBG/WBG) till completion of all contractual obligations of the supplier, including warranty obligations. Any bid not accompanied by Integrity Pact duly signed by the bidder shall be considered to be a non responsive bid and shall be rejected straight away.

**5.13.11 Validity of IP.** The IP shall remain valid for a period of three years or up to 60 days beyond the date of completion of all contractual obligations including warranty period to the complete satisfaction of both the bidder and the buyer, whichever is later.

**5.13.12 Exemption from IP.** DPSUs are exempt from submission of IP only for procurements being undertaken on ab initio Single Vendor/ nomination basis. They shall, however, enter into a pre-contract IP on the same lines with their sub-vendors individually in case the estimated value of each subcontract(s) exceeds ₹ 5 crore. DPSUs will submit IP, apart from Bank Guarantees, etc., as may be applicable, while participating in multi-vendor cases.

**5.13.13 Return of Securities/ Bank Guarantees.** All forms of securities/ bank guarantees, when being returned to the bidders, are to be forwarded under a cover note/ memo.

## **5.14 Tendering Process**

**5.14.1 Expression of Interest (EoI)**. In those cases where specifications of the desired goods or services are not clear or the sources are not known, and it is considered desirable to resort to pre-qualification of suppliers, a notice calling for Expression of Interest (EoI)/ information/pre-qualification may be issued, and pre-bid conference may be held with the firms which fulfil the criteria prescribed in the notice, to firm-up the Qualitative Requirements (QRs)/ specifications before issuing the Request for Proposal (RFP).

**5.14.2 Pre-Qualification Process**. In OTE /GTE cases involving complex technical requirements where capability of source of supply is crucial (for example in procurement of complex machinery and equipments etc.), for the successful performance of the contract, besides considering techno commercial suitability, it is necessary to ensure that competition is only among bidders with requisite capabilities matching the challenges of the task. In such cases, a pre-qualification process may be followed. The prequalification criteria should be clear, non-restrictive, unambiguous, exhaustive and yet specific and should ensure fair competition. Offers may be invited from prospective bidders by giving wide publicity to the invitation to prequalify, and the Procurement Entity shall subsequently publish the particulars of the bidders who qualify as per the criteria given in the notice to pre-qualify, on the Central Public Procurement Portal (CPPP)/ Defence e-Procurement Portal (DePP). Only the pre-qualified bidders shall, thereafter, be eligible for continuing in the procurement proceedings and RFP issued to them. The decision regarding bidders who have pre-qualified shall be taken in accordance with the criteria set out in the pre-qualification documents. Integrated Finance shall be involved in the vetting of the qualification criteria set out in the EoI/ Notice for pre-qualification of Bidders for a particular procurement in all those cases wherein financial powers are to be exercised in consultation with Integrated Finance.

**5.14.3 Preparation of the Request for Proposal (RFP)/ Tender Enquiry**. The text of the bidding document shall be self-contained and comprehensive without any ambiguities. All essential information that enables a bidder to send a responsive bid, shall be clearly spelt out in the bidding document in simple language. The conditions of prior turnover and prior experience may be relaxed for Startups {as defined by Department for Promotion of Industry and Internal Trade (DPIIT)} subject to meeting of QRs, technical specifications and making suitable provisions in the bidding document. The bidding document shall contain, inter alia:-

- (a) Description and Specifications of goods/ services, including the nature, quantity, apportionment of quantity (if any), Tender/ Advance sample (if any), time and place or places of delivery.
- (b) Quality standards, Inspection criteria and inspecting agency.
- (c) The criteria for eligibility and qualifications to be met by the bidders such as minimum level of experience, past performance, technical capability, manufacturing facilities and financial position, etc., or limitation for participation of the bidders, if any.
- (d) Eligibility criteria for goods/ services, indicating any legal restrictions or conditions about the origin of goods/services, etc., which may require to be met by the successful bidder.
- (e) The procedure as well as date, time and place for sending the bids.
- (f) Date, time and place of opening of the bids.
- (g) Criteria for evaluation of the bids.
- (h) Special terms affecting performance, if any, including trial methodology/ trial directives, where applicable.
- (i) Essential terms of the procurement contract.
- (j) Bidding Documents shall include a clause that 'if a firm quotes NIL charges/ consideration, the bid shall be treated as unresponsive and shall not be considered'.
- (k) Suitable provision shall be kept in the bidding document to enable a bidder to question the bidding conditions, bidding process and/ or rejection of its bid. The reasons for rejecting a tender or non-issuing a tender document to a prospective bidder shall be disclosed where enquiries are made by the bidder.
- (l) Suitable provision for settlement of disputes, if any, emanating from the resultant contract, shall be kept in the bidding document.
- (m) The bidding document is to indicate clearly that the resultant contract shall be interpreted under Indian Laws.
- (n) The specifications of the required goods shall be clearly

stated without any ambiguity so that the prospective bidders can send meaningful bids. In order to attract sufficient number of bidders, the specifications are to be broad based to the extent feasible. Also the specifications should be developed as per indigenous capabilities and may also be firmed up at the beginning of the proposal. Sub-Paragraph 2.1.4(c) (Chapter 2) is also relevant in this regard.

- (o) The user requirements shall be expressed in terms of functional characteristics. Its formulation shall not prejudice the technical choices by being narrow and tailor-made. Specific Quality Assurance requirements, if any, shall be included in the RFP.
- (p) Special Instructions to contractors/ bidders for e-submission of bids online through e-Procurement Portals may be adhered to. The details of the Earnest Money Deposit (EMD), the documents submitted physically to the Organisations/ Units and the scanned copies furnished at the time of bid submission online, shall be the same, otherwise the tender is to be summarily rejected.
- (q) There are no such qualifications for the bidders that would be advantageous to the foreign manufactured goods at the cost of domestically manufactured goods
- (r) The bidders should be given reasonable time to prepare and send their bids.
- (s) Any other information which the procuring entity considers necessary for the bidders to submit with their bids.
- (t) **Pre-Bid Conference.** In case of turnkey contract(s) or contract(s) of special nature for procurement of sophisticated and costly equipment or wherever felt necessary, a suitable provision is to be kept in the bidding documents for one or more rounds of pre-bid conference for clarifying issues and clearing doubts, if any, about the specifications and other allied technical details of the plant, equipment and machinery, etc., projected in the bidding document. Site visits may also be planned as required, for better appreciation of the project/ Scope of Work. The date, time and place of pre-bid conference shall be indicated in the bidding document. This date shall be sufficiently ahead of bid opening date. The records of such conference shall be intimated to all bidders, and shall also be exhibited on the website(s) where tender was published.

**5.14.4 Vetting of RFP**. RFP shall be vetted by the Procurement Committee (PC) or by the Integrated Finance in cases where PC is not constituted and financial powers are to be exercised with their concurrence.

**5.14.5 Reference to Brand Names in the RFP**. Standards and specifications quoted in bidding documents in generic terms, shall promote the broadest possible competition while assuring critical performance or fulfilment of other requirements for the goods/services. Hence, references to brand names, catalogue numbers, etc., in the RFP are to be avoided as far as possible. Where unavoidable, such item descriptions should always be followed by the words "or substantially equivalent".

**5.14.6 Format of RFP**. It shall be borne in mind that no clause is incorporated in the contract/ supply order that was not mentioned in the RFP. Inclusion of clauses in the contract, which did not figure in the RFP, amount to unfair denial of opportunity to other suppliers and deviation from the principles of procurement laid down in Chapter 2 of this Manual. Draft format of RFP, along with instructions to the buyer for framing RFP, are placed at **DPMF 11** and **Appendix E**, respectively.

## **5.15 Receipt of Tenders**

**5.15.1** It is mandatory for the Departments of Ministry of Defence to receive all bids through e-Procurement portals in respect of all procurements. Provisions of Paragraph 5.3.2 are also relevant.

**5.15.2** The tender box may be utilised for physical submission of EMD instruments and certificates/ documents, etc., in case of e-Procurement.

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

## **5.16 Amendment(s) to the RFP and Extension of Tender Opening Date**

### **5.16.1 Amendment(s) to the RFP**

- (a) In case any modification is made to the bidding document or any clarification is issued which materially affects the terms contained in the bidding document, the procuring entity shall publish or communicate such modification or clarification in

the same manner as the publication or communication of the initial bidding document was made.

- (b) In case a clarification or modification is issued to the bidding document, the procuring entity shall, before the last date for submission of bids, extend such time limit, if, in its opinion, more time is required by bidders to take into account the clarification or modification, as the case may be, while submitting their bids.
- (c) Any bidder who has submitted his bid in response to the original invitation, shall have the opportunity to modify or re-submit it, as the case may be, or withdraw such bid in case the modification to bidding document materially affects the essential terms of the procurement, within the period initially allotted or such extended time as may be allowed for submission of bids, after the modifications are made to the bidding document by the procuring entity, provided that the bid last submitted or the bid as modified by the bidder, shall be considered for evaluation.

#### **5.16.2 Extension of Tender Opening Within Due Date of Opening.**

- (a) CFA may extend the date of opening of the tender, as specified in the RFP upto a maximum period of three months (maximum upto three occasions with cumulative period not more than three months) without consultation of IFA, even where CFA's procurement powers are exercisable with financial concurrence.
- (b) CFA may extend the date of opening of the tender, as specified in the RFP, for any period/ number of times, in consultation with IFA, where required as per delegation of financial powers.
- (c) In cases where PC is constituted, the PC is empowered to extend the date of opening of the tender, as specified in the RFP, for any period/ number of times, in a collegiate manner. Paragraph 4.6.2 (Chapter 4) is relevant in this regard.
- (d) The procuring entity shall publish or communicate such extensions and amendments in the same manner as the publication or communication of the initial bidding document was made.

#### **5.16.3 Extension of Tender Opening Date After Due Date of Opening:** In case no bid has been received within the due date of receipt, date of opening of the tender may be extended for a reasonable period with the approval of the CFA and in consultation with the IFA, where financial powers are to be exercised with the concurrence of Integrated Finance. While granting extension, provisions as stipulated at Para 5.16.2 (d) shall also be followed.

**5.16.4 Withdrawal of Bids.** In case a firm request for withdrawal/ return of the bid within the tender opening date, the bid may be returned to the firm concerned. The EMD shall also be returned and may accompany the bid documents. In case of e-Procurement, the bidder may withdraw the bids following the online bid withdrawal procedure of the e-Procurement portal concerned.

## **5.17 Tender Opening**

**5.17.1 Opening of Tenders Under Single Bid System.** The following procedure shall be followed for opening of tenders:-

- (a) **e-Procurement Cases.** Bid opening in e-Procurement is done automatically by the system as per modalities of CPPP/ DePP. The details of the bids are visible to the bidders online. Tender Opening Committee is required to open the online bids with their digital signatures as per the provisions of CPPP/ DePP.
- (b) **Non e-Procurement Cases.**
  - (i) All the tenders received on time shall be opened in the presence of authorised representatives of the tenderers, who choose to be present, at the prescribed time, date and place by the Tender Opening Committee, to be nominated by the CFA in advance. The authorised representatives, who intend to attend the tender opening, shall be required to bring with them letters of authority from the tenderers concerned.
  - (ii) The tender opening official/ committee shall announce the salient features of the tenders like description and specification of the goods/services, 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.
  - (iii) After opening, every tender shall be numbered serially, initialled, and dated on the first page by the official(s) authorised to open the tenders. Each page of the price schedule or letter attached to it shall also be initialled by them with date, particularly the prices, delivery period, etc., which shall also be circled and initialled, indicating the date. Blank tenders, if any, shall be marked accordingly by the tender opening officials.
  - (iv) Alterations in tenders, if any, made by the tenderers, shall be initialled with date and time by the official(s) opening

the tenders to make it perfectly clear that such alterations were present on the tenders at the time of opening.

- (v) Wherever any erasing or cutting is observed, the substituted words shall also be encircled and initialled with date and time to make clear that such erasing/ cutting of the original entry was present on the tenders at the time of opening.
- (vi) The tender opening official(s) shall prepare a list of the representatives attending the tender opening and obtain their signatures on the list. The list shall contain the representatives' names and the corresponding tenderers' names and addresses. The authority letters brought by the representatives are to be attached with this list. This list is to be signed by the tender opening official(s) with date and time.
- (vii) An on-the-spot report containing the names of the tenderers (serial number-wise) and salient features of the tenders, as read out during public opening of tenders, shall be prepared by the tender opening official(s) duly signed by them with date and time.
- (viii) The tenders, which have been opened, the list of the representatives attending the tender opening and on-the-spot report are to be handed over to the nominated officer of the procuring agency and acknowledgement obtained for the same.

**5.17.2 Opening of Tenders under Two Bid System.** The procedure laid down in the preceding Paragraphs shall be followed mutatis mutandis under two bid system also, but only the technical bids shall be opened in the first instance. Commercial bids of only QR-compliant tenderers shall be opened after evaluation of the technical bids and approval of the TEC report by the CFA. The commercial bids of other tenderers, who are not found to comply with the QRs as above, shall be returned to the tenderers, in sealed and unopened condition as received, except in e-Procurement cases where the commercial bids are left unopened on the web portal itself.

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

## **5.18 Evaluation of Technical Bids**

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

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

**5.18.3 Technical Evaluation Committee (TEC)**. TEC, wherever formed, shall invariably have representatives of the user, designated inspecting agency, maintenance agency and procurement agency, apart from the Chairman. Finance representative may not be associated with the TEC. Composition of the TEC shall be approved by the CFA.

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

**5.18.5 Preparation of Compliance Report by TEC**. The TEC shall prepare a compliance report bringing out the extent of variations and differences, if any, in the technical characteristics of the equipment/ tendered item(s) offered by various vendors with reference to QRs, and compliance or noncompliance with the essential parameters. If considered necessary, the TEC may invite those vendors who meet essential parameters, for technical presentations/ clarifications.

**5.18.6 Aspects Considered in TEC Report**. The TEC report shall be prepared, as per sample format placed at **DPMF 23**, after considering following aspects:-

- (a) The basic profile/ character of technical offer must not be permitted to be changed.
- (b) Opportunity for revision of minor technical details, shall be accorded to all vendors in equal measure, to ensure fair play.
- (c) No extra time shall be given to any vendor to modify his offer to make it QR-compliant.
- (d) Original commercial quotes shall remain firm and fixed, and no loading/ unloading in price shall be permitted during TEC's discussion with the vendor.

(e) No conditional offer shall be accepted, which is not in conformity with the specifications mentioned in the RFP.

**5.18.7 Mandate of the TEC as regards Commercial Aspects.** The TEC is not authorised to discuss commercial aspects of the case. However, the TEC shall prepare the compliance report in respect of commercial terms and conditions, such as bid security, warranty, etc., included in the technical bids as per the RFP. In case bids are being rejected due to non-compliance of such commercial terms, advice of IFA shall be sought prior to obtaining the decision of CFA in those cases where financial powers are to be exercised with the concurrence of Integrated Finance.

**5.18.8 Association of IFA.** Whenever two bid system of tendering is followed, technical evaluation of the bid becomes a vital step not only for ascertaining conformity of the technical bids with the technical specifications mentioned in the tender, but also to bring all bidders on a level playing field in respect of qualitative requirements. While technical evaluation is to be carried out by the TEC and Integrated Finance may not be associated at this stage, CFA may, if considered necessary, evolve a system of associating the IFA or his representative in examination of the TEC Report in regard to compliance with the commercial terms and conditions before opening of the price bid. TEC report, once finalised, shall be sent to CFA for approval.

**5.18.9 Approval by the CFA.** The TEC report shall be approved by the respective CFA. TEC report may be approved by the Secretary and Special/ Additional Secretary of the Department concerned in those cases where Raksha Mantri and Secretary respectively are the CFAs.

**5.18.10 QR-Compliant Offers.** Those offers, which meet the essential parameters as per the TEC report, duly approved by the CFA, shall be considered by the Procurement Committee (PC)/ Commercial or Contract Negotiation Committee (CNC), which, in turn, shall evolve methods for benchmarking of price and negotiations with the L1 vendor, if considered necessary by the PC/ CFA, in consultation with the IFA where powers are to be exercised with the concurrence of Integrated Finance. Upon written request from the vendor(s), a suitable certificate of technical compliance may be issued by the Procuring Entity to the QR-compliant vendor(s) (L2, L3, etc.), after placement of Supply Order/ signing of Contract.

## **5.19 Evaluation of Commercial Bids**

**5.19.1 Preparation of the Comparative Statement of Tenders (CST).**

In e-Procurement cases, the portal auto-generates the CST and identifies the L1. In non e-Procurement cases, after opening of the commercial bids (of QR-compliant tenderers in the case of two bid system and after approval of the TEC report by the CFA), the procuring agency shall prepare a CST. The CST shall be prepared with due care, showing each element of cost (basic cost, taxes, duties, freight, insurance, etc.) separately against each tenderer. The CST shall be prepared soon after opening of the commercial bids and vetted by the IFA or his representative as to its correctness, if not processed through PC, where financial powers are to be exercised with the concurrence of Integrated Finance.

**5.19.2 Commercial Evaluation:** Evaluation of commercial bids is the core activity in any purchase decision. If correct evaluation of quoted basic rates of items, taxes, duties, installation, commissioning, freight, insurance, AMC/ CMC and other requirements involved is not carried out as per the criteria incorporated in the RFP, purchase decision may become deficient and faulty.

**5.19.3 Negotiations:** Normally, there should be no negotiation. Negotiations should be an exception rather than the rule. However, negotiations may become necessary to ensure that the interest of the State is fully protected and the price paid/ other commercial terms are reasonable. If it is decided to hold negotiations, they should be held only with the lowest acceptable bidder (L1) in case of LTE/OTE/GTE and with vendor in case of PAC and Single Tender. Such negotiations are invariably conducted by a duly appointed Procurement Committee (PC)/ Commercial or Contract Negotiation Committee (CNC), which shall include IFA or his representative as one of the members, if financial powers are to be exercised with the concurrence of Integrated Finance. Commercial negotiations may be carried out in those cases where the quoted price is considered higher with reference to the assessed reasonable price/benchmark price taking into account inter alia, the competition observed from the response of the bidders to the RFP. The justification and details of such negotiations shall be duly recorded and documented without loss of time, by the authority recommending the negotiations. The decision whether to undertake commercial negotiations in individual cases, shall be taken by the PC/ CNC, if so authorised by the CFA. The CFA, while constituting the PC/CNC should clearly bring out the activities including decision on negotiation with L1 bidder and subsequent negotiation that have been authorised to PC/CNC.

**5.19.4 Chairperson of the PC/ CNC.** The CFAs can nominate any official up to two levels or one rank below in their organisation. In those cases, where officers of requisite rank/level are not available, CFA

will have the discretion to chair the PC. The CNC may be headed by a Joint Secretary where Raksha Mantri/ Secretary/ Additional Secretary of the Department concerned is the CFA. The CFAs in the Ministry of Defence may also authorise an officer from the Service HQs/ Organisations concerned to be the chairperson of a CNC, particularly in those cases where the proposal was initially processed under the delegated powers but on opening of the tenders, the cost was found to have exceeded the financial powers delegated to the CFAs in the Service HQs/other Organisations. Paragraph 4.6.3 (Chapter 4) is also relevant in this regard.

**5.19.5 Composition of PC/ CNC:** Apart from the Chairperson, there shall be representatives of the User, Integrated Finance, designated Inspecting (Quality Assurance) Agency, Maintenance Agency and the Directorate concerned with post-contract management, as applicable. CFA may nominate any other member, such as a costing expert while constituting the PC/ CNC. TEC and PC/ CNC are not to be chaired by the same person.

**5.19.6 Price Reasonableness:** The basic objective of the PC/ CNC is to establish reasonableness of price being paid by the Government. This is a complex task and many factors need to be considered. However, factors like the Last Purchase Price (LPP), movement of price indices, market intelligence regarding cost of the item or similar items, material composition, cost analysis of raw materials, technological complexities involved, whether the items are of current production or otherwise, maintenance requirements, requirement of spares and warranty, etc., are to be considered while examining price reasonableness. Further details on determination of price reasonability are covered in Section-II below.

**5.19.7 Responsibility of the PC/ CNC:** PC/CNC shall determine L1, indicating specific reasons for making the recommendation. Recommendations of the PC/CNC should be specific and unambiguous. Wherever negotiations are conducted by the PC/ CNC, minutes of the meetings shall be recorded clearly and expeditiously. Detailed record of discussions regarding compliance with tendered QRs, price and contract clauses held during the PC/ CNC meetings shall be prepared and placed on record in the form of minutes of the meetings. All the members of the PC/ CNC shall sign the minutes. Various provisions regarding PC at Paragraph 4.6 (Chapter 4) are also relevant.

**5.19.8 Multiple L1.** Situation may arise when two or more firms quote the same lowest rate. Such situations are to be handled as under:-

- (a) **GeM Procurement.** Modalities as per GeM manual will be followed.

(b) **Non-GeM Procurement.** If the rates quoted by multiple L1 vendors are considered reasonable (within benchmarked price) and it is possible to distribute the orders, total quantity to be procured may be divided equally to the extent feasible amongst the L1 vendors. In case of withdrawal by one of the L1 vendors, the quantity apportioned against the vendor may be distributed equally among the remaining L1 vendors. In case of non-divisible/ single item(s), CFA may take a decision for negotiation/ re-tender, in consultation with IFA where required as per delegation of financial powers. Such provisions are to be included in the RFP. In case the L1 quoted price is not considered reasonable, retendering may be resorted to.

**5.19.9 Withdrawal of Offer by L1.** If the bidder, whose bid has been found to be the lowest evaluated bid, withdraws or fails to sign the procurement contract as may be required, or fails to provide the security as may be required for the performance of the contract, or otherwise withdraws from the procurement process, the Procuring Entity shall cancel the procurement process and may re-tender the case. Necessary action may also be initiated against the bidder with approval of the CFA as per Paragraph 3.7 (Chapter 3) of this Manual and Bid Security/ EMD, if any, shall be forfeited as mentioned at para 5.13.8 above. While re-tendering, RFP should not be issued to the L1 bidder who backed out.

**5.19.10 Determination of L1 on Entire Package.** In case an RFP contains a large number of items and it is indicated in the RFP that L1 will be decided based on the package price, the L1 offer should be determined on the basis of the cash outflow for the entire package only. Negotiation may be held in case the total package cost is more than the benchmark cost for the entire package. In case of higher item-wise quoted cost by the L1 vendor of the package, negotiation for the respective items may be also considered by the PC/ Price Negotiating Committee in case of reasonable ground for such negotiation.

## **5.20 Cartel Formation/ Pool Rates**

**5.20.1** Sometimes, a group of bidders quote identical rates against a tender. Such Pool/ Cartel formation is against the basic principle of competitive bidding and defeats the very purpose of open and competitive tendering system. Such practices are to be discouraged by adopting various administrative measures as given below:-

- (a) Rejecting the offers.
- (b) Reporting the matter to the Registrar of Companies,

Competition Commission of India (CCI), National Small Industries Corporation (NSIC), etc.

- (c) Encouraging new firms to get themselves registered for the subject goods/ services to break the monopolistic attitude of the firms forming cartels.
- (d) Considering changes in the mode of procurement and packaging/ slicing of the tendered quantity and items.
- (e) The Departments may also examine the desirability of bringing such unhealthy practices to the notice of the trade associations concerned, e.g., Federation of Indian Chambers of Commerce & Industry (FICCI), Associated Chambers of Commerce of India (ASSOCHAM), Confederation of Indian Industry (CII), Society of Indian Defence Manufacturers (SIDM), NSIC, etc., requesting them, inter alia, to take suitable action against such firms.
- (f) All requests for making reference to outside agencies, such as the Registrar of Companies or trade associations, etc., are to be made by the Service HQs/ other Organisations to the Ministry of Defence.

## **5.21 Lack of Competition in OTE/ GTE/ LTE**

**5.21.1** The following situations imply lack of competition: -

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

**5.21.2** 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 may be considered valid, provided the following conditions are satisfied:-

- (a) The procurement was satisfactorily advertised and sufficient time was given for submission of bids.
- (b) The qualification criteria were not unduly restrictive.
- (c) Prices are reasonable in comparison to market values.

## **5.22 Resultant Single Vendor Situation (RSVS)**

**5.22.1 Action to be Taken in RSVS:** In multi-vendor cases (OTE/ GTE/ LTE), there may be instances when only a single quote is received or a

single valid quote is found acceptable. This situation may arise in single bid tendering, as well as in two bid tendering, before or after technical evaluation. This results in a single vendor situation. In such situations, the following aspects shall be examined:-

- (a) 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 RFP.
- (b) Whether the RFP had been properly dispatched and duly received by the prospective vendors to whom these were sent.
- (c) Whether the SQRs, particularly in the LTE cases, could be reformulated and made more broad-based to generate wider competition.
- (d) Whether time and criticality of requirement permits reformulation of the SQRs.
- (e) Whether the situation has resulted due to withdrawal of offers/ refusal to extend bid validity, by any vendor(s). However, in such cases provisions as in 5.21.1(b) shall be duly considered and recorded.

**5.22.2** If the examination reveals that Sub-Paragraphs 5.22.1 (a) and (b) had been complied with, Sub-Paragraphs 5.22.1 (c) and (d) are not feasible, and Sub Paragraph 5.22.1 (e) is not attributable to inordinate delays in processing of the procurement case/ any unfair practices, the proposal is to be treated as RSVS and may be processed further in accordance with LTE/ OTE powers of CFA, in consultation with IFA where required as per delegation of financial powers. In the remaining cases, the RFP shall be retracted and retendering may be considered, if required.

### **5.23 Re-Tendering**

**5.23.1** Re-tendering may be recommended by the PC/ CNC and approved by the CFA with the concurrence of Integrated Finance, where original approval was accorded with the concurrence of Integrated Finance, after recording the reasons/ proper justification in writing. In cases where nil bids are received against a tender, re-tendering may be ordered by the CFA without IFA concurrence, only if there are no changes in the mode of tendering/ specifications/ RFP, etc., to give another opportunity to interested vendors and in anticipation of better vendor response. Re-tendering may also be considered under the following circumstances:-

- (a) Offer(s) do not conform to qualitative requirements and other terms and conditions set out in the RFP.

- (b) Post uploading of RFP, there are major changes in specifications and quantity.
- (c) Prices quoted are unreasonably high with reference to assessed reasonable price or there is evidence of a sudden slump in prices after receipt of the bids.
- (d) It is concluded that the bidding process involved unethical practices like Cartel Formation, Bid Rigging, etc. Paragraph 5.20 is relevant in this regard.
- (e) It is concluded that lack of competition is due to restrictive specifications, which may not permit many vendors to participate. In such cases, wherever required, CFA may consider reviewing the specifications to facilitate wider and adequate competition.

**5.23.2 Procurement of Bare Minimum Quantity**. In cases where it is decided to resort to re-tendering due to unreasonableness of the quoted rates but the requirement is urgent/ inescapable and retendering for the entire quantity is likely to delay the availability of the item(s), jeopardising the essential operations, maintenance and safety, negotiations may be held with the L1 bidder for supply of a bare minimum quantity. A decision in this regard shall be taken by the CFA in consultation with the IFA if the procurement proposal was processed in consultation with IFA as per the delegation of financial powers. The balance quantity, shall however, be procured expeditiously through re-tender, following the normal tendering process.

**5.24 Acceptance of CNC's Recommendations and Expenditure Angle Sanction (EAS) by CFA**

**5.24.1** The recommendations of the PC/ CNC should be processed on file/ online by the Procuring Agency for the approval of the CFA with the concurrence of the IFA, wherever required as per the delegation of financial powers. An EAS is a written authority from the CFA authorising the expenditure. The sanction invariably indicates the reference to the authority under which expenditure is being sanctioned, the financial implication, the item for which the expenditure is approved and the budget code head. A sample format of the certificate to record EAS is placed at **DPMF 24**. Whenever the final expenditure exceeds the sanctioned amount, revised financial sanction of the CFA, in whose delegated powers the total expenditure falls, shall be obtained. In cases where the final expenditure is found to be within the powers of a lower CFA, the AoN according CFA will give the EAS and conclude the supply order/contract. While determining the CFA in foreign procurement

cases, foreign exchange rate of respective currency is to be taken into account as per Paragraph 5.30.3. Future variation in the currency exchange rate shall not affect the determination of CFA as long as the contract value is not changed in the respective foreign currency.

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

**5.25.1** Once the CFA accords sanction of expenditure of the procurement case the contract shall be signed or the supply order placed, as the case may be, immediately. It is to be ensured that the contract/ supply order is as per the approved terms and conditions and the rates are correctly shown as finally negotiated and accepted by the CFA. Contracts/ supply orders are to be vetted by the PC/ CNC and concurred by the IFA, wherever required as per delegation of financial powers, prior to acceptance of the purchase proposal by the CFA. Copies of the contract/ supply order shall be sent to all concerned, including the IFA, Inspection Agency (where applicable), the audit authority and the paying authority, and their acknowledgement obtained. Sample formats of Contract and Supply Order are placed at **DPMF 12** and **DPMF 13** respectively.

## **5.26 Procurement Involving Validation/ Testing**

**5.26.1 Circumstances**. Due to constant changes in technology and exposure to extreme climatic conditions, various weapons, equipment, ammunition, clothing, etc., which are already in service, need to be replaced by newer variants or upgraded/ refurbished/ reequipped/ modified/ overhauled to incorporate advancements in technology. This may necessitate validation trials/ testing of upgraded/ refurbished/ re-equipped/ modified equipment, if considered necessary by the Service HQs/Organisations concerned. The procedure set out in this Section shall normally be applicable to cases processed at the level of the Ministry of Defence/ Service HQs/equivalent levels in other Organisations and shall be suitably indicated while seeking AoN. Such cases are not to be treated as new introduction into Service.

**5.26.2 Categories of Cases**. The cases to be processed under the provisions of this Section would generally fall into the following categories:-

- (a) Procurement of upgraded new versions of equipment, ammunition, vehicles, clothing, etc., under the provisions of this Manual, provided they conform to the existing laid down QRs and meet the prescribed performance parameters, or certain enhanced parameters which have been incorporated as an amendment to the existing QRs.

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

**5.26.3 Procedure for Procurement of Upgraded New Versions of Equipment, Ammunition, Vehicles, Clothing, etc.** For procurement of items mentioned in Sub-Paragraph 5.26.2 (a) above, the Service HQs/other Organisations shall decide whether a validation process is required and, if so, it shall be indicated in the proposal for AoN. If such a validation process (trial/ testing) is considered necessary, the scope and duration thereof shall also be finalised and indicated in the RFP. It is to be mentioned in the RFP that the vendors found technically compliant shall be required to provide specified quantities of the item on 'No-Cost, No-Commitment' (NCNC) basis for trial evaluation/ testing. The period within which the vendor is to submit the equipment/ sample after being found technically compliant shall be indicated in the RFP. The remaining procedure shall be as under.

(a) The technical evaluation shall be a two-stage process. After the technical bids are opened, the TEC shall short-list the vendors that are technically compliant, and the TEC Report shall be approved by the CFA. Thereafter, the technically compliant vendors shall go through the process of evaluation/ testing. The evaluation/ testing shall ideally be completed within a period not exceeding eight months (or as specified in RFP) from receipt of the equipment/ sample from the vendors. The Validation Trial/ Testing Report shall be again ratified by the TEC and approved by the CFA.

(b) **Opening of Commercial Offer after Trial Evaluation/ Testing.** The commercial offer shall be opened only after acceptance of the TEC/ Validation Trial/ Testing Report of those vendors who have been recommended as technically compliant. It is to be ensured that the commercial offer remains valid until placement of supply order/ signing of contract.

(c) **Dispensing with Trial Evaluation/ Testing.** For equipment available Commercial off-the-shelf (COTS), which are upgrades of in-service items and have requisite International

Standards (IS)/ Bureau of Indian Standards (BIS) or equivalent certification, the Service HQs/other Organisations may accept the equipment on the basis of self-certification by the vendor without going through the validation/ testing process, provided it is confirmed by the QA Agency/ AHSP or any other technical agency concerned. However, in such cases also, the TEC Report shall be approved by the CFA.

**5.26.4 Procedure for Upgradation, Refurbishment, Re-Equipment, Modification, Technical Life Extension, Overhaul etc.** For upgradation, refurbishment, etc., as mentioned in Sub-Paragraph 5.26.2(b) above, the vendors shall be short-listed on the basis of an EoI with the prior approval of the CFA and with the concurrence of Integrated Finance, and the shortlisted vendors may be provided an opportunity to survey the weapon platform/ systems, etc., which is to undergo upgradation/ refurbishment/ re-equipment/ modification/ technical life extension/ overhaul, prior to issue of the RFP. In case the upgrade, refurbishment, etc., is to be done in India, the vendors shall certify the capability and confirm the adequacy of the facility to the satisfaction of the Service HQs/Organisations concerned. If required, a Detailed Project Report (DPR) may be prepared by the Service HQs/other Organisations after obtaining the AoN but before issuing the RFP, with a view to defining the scope and other technical details of the upgrade/ overhaul (OH) programme, etc. The remaining procedure shall be as under.

- (a) **Special Provisions in RFP.** The RFP for upgradation, refurbishment, etc., is to solicit technical and commercial offers separately and may also have a provision for pre-bid conference prior to submission of the offers, so that the technical and other issues are clarified to vendors. The RFP shall seek inputs on the location of the plant/ factory where upgradation, refurbishment, etc., is to be undertaken and whether the vendor owns the facility. If the facility is not owned by the vendor, a certificate of agreement between the OEM and the plant owner shall be required to be submitted by the vendors along with their offer. There shall be a provision in the RFP that one lead equipment (where there are more than one number) shall be tested by the vendor along with the representatives of the Service HQs/other Organisations (either in India or abroad) before the balance equipment are taken up for upgradation, refurbishment, etc. In case of a single weapon platform, there shall be a provision for concurrent testing along with the upgradation, refurbishment, etc.
- (b) **Approval of the TEC Report and Opening of Commercial Offer.** The TEC Report shall be approved by the CFA and the commercial offer of the vendors who have been recommended

as technically compliant, is to be opened only thereafter.

**5.26.5 Validity of the Offer**. The commercial offer shall have a validity of up to 18 months from the last date of submission of the offer or as indicated in the RFP, depending on the period required for completing the technical evaluation, so as to ensure that the offer remains valid until the order is placed/ contract signed. A shorter validity period may be prescribed commensurate with the period of trial/ testing.

**5.26.6 Assessment of the Vendor's Facility**. If required and considered necessary, a composite delegation of representatives of the User Department, Quality Assurance (QA) Agency, Indenter, CFA and Integrated Finance may be deputed to visit the plant/ factory of the vendor finally recommended by the CNC to assess the capability/ capacity of the selected vendors to carry out upgradation, refurbishment, etc., before commercial negotiations are finalised and approved by the CFA.

## **5.27 Instructions to Bidders**

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

- (a) **Eligibility.** All bidders who fulfil the 'Eligibility Criteria' and 'Qualification Criteria' stipulated in the tender document/ RFP shall be eligible to bid. In LTE and two-stage bidding (Second Stage seeking commercial bids) cases, only such bidders who have been specifically invited, or previously shortlisted, shall be eligible to bid.
- (b) **Clarification(s) on Bidding Documents.** A prospective bidder who requires clarification(s) regarding the contents of the bidding documents, shall notify the Procuring Entity in writing and the Procuring Entity shall respond in writing to the clarifications sought not later than 14 days prior to the date of opening of the tenders. Copies of the query/ies and clarification/s by the Procuring Entity shall be sent to all prospective bidders who have received the bidding documents.
- (c) **Quotations submitted under Original Memos.** Bids shall be forwarded by bidders under their original memo/ letter pad, furnishing, inter alia, the TIN/ GST No., bank details, complete postal and e-mail address of the bidder. This is applicable only in cases other than e-Procurement.
- (d) **Amendment(s) to Bidding Documents.** At any time prior to the date of submission of bids, the Procuring Entity may, whether

at its own initiative or in response to a clarification requested by a prospective bidder, modify bid documents by way of amendments. The amendments shall be notified in writing to all prospective bidders. In order to afford prospective bidders, a reasonable time to take the amendment(s) into account in preparing their bids, the Procuring Entity may, at its discretion, extend the deadline for submission of the bids.

- (e) **Bid Validity.** A bid shall normally remain valid for 90 days in case of single bid RFP and 120 days in case of two bid system, unless otherwise specified in the RFP, from the last date of submission of the bids. A bid valid for a shorter period shall be rejected by the Procuring Entity, as being non-responsive. In exceptional circumstances, the Procuring Entity may request the consent of the bidder for an extension to the period of bid validity. Such requests shall be made in writing. In such cases, the bid security provided, shall also be suitably extended. A bidder accepting the request and granting extension, shall not be permitted to modify the bid.
- (f) **Late Bids.** In the case of competitive tendering, late bids (i.e. bids received after the specified date and time for receipt of bids) shall not be considered and shall not be opened. Such unopened bid shall be returned to the bidder.
- (g) **Modification and Withdrawal of Bids.** A bidder may modify or withdraw his bid after submission provided that the written notice of modification or withdrawal is received by the Procuring Entity prior to deadline prescribed for submission of bids. A withdrawal notice shall be sent by electronic mode, but it is to be followed by a signed confirmation copy sent by post. Such withdrawal/ alterations/ modifications are received, duly sealed and marked like original tender, up to the date and time of receipt of tender. No bid shall be modified after the deadline for submission of bids. No bids 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, shall result in bidder's forfeiture of bid security.
- (h) **Clarification(s) on Bids.** During evaluation and comparison of bids, the Procuring Entity may, at its discretion, ask the bidder for clarification(s) on the 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(s) on the initiative of the bidder shall be entertained.

## 5.28 Instructions to Procuring Entity/Buyer

**5.28.1** Subject to other specific provisions of this Manual, the broad instructions for the Procuring Entity/Buyer are as follows:-

- (a) **Preliminary Examination.** Procuring Entity shall evaluate the bids to determine whether:-
  - (i) They are complete.
  - (ii) Any computational errors have been made.
  - (iii) Required sureties have been furnished.
  - (iv) Essential documents such as the technical literature and Agency Agreement in the case of medical stores, etc., as specified in the RFP, have been furnished.
  - (v) The bid documents have been properly signed.
  - (vi) The bids are generally in order.
- (b) **Discrepancy in Quoted Price.** If, in the price structure quoted for the required goods, there is discrepancy between the unit price and total price (which is obtained by multiplying the unit price by the quantity), the unit price shall prevail and the total price corrected accordingly. If there is an error in a total corresponding to the addition or subtraction of sub-totals, the sub-totals shall prevail and the total shall be corrected. 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, the bid shall be rejected and the bid security may be forfeited.
- (c) **Trivial Errors.** Trivial errors such as omission to enter the rates in words, initial any alteration in rates or sign both the tender and the schedule(s), which do not constitute any material deviation and financial impact may be corrected, initialled and dated by the officers opening the tenders, and signed and dated subsequently by the tenderer.
- (d) **Responsiveness of the Bid.** Prior to detailed evaluation, the Procuring Entity shall determine the substantial responsiveness of each bid to the bid documents. A substantially responsive bid is the one which conforms to all terms and conditions of the bid documents without material deviations. Deviations from or objections or reservations to critical provisions like bid security, Warranty & Guarantee, Applicable Law, Taxes and Duties and non-submission of documents such as valid Agency Agreement and technical literature in the case of medical stores or any other item/equipment if sought in the bid document, shall be deemed to be a material deviation.

- (e) **Evaluation and Comparison of Substantially Responsive Bids.** The evaluation and comparison of responsive bids shall be done on the prices of the goods/services offered, inclusive of all taxes and duties, and other charges such as packing and forwarding, freight and insurance, AMC (if sought for), etc., as indicated in the price schedule of the bid document. Such requirements are to be included in the RFP.
- (f) **Award Criteria.** The Procuring Entity shall award contract to the successful bidder whose bid has been determined to be substantially responsive and has been determined to be the lowest evaluated bid, provided further that the bidder is found to be technically, commercially and financially acceptable and whose goods/services have been type-approved/ validated by the Procuring Entity.
- (g) **Waiver of QRs/ Parameters.** There shall be no waiver of parameters after the issue of RFP, as this may result in denial of opportunity to firms/ vendors who could have met the revised essential parameters, had this been reflected in the RFP ab initio. This is particularly relevant in single vendor cases. This is also relevant in resultant single vendor cases where waiver of essential parameters after issue of RFP and receipt of tenders, shall be prejudicial to the interest of other firms/ vendors who might have submitted their bids as per the revised parameters, but could not because of the essential parameters mentioned in the RFP.
- (h) **Pre-Bid Conference.** To obviate the possibility of an RFP fetching no response, resulting in a single vendor situation or resulting in limited competition, review of the techno-commercial requirements may be considered by the PC/ CNC based on discussions in pre-bid conference under the two bid tendering system, with the approval of the CFA, particularly where the goods/ services to be procured are not available commercially off-the-shelf or are of complex and highly technical nature.

## **SECTION II - EVALUATION OF QUOTATIONS AND PRICE REASONABILITY**

### **5.29 Introduction**

**5.29.1 Cost Estimation.** Correct estimation of rates/ costs is vital for determining the CFA and establishing the price reasonability of the offers received from the suppliers. It is, therefore, important that the rates/ costs are worked out in a realistic, objective and professional manner on the basis of the prevailing market rates, Last Purchase Price (LPP), economic indices for raw material/ labour, other input costs and assessment based on intrinsic value, etc. It is equally important to evaluate the quotations/ offers received in response to the RFP correctly, to select the best offer. Guidelines for assessment of rates/ costs, evaluation of quotations and determining price reasonability are enumerated in succeeding Paragraphs.

### **5.30 Costing of Procurement Proposals**

**5.30.1 Need for Costing.** The first stage at which costing is to be done is when the proposal is initiated by the Procuring Agency for seeking AoN. It is necessary to work out the complete cost of a procurement proposal to determine availability of funds to meet the expected cash outflow and the CFA level at which it is to be approved. It is, therefore, essential that the costs are assessed realistically and comprehensively. The entire, all-inclusive assessed cost shall be the basis for determining the CFA.

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

**5.30.3 Cost worked out in INR.** Wherever applicable, the assessed cost shall be converted into the common denomination of Indian Rupee (INR) and shown both in terms of the foreign currency and INR while seeking CFA's approval. The Foreign Currency exchange rate adopted shall be the exchange rate as on the date of opening of the price bids. The Foreign Currency exchange rate (to be used for imported goods/ services), shall be as per the Bills for collection (BC) Selling rate of the Parliament Street Branch of State Bank of India (SBI), New Delhi, or the SBI website.

**5.30.4 Harmonised System of Nomenclature (HSN) Code.** The basis of tax liability should be the promulgated HSN code of that particular item.

### **5.31 Evaluation of Quotes**

**5.31.1 Evaluating Financial Implications of Offers.** While RFP is issued on the basis of the assessed cost, as approved by the CFA, the next important stage in the process is the stage at which the bids received in response to the RFP, are required to be evaluated to work out the total financial implication and reasonability of each offer. The first step in arriving at the decision regarding reasonability of price or otherwise, is to determine the exact cost of the proposal. In order to ensure that all offers are compared in an equitable and fair manner and the vendors are provided a level playing field, all elements of cost, including the terms and conditions with financial implications are to be taken into account. The criteria to be adopted for this purpose shall be indicated in the RFP and the quotations are to be ranked as per those criteria. In the case of medical equipment or other special equipment where extended maintenance support is essential beyond the warranty/guarantee period, firms may be asked to quote comprehensive AMC rates for such period (on expiry of warranty/guarantee) and these shall be loaded in CST and taken into consideration while deciding the L1 vendor. Discounted Cash Flow Technique, as given in Paragraph, 5.33.5 may be utilised to arrive at the Net Present Value (NPV) while preparing CST in such cases. However, this evaluation criterion shall be clearly indicated in the RFP in such cases.

**5.31.2 Basis for Comparison of Cost.** The basis for comparison of cost in different situations would be as follows:-

- (a) Normally, the comparison of the responsive tenders shall be on total outgo from the Procuring Entity's pockets, to be paid to the supplier or any third party, including all elements of costs as per the terms of the proposed contract, including all taxes, duties, freight, insurance, etc. Therefore, it shall normally be on the basis of CIF/ CIP on destination basis, duly delivered, and commissioned, as the case may be.
- (b) In the case of goods manufactured/services rendered in India or goods/services of foreign origin already located in India, Goods and Services Tax (GST) and other similar taxes and

duties, which are contractually payable (to the tenderer) on the goods, are to be added.

- (c) In the case of goods/services of foreign origin offered from abroad, customs duty and other similar import duties/ taxes, which are contractually payable (to the tenderer) on the goods, are to be added. In cases where customs duty exemption has been accorded, the customs duty amount is to be notionally added for the purpose of L1 determination, in order to provide a level playing field to domestic/Indian tenderers.

**5.31.3 Determining CIF/ CIP Cost.** When quotations of foreign vendors are to be compared with quotations of indigenous suppliers, CIF/ CIP cost of foreign supplier is to be taken into account but difficulty arises when only FOB/ FCA cost is indicated by a foreign supplier. This creates difficulty in determining CIF/ CIP value. To avoid a situation like this, it is to be clearly indicated in the RFP that the foreign vendors shall indicate the CIF/ CIP cost.

**5.31.4 Comparative Statement of Tenders.** On receipt of all accepted tenders, the Procuring Agency shall collate them in the form of a Comparative Statement of Tenders (CST). The prices quoted in foreign currencies are to be converted into INR and indicated in the CST as per Paragraph 5.30.3. The CST shall be exhaustive and include all details given in the quotations. Any deviation from the tender documents is to be brought out in the CST. LPP, wherever available, shall be indicated in the CST for a fair comparison of the offered prices. In case of manual bidding, the representative(s) of Procuring Entity/ members of PC/ CNC shall sign the CST. While in the non-PC cases, vetting will be done by IFA/IFA rep. In cases of e-Procurement, the auto-generated CST duly signed by the authorised officers is normally valid and hence there is no need of vetting of CST by IFA/Rep/PC/CNC. However, there may be occasions when the auto-generated CST does not determine the L1 correctly due to various reasons of omissions/ inconsistencies, etc., in the bids. In such cases, CST shall be prepared manually by the Procuring Entity. CST may be prepared by the procuring entity and is required to be vetted by IFA/Rep. of IFA/PC. CST may be prepared using ERP module, if available.

**5.31.5 Determination of Lowest Acceptable Offer.** PC/ CNC or Procuring Agency shall determine the lowest acceptable offer, L1, based on the overall evaluation criteria indicated in the RFP.

**5.31.6 Evaluation Methods - Commercial Bids.** Based on the nature and complexity of project and scope of work envisaged, one of the under-mentioned evaluation methods may be used. The method of evaluation is to be decided at AoN stage and included in the RFP.

- (a) **Least Cost System (LCS) or L1 Method.** This method is appropriate for assignments of a standard or routine nature where well-established methodologies, practices and standards exist. There is no weightage for technical score in the final evaluation and the responsive technically qualified proposal with the lowest evaluated cost, shall be selected.
- (b) **Quality and Cost-Based Selection (QCBS) Method.** This provision is applicable only for procurement of ICT (Chapter 11), Consultancy Services, (Section-I of Chapter 12) and Refit/ Repair Chapter 13). This method may be adopted for complex/ high value projects or where quality is of prime concern, viz. a Quality Oriented Procurement. A procurement shall be declared as a QOP only if there is enough justification in terms of value addition, or enhancement of delivery, or paramount importance of quality. The competent authority for declaring a procurement as a QOP shall be the Secretary of the Ministry/ Department. Suitable weightages are to be assigned to technical specifications/ superiority of solutions suggested, provided the weights to be assigned to technical features/ business criteria/ etc., are objective and stated upfront in the RFP. The Technical and Financial proposals are to be given weightage in the ratio 70:30 or any suitable ratio depending upon scope of work/ complexity of project. The weightage of the technical parameters, i.e. non-financial parameters should, in no case, exceed 80%. Detailed and objective technical evaluation criteria out of 100 points, along with the minimum Technical Score ( $ST$ ) to be obtained for considering financial proposal, shall be specified in the RFP. The proposals shall be evaluated as follows:-
  - (i) A Special Technical Committee (STC) shall be constituted with the following composition:-
    - (aa) Two or more persons who have expert knowledge and/ or long experience relevant to the procurement in question.
    - (ab) One or more persons with extensive experience in handling public projects and/ or financial management/ financial administration/ audit/ accountancy.

- (ac) Not more than one member representing the Procuring Entity who may, *inter alia*, provide administrative support to the Committee.
- (ad) Any person who is a member of the STC shall not associate himself/ herself in any manner with any bidder for the procurement concerned.
- (ae) The persons referred to in sub-paragraphs (aa) and (ab) above, shall be persons not working under the Competent Authority.

(ii) The STC shall make specific recommendations on the following matters:-

- (aa) The weight to be given to non-financial (technical) parameters (not exceeding 80%).
- (ab) The specific quality/ technical parameters, their weights, their scoring methodology, the minimum qualifying standard/ marks, etc., and other relevant criteria necessary for ensuring fair and transparent quality/ technical evaluation of the bids.

(iii) The technical proposal shall be evaluated by constituting a suitable committee/ TEC, wherein members of the STC shall not be included and marks are to be allotted to each of the bidders for each of the quality/ technical parameters, and then, total technical marks are to be calculated for each bidder, which will serve to determine the 'quality' of each proposal. After evaluation of quality has been completed, the Procuring Entity shall notify those bidders/consultants whose proposals did not meet the minimum qualifying standard, or where marks have been awarded, the minimum qualifying total technical marks, or were considered non-responsive to the RFP, and their financial proposals/ bids will be returned in sealed and unopened condition as received, except in e-Procurement cases where the commercial bids will be left unopened on the web portal itself. The procuring Entity shall simultaneously notify the bidders/consultants who have successfully satisfied the qualifying standard, or where marks have been awarded, the minimum qualifying marks, and indicate the date and time set for opening their financial proposals.

(iv) As mentioned above, the financial proposals shall be opened and financial evaluation shall be done for only those proposals which meet the minimum technical marks/ qualifying standard. The Financial Scores (  $|SF|$  ) of all proposals are to be calculated by using the following formula:-

$$|SF| = \frac{100 \times FP_{min}}{FP}$$

Where,

$|SF|$  = Financial Score of proposal under consideration.  
 $|FP_{min}|$  = Price of lowest financial proposal.  
 $|FP|$  = Price of proposal under consideration.

(v) Similarly, the Technical Scores (  $|ST|$  ) of all qualified proposals are to be calculated by using the following formula:-

$$|ST| = \frac{100 \times T}{T_{max}}$$

Where,

$|ST|$  = Technical Score of proposal under consideration.  
 $|T_{max}|$  = Highest Total Technical Marks among all qualified proposals.  
 $|T|$  = Total Technical Marks of the proposal under consideration.

(vi) Proposals shall be ranked according to their combined technical/ financial scores as per the following formula (for 70:30 ratio):-

$$|S| = |ST| \times 0.7 + |SF| \times 0.3$$

Where,

$|S|$  = Combined Technical and Financial Score.  
 $|ST|$  = Technical Score.  
 $|SF|$  = Financial Score.

(vii) The bidder achieving the highest combined Technical and Financial Score, shall be considered for the award of the contract.

### 5.32 Benchmarking.

**5.32.1** It is advisable to work out the estimated reasonable rate or the benchmark, to judge acceptability of the L1 offer based on available information. Benchmarking of price will be undertaken by the PC/ CNC where constituted or by a committee duly approved by the CFA with IFA /IFA representative as a member, if the financial powers are to be exercised in consultation with IFA as per the delegation of financial powers and shall be done after the last date of receipt of bids and before opening of the price bids in case of two bid system and before the tender opening date in single bid system, to ensure complete objectivity and fairness, and also because the decision to negotiate or not, depends upon such an assessment. Data may be collected from trade journals/ internet/ technical literature/ industry sources/ international or domestic market surveys, products performing similar functions or using similar components/ materials/ technology/ etc.

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

- (a) **Ascertain Element-wise Break-Up of Cost.** The quote/ selling price generally constitutes elements such as material cost, labour cost and overhead cost, along with applicable warranty and profit.
- (b) **Ascertain the Last Purchase Price (LPP).** Ascertain the LPP of similar item, supplied by the vendor recently to same Service or other sister Services/ Organisations. If LPP is of an earlier period, then the Price Level (PL) is required to be fixed as per last delivery of item with applicable escalation on that PL up to the year of delivery for the current proposal.
- (c) **Ascertain Escalation.** Escalation is to be worked out on the basis of material composition and analysis of raw materials used to make the item. The movement of price indices of raw materials (year-over-year average), wholesale price indices, consumer price indices, global metal indices such as London metal indices, US indices, UK aerospace and electronic cost indices , etc., may be used to assess the escalation rate.
- (d) **Ascertain Delivery Period.** Delivery period is to be ascertained and if the delivery is scheduled for more than

one year, then midpoint of delivery period is to be taken for deciding escalation. Month-wise escalation from date of LPP may be given, or if it is proposed yearly, then seven months or more may be considered for one additional year's escalation, e.g. if an item is to be delivered in the FY 2024-25 and LPP is for FY 2018-19, then the prices are to be escalated from the FY 2019-20 up to FY 2024-25.

- (e) **Budgetary Quotes (BQs)**. BQs obtained from one or more prospective sellers may also form the basis of benchmarking cost. If there is huge variation in the BQs, the aberrations are to be marginalised.
- (f) **Market Surveys (MS)**. Prevailing market rates obtained through MS or prices available from open sources like internet, etc., may be taken for benchmarking. The source and authenticity of the market rates so obtained, are to be indicated in the CNC.
- (g) **Labour Cost**. Labour cost is to be broken down into labour hours used and the Man-Hour Rate (MHR). In case of procurement of major items, the apportionment of estimated hours required by the vendor and the MHR of the vendor, where available, is to be used for working out the labour cost.
- (h) **Professional Officers' Valuation (POV)**. POV may be considered in case no other prices are available of that particular item.
- (i) **Factoring Discounts/ Exchange Rate Variation (ERV)**. Discounts may be factored in while benchmarking, viz. on account of Long-Term Business Agreements (LTBA) with other OEMs or economies of scale. In case of Bought Out Items (BOI) from abroad or indigenous items with substantial import content, LPP plus Exchange Rate Variation (ERV) since last purchase date, if any, are to be factored in benchmarking.
- (j) **Taxes and Duties**. Taxes and duties may not be factored in, while benchmarking.
- (k) **DPSUs**. In case of DPSUs, the parameters of cost as per Pricing Policy or Govt. of India letters, if any, may be factored in while arriving at benchmark price.
- (l) **Other Factors**. Factors such as obsolescence, redundancy, Freight & Insurance, Profit & Warranty, etc., may also be considered while arriving at benchmark price.

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

**5.33.1** The approach to be adopted for assessing reasonability in different contingencies is given in the succeeding Paragraphs.

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

**5.33.3** **Determining Reasonability of Prices.** In the case of competitive tendering, where two or more vendors are competing independently to secure a contract, competitive bids form the basis for determining reasonableness of prices. The following factors are to be considered to determine price reasonability:-

- (a) Evaluation of tenders is to be made on the basis of the ultimate cost to the user.
- (b) As a general principle, no offer involving any uncertain or indefinite liability or any condition of unusual rate or character, shall be considered.
- (c) The reasonableness of the price proposed has to be established by taking into account the competition observed from the response of the vendors to the RFP, Last Purchase Price (LPP), estimated value as given in the AoN/ indent, database maintained on costs based on the past contracts entered into, market price, wherever available, changes in prices of raw materials, labour and energy, statutory changes, price indices, and so on, to bring the prices/ costs up to the current prevailing levels/ conditions.
- (d) For procurement of spare parts, consumables and small value contracts, which were supplied in the past, price reasonableness, may be determined after comparing with LPP and factoring in changes in price indices published by Government sources. Other relevant factors as stated in (c) above may also be considered.
- (e) The reasonableness of price may also be examined by

resorting to Cost Analysis in situations where there is a wide variance over the LPP, not explained by corresponding changes in indices. A sample format for undertaking Cost Analysis is placed at **DPMF 25**.

- (f) Efforts are to be made to check cost break-up details to the extent possible.

**5.33.4 Last Purchase Price (LPP) as a Determinant of Reasonable Price.** LPP is one of the relevant factors in deciding price reasonableness. However, following factors may be considered while comparing the quoted rates with the LPP:-

- (a) LPP of more than three years' vintage or of obsolete items is not a real scale for comparison. However, such LPP could be used as an input for assessing the rates by adding yearly escalation, if considered necessary. The rate of escalation may differ from case to case, depending on the type of goods being procured. This escalation factor shall be carefully worked out on the basis of data of past purchases of the same/ similar items or as per the Pricing Policy Agreements, if any. The escalation factor shall be worked out by Procuring Agencies of the Services/other Organisations after mutual consultation as per modalities to be laid down, so that different escalation factors are not applied by different Procuring Agencies for same/ similar items and in respect of the same source, or shall be worked out as per pricing policy where such pricing agreement is in place.
- (b) LPP pertains to a past successfully executed/ placed order of similar magnitude and scope of supply.
- (c) Factors like basket price and bulk discount offered are to be taken into account while using LPP as a scale for comparing prices.
- (d) Price Variation clause, if any, and the final cost paid by the user in respect of last purchase to which LPP pertains, is to be considered.
- (e) Factors like items supplied against LPP being of current production or ex-stock supply, are to be taken into account.
- (f) Market conditions and other factors like re-starting production lines due to obsolescence, may also have to be considered.

(g) Where no other option to assess reasonable rate is feasible, LPP of more than three years' vintage may also be taken into account.

**5.33.5 Discounted Cash Flow (DCF) Technique.** The DCF is defined as the method of evaluation by which cash flows of the future are discounted to current levels or the Net Present Value (NPV), by the application of a discount rate with a view to reducing all cash flows to a common denomination and make comparisons. The DCF technique is to be used only if the payment schedules span over a period greater than 12 months. Various steps to be taken in the DCF Technique to arrive at the NPV, are placed at **Appendix F**.

(a) **Occasions for Employing DCF Technique.** The bid with the smallest Net Present Value (NPV) in a procurement case is the obvious choice as the lowest evaluated responsive bid (L1). The DCF Technique may be used to facilitate determination of L1 in the following procurement situations:-

(i) To compare different payment terms of the vendors to a common denomination for determining L1 status.

(ii) To deal with cases where entering into AMC over a period of more than one year is part of the contract for determining L1 status. Determination of L1 by merely adding arithmetic values spread over a long period of time, results in incorrect L1. Therefore, cash flows are to be reduced to their present values through the DCF technique.

(b) **Inclusion in RFP.** Employment of DCF Technique to determine L1, along with the discounting rate being adopted, are to be included in the RFP. **Appendix F** may be referred to for the discounting rate to be specified in the RFP.

#### **5.34 Analysis of Offers from Foreign Suppliers**

**5.34.1 Analysis of Offers.** Apart from the parameters enumerated earlier in this section, wherever feasible, efforts may be made to analyse the following:-

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

(b) The prices of similar products, systems and sub-systems wherever available, may be referred to.

- (c) The database maintained in respective divisions connected with the procurement of such type of stores, may be accessed.
- (d) The foreign vendor may be requested to provide the details of past supplies and contract rates, if any, of similar kind of products to other buyers.
- (e) Assistance from DRDO and in-house Production Agencies of the Services/ other Organisations under MoD may be sought in assessing the reasonability of prices in high value procurements.

### **5.35 Database to be maintained**

- 5.35.1 Database on Costs & Prices.** Each Service HQs/ other Organisations may have a costing expert to advise on reasonableness of price, escalation clauses, and cost verification where prices are fixed subject to a ceiling price. Service HQs/ other Organisations shall maintain database on past contracts showing details of items procured, their essential specification(s), unit rate, quantity, total value, mode of tendering, number of tenders received, number of tenders considered acceptable, reasons for tenders found unacceptable, un-negotiated rates of L1, the contracted rates, delivery schedules and the status of actual deliveries against contracts, in order to help in ascertaining reasonability of prices of future procurements.
- 5.35.2 Price Indices.** Internet may be accessed by officers dealing with purchases/ associated with PC/ CNC, to obtain data on price indices from relevant websites. In regard to price indices of indigenous items, website of DPIIT should be accessed for the latest indices/ trends. RBI's Monthly Bulletin, Government of India's Economic Survey along with its Appendices containing statistical tables and data on Ministry of Finance website may be referred to ascertain market trends. The World Economic Outlook by IMF, gives inputs on price trends of different countries. Similarly, price trends are available in publications of other multilateral organisations, like World Bank, OECD, etc. Business/ commercial newspapers, etc., could also be referred to.
- 5.35.3 Expert Agencies.** Expert agencies may be approached for obtaining market intelligence, forecasting trends and best practices. Public Sector Banks (PSBs), particularly State Bank of India (SBI), may be consulted before firming up major payments involving Letters of Credit (LCs), Performance Bank Guarantees (PBGs), ascertaining reputation of foreign banks, etc.

**5.35.4 General Analysis of Financial/ Cost Ratios.** In assessing the reasonableness of price, general analysis of Financial/ Cost ratios from published accounts and evaluation of Commercial/ Technical information of the Vendor/ Bidder could be considered in certain cases, where required. For this purpose, data may be obtained from the Ministry of Corporate Affairs website, or directly from the vendor, and if required, assessment may be undertaken with assistance from costing experts. The allocation of overheads shall be as per established principles of costing. Assessment could also be based on factors such as adherence to delivery schedule, Cost Accounting System, and vendor's approach to controlling costs and ability to meet scheduled targets.

**5.35.5 Data-Sharing.** The Service HQs/other Organisations under MoD shall put in place a system for data-sharing and data-networking, both within the Service and among the Services, as well as with other Organisations, in order to widen the procurement sources and obviate different prices being paid for the same item by different Procuring Agencies within a Service or Procuring Agencies of different Services/other Organisations under MoD.

**5.35.6 Transparency in Assessment Process.** Assessing the reasonableness of price is an arduous task, especially where price data is not available or in case of overseas purchases. In all cases, efforts should be made to arrive at the acceptable price without undue delays and make procurement decisions at the earliest and with utmost transparency, so as to maintain the integrity of the overall procurement process.

## **CHAPTER 6**

### **CONTRACT AND ITS CONDITIONS**

#### **SECTION I - CONTRACT**

##### **6.1 Law**

**6.1.1 Elementary Law.** The elements and principles of contract law and the meaning and import of various legal terms used in connection with the contracts are contained in the Indian Contract Act, 1872 read with the Sale of Goods Act, 1930. The law relating to redressal of disputes is laid down in the Arbitration and Conciliation Act, 1996 as amended by the Arbitration and Conciliation (Amendment) Act, 2019 (33 of 2019). Some of the salient principles relating to contracts are set out briefly in this Chapter.

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

##### **6.2 Elementary Legal Terms and Practices**

**6.2.1 Contract.** As defined in Paragraph 1.3.7 (Chapter 1).

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

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

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

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

### 6.3 Competency of Parties

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

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

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

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

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

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

enter into a contract for purposes not covered by its memorandum of association; any such agreement in excess of power entered into by the company is void and cannot be enforced. Therefore, in cases of doubt, the company shall 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 represent the company. Where tenders are signed by persons other than Directors or authorised Managing Agents, it may be necessary to examine if the person signing the tender is authorised by the company to enter into contracts on its behalf.

**6.3.6 Corporations other than Limited Companies.** Associations of individuals incorporated under statutes such as the Trade Union Act, Cooperative Societies Act and Societies Registration Act are also artificial persons in the eye of law and are entitled to enter into such contracts as are authorised 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 and also the authority of the person coming forward to represent the said corporations/ associations are to be verified.

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

#### **6.4 Consent of Both Parties**

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

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

**6.4.2 Free Consent of the Parties.** The consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake. Consent is said to be so caused when it would not have been given but for the existence of coercion, undue influence, fraud,

misrepresentation or mistake. When consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put on the position in which he may have been if the representations made had been true.

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

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

## 6.5 Consideration

**6.5.1** Consideration is the major element of a contract. 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.

## 6.6 Lawfulness of Object

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

## 6.7 Communication of an Offer/ Proposal and Acceptance

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

### **6.7.2 Communication of Acceptance.**

- (a) 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 tenderer firm shall be obtained to keep the offer open for further period or periods.
- (b) The communication of an acceptance is complete as against the proposer or offerer, where it is put in the course of transmission to him, so as to be out of the power of the acceptor, and it is complete as against the acceptor when it comes to the knowledge of the proposer or offerer. The medium of communication in government contracts is generally by post and the acceptance is, therefore, complete as soon as it is posted. So that there might be no possibility of a dispute regarding the date of communication of acceptance, it shall be sent to the correct address by some authentic foolproof mode, like registered post acknowledgement due, etc.

### **6.7.3 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 shall, therefore, be ensured that the terms incorporated in the acceptance are not at variance with the offer or the tender and that none of the terms of the tender are left out. In case, uncertain terms are used by the tenderers, clarifications are to be obtained before such tenders are considered for acceptance. If it is considered that a counter offer is to be made, such counter offer shall be carefully drafted, as a contract is to take effect on acceptance thereof. If the subject matter of the contract is impossible to fulfil, or is in itself, in violation of law, such contract is void.

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

### **6.8.1 Withdrawal of an Offer/ Proposal.** A tenderer firm, which is the proposer, may withdraw its offer at any time before its acceptance, even though the firm might have offered to keep the offer open for a specified period. It is equally open to the tenderer to revise or modify the offer. Such withdrawal, revision or modification shall reach the accepting authority before the due date and time for submission of tender. No legal obligations arise out of such

withdrawal or revision or modification of the offer as a simple offer is without a consideration. Where, however, a tenderer agrees to keep his offer open for a specified period for a consideration, such offers cannot be withdrawn before the expiry of the specified date. This is so where earnest money is deposited by the tenderer and withdrawal of offer by the tenderer before the specified period shall entitle the purchaser to forfeit the earnest money.

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

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

**6.9.1 Signing of Contract**. All Defence contracts are in the name and on behalf of the President of India. However, the contract, after due approval of the CFA, may be signed by the CFA, or a designated Officer/ Staff Officer, duly authorised by the CFA 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/ vendor, the person signing the contract is deemed to have been authorised by the contractor/ vendor. In case of procurement through GeM, the copy of the contract/ supply order is generated electronically. Accordingly, verification of specimen signature is not warranted. However, copy of the contract so generated must be sent to the authorities including the IFA, Inspection Agency (where applicable), the audit authority and the paying authority.

**6.9.2 Acceptance of Contract**. A contract is deemed to come into force with the acceptance of the tender by the purchaser and the seller as per mutually agreed terms and conditions contained in the RFP and the offer, even when the contract is not signed by both parties. However, in the case of supply orders, the firm shall 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 supply order is not received within the stipulated period, the supply order is deemed to have been fully accepted by the firm. In case of foreign contracts, normally both parties sign the document, thus conveying their acceptance of the contract.

**6.9.3 Stamping of Defence Contracts**. Under Entry 5 in Schedule I of the Indian Stamp Act, 1899, an agreement or memorandum of agreement for or relating to the sale of goods or merchandise exclusively, is exempt from payment of stamp duty.

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

**6.10.1 Types of Contracts.** Government contracts are classified based on the nature of the item being procured, work to be executed, services required to be rendered and support to be provided. The provisions contained in this Manual are not applicable to the contracts for works and projects. These shall apply to all other types of revenue contracts.

The general types of contracts are classified as follows:-

- (a) Contract/ Purchase order for items of stores, spares or equipment.
- (b) Rate Contract/ Price Agreements.
- (c) Service/ Repair Contract / Rate Repair Contract.
- (d) Annual Maintenance Contract (AMC)/Comprehensive Maintenance Contract (CMC).
- (e) Consultancy Contract.
- (f) Development Contract.
- (g) Long-Term Support for supply, repair, maintenance/ Performance Based Logistics (PBL) agreements etc., with OEMs/ OEM approved sources.
- (h) Upgrade of existing equipment, Maintenance Repair Contracts (MRO), Overhaul Contracts, Turnkey Contracts, Training Contracts, etc.
- (i) Fabrication Contract for one-time fabrication/ supply of item(s) against design drawings/ specifications.

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

- (a) The terms of contract must be precise and definite and there must be no room for ambiguity or misconstruction therein.
- (b) Standard forms of contracts should be adopted, wherever possible, and the terms of the contract should be subjected to close scrutiny. The alternatives used in the standard forms, which are not applicable, should be invariably scored out.
- (c) As far as possible and where mandated, particularly if standard format of contract is not to be adopted, legal and financial advice should be taken in drafting of contracts and before they are finally entered into.
- (d) The terms of a contract, including the scope and specifications once entered into, should not be materially varied. Wherever

material variation in any of the terms or conditions in a contract becomes unavoidable, the financial and other effects involved should be examined and recorded and specific approval of the authority competent to approve the revised financial and other commitments obtained, before varying the conditions. All such changes should be in the form of an amendment to the contract, duly signed by all parties to the contract.

- (e) No contract involving an uncertain or indefinite liability or any condition of an unusual character should be entered into without the previous consent of the competent financial authority.
- (f) Whenever practicable and advantageous, contracts should be placed only after tenders have been openly invited.
- (g) In selecting the tender to be accepted, the financial status of the individuals and firms tendering should be taken into consideration, in addition to all other relevant factors.
- (h) No work of any kind should be commenced without proper execution of an agreement/ contract.
- (i) 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.
- (j) It is desirable that the Contract document, where necessary, is executed within 21 days of the issue of letter of acceptance or within mutually agreed period as specified in the contract. Non-fulfilment of this condition of executing a contract by the contractor or supplier would constitute sufficient ground for annulment of the award and forfeiture of Earnest Money Deposit.
- (k) Contracts shall normally be entered into on a firm and fixed price basis, with payments linked to deliveries, for which the bidders are required to quote a fixed price for completing the deliveries in accordance with the given specifications/ functional requirements as per RFP. Cost plus contracts should ordinarily be avoided. Where such contracts become unavoidable, full justification should be recorded before entering into the contract.
- (l) Departmental issue of materials should be avoided as far as possible. Where it is decided to supply materials departmentally, a schedule of quantities of such material, which are required to execute the contract work, should form an essential part of the contract.
- (m) In contracts where government property is entrusted to a contractor either for use on payment of hire charges or for

doing further work on such property, specific provision for safeguarding government property (including insurance cover) and for recovery of hire charges regularly, should be included in the contracts.

- (n) **Transfer & Sub-Leasing.** The Seller has no right to give, bargain, sell, assign or sublet or otherwise dispose of the contract or any part thereof, as well as to give or to let a third party take benefit or advantage of the present contract or any part thereof, except with the prior consent of the Buyer in case of merger, amalgamation, consolidation, acquisition, change in control or similar transactions. For granting such consent, Buyer will require the Seller to enter into a Novation Agreement. The Seller may utilise its wholly owned subsidiary in India to provide product support related to the contract. However, it shall not relieve the Seller of any obligation, duty or liability attributable to the Seller under the contract.
- (o) **Sub-Contracting.** This may be required in case of contracts involving complex equipment/ items/ systems, wherein a clause may be provided for the Sellers to subcontract any part/ process of work on prior mutual agreement with the procuring agency, and the lead Seller would be entirely responsible for quality/ standard and timely execution of the subcontracted work. Thus, the supervision of work and timely completion/ delivery for the subcontracted jobs will be done by the lead Seller. The Sellers can, under no circumstance, subcontract the complete Scope of Work to a Third Party. The Third Party sub-contractor should not be serving a ban/ debarment by the MoD or any other agency of the GoI.
- (p) **Fabrication Contracts.** Fabrication contracts, viz. one-time contracts for fabrication and supply of components/ sub-assemblies/ assemblies/ etc., against design drawings/ specifications to be supplied by the Buyer, should be placed only for items which are not commercially available.

#### **6.10.3 Placement of Supply Order/ Signing of Contract.** The decision to issue a Purchase/ Supply order or sign a formal contract shall be taken on the basis of the following broad guidelines, as amended from time to time:-

- (a) Purchase/ Supply orders containing basic terms and conditions, may be issued in the case of purchases up to ₹ 2.5 lakh.
- (b) Purchase/ Supply orders may generally be placed for purchases valued between ₹ 2.5 lakh to ₹ 10 lakh in cases where the tender documents include the General Conditions of Contract, Special Conditions of Contract and detailed scope of work. In

these cases, the letter of acceptance shall result in a binding contract. This mode could be used in single bid cases, local purchase of COTS items, items with standard specifications, etc.

- (c) However, Purchase/ Supply orders should be placed in all cases where the purchase is made against Rate Contracts/ Price Agreements centrally concluded by the Central Procurement Authorities/ Departmental authorities, who are empowered to do so. Sanction of the CFA under whose financial powers the Purchase/Supply Order falls, need to be obtained every time the Purchase/Supply Order is placed
- (d) For purchases valued above ₹ 10 lakh, a Contract document should be executed, with all necessary clauses.
- (e) A Contract document should invariably be executed in respect of all turnkey projects or agreements for maintenance of equipment and provision of services.

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

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

**6.11.2 Amendment to a Concluded Contract.** Amendment to a contract already concluded, may become essential in certain situations when either party to the contract requests for an amendment and the proposed amendment is acceptable to the other party to the contract. Requests for such amendment and modifications mostly emanate from the supplier. However, in a few cases, it may be necessary to amend the contract suo moto in the interest of the administration. In such cases, it is legally necessary to obtain clear acceptance of the amendment from the supplier. If the contractor does not raise objections within 14 days to any suo-moto modifications/ amendments made by the Procuring Entity, it shall be assumed that the contractor has consented to the amendment.

**6.11.3 Enhancement in Rates.** No enhancement in rates/ prices should be made unless the contract specifically provides for it. Such situations may arise in those cases where the contract provides for Price Variation Clauses, Exchange Rate Variation clause or the change is due to variation in GST/ Customs Duties/ other Government taxes & levies and the contract provides for payment

of these duties on the basis of actual rates, provided the supplies are made during the original delivery period. Consultation with Integrated Finance in such cases would be required if the original contract was concluded with the concurrence of Integrated Finance or, after increase in value, the contract falls within the delegated powers of the CFA, exercisable with the concurrence of Integrated Finance. While considering any enhancement in rates under this clause, provisions as stipulated at paragraph 6.11.6 and 6.26 of this manual, shall be duly considered.

**6.11.4 Vetting of Price Variation Clause.** Financial Advisor/ IFA should be consulted for vetting of Price Variation Clauses in all cases including cases where sanction was accorded by the CFA within his inherent powers.

**6.11.5 Imposition of Liquidated Damages (LD) While Granting Delivery Period (DP) Extensions.** While granting extensions of DP on an application of the contractor/ seller, the letter and spirit of the application is to be considered while fixing revised time for delivery, and it is to be decided while granting extension, whether it is with or without imposition of LD.

**6.11.6 Liability on Account of Taxes, etc., while Granting DP Extension due to reasons attributable to the Seller.** While granting extension of DP due to the reasons attributable to the Seller any increase in the taxes and levies shall not be payable by the Buyer, unless the contract specifically provides for it or it is expressly agreed to with the concurrence of the Integrated Finance in cases wherein financial powers are to be exercised with the concurrence of Integrated Finance, duly recording the reasons and justification thereof and is approved by the CFA.

**6.11.7 Consultation with IFA.** All amendments to contracts, which have financial implications, including short-closure/ foreclosure and delivery period extensions (with or without LD), shall be approved by the CFA in consultation with the IFA, where the original contract was concluded with the concurrence of Integrated Finance.

**6.11.8 Amendments of Minor and Non-Financial Nature.** Amendments of minor nature concerning Drawing No., Part No., etc., which do not have either implicit or explicit financial implications and which effectively do not change specifications and deliverables may be approved by an authority one level below the contract approving authority if such authority is specifically authorised by the CFA. In case of contracts concluded with the concurrence of Integrated Finance, approval shall be given by the CFA himself and consultation with the IFA may not be necessary.

**6.11.9 Change of Name of the Company/ Entity.**

- (a) On receipt of information regarding change of name of the company/ entity due to merger, amalgamation, consolidation, acquisition, etc., vendor shall be asked to submit self-authenticated relevant documents such as the new certificate of incorporation issued by an appropriate Registrar along with Novation Agreement, and an undertaking by the new company/ entity confirming inter alia that they have assumed all obligations and liabilities of and all claims against the earlier company/ entity under the Supply Order/ Contract as if the new company/ entity were original party to the Supply Order/ Contract.
- (b) User Directorates for Service HQ cases shall process the case for change of name of vendor including accord of approval of VCOAS/ VCNS/ VCAS/ DG ICG (as applicable). Action on similar lines may be initiated by lower formations as well as by other Organisations. Legal advice may be sought where required.
- (c) On grant of consent, vendor is to be intimated and he shall submit new Integrity Pact (where applicable) and any other applicable financial instruments/ documents bearing the new entity name.
- (d) If the firm is involved in multiple contracts, a single case should be progressed for seeking approval of the appropriate competent authority.

**6.11.10 Delegation of Post-Contract Management Activities.** Some of the Post-Contract Management activities for revenue expenditure where CFA is MoD have been delegated to the Service HQs by the MoD from time to time. These are placed at **Appendix G.**

## **SECTION II - CONDITIONS OF CONTRACT**

### **6.12 Conditions of Contract**

**6.12.1 Conditions of Contract**. A contract is a legal document and is governed by certain terms and conditions to protect the interests of both the parties to the contract. It is important that every Purchase Officer is not only thoroughly familiar with each condition of a contract, but is also able to take appropriate and timely action to safeguard the interest of the Government. It is desirable that the conditions of a contract are practical, fair and just for both the Buyer and the Seller. The conditions of contract become binding for both parties on signing/ acceptance of the mutually agreed contract.

**6.12.2 Standard Conditions of Contract (SCoC)**. In order to facilitate clear understanding of the conditions of contract, a set of standard conditions, generally applicable to all contracts, is formulated and made available to all firms at the time of registration itself. It is desirable that the SCoC are publicised on the Central Public Procurement Portal (CPPP)/ the Defence e-Procurement Portal (DePP), and organisations' web portal as well. The Request for Proposal (RFP) contains standard as well as special conditions that the bidders are required to abide by. The contract shall also include the standard as well as special conditions specific to a particular case, as mentioned in the RFP. For this reason, the standard and special conditions of contract are included in the format of the RFP (**DPMF 11**) as well as in the formats of the Contract (**DPMF 12**) and Supply Order (**DPMF 13**).

**6.12.3 Special Conditions of Contract**. Special conditions of contract are supplementary conditions applicable to a specific tender and contract. Such conditions become essential, particularly in cases of contract for supply of services or even equipment. Special conditions of contract may be included on a case-by-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 are to be decided while processing the proposal for CFA's approval and mentioned in the RFP as well as in the Contract/ Supply Order.

**6.12.4 Applicability to Supply Orders**. The Standard and Special Conditions of Contract are applicable to Supply Orders also.

## **6.13 Applicability of Conditions of Contract**

**6.13.1 Terms and Conditions**. The formats of the RFP and the Contract agreement contain all the standard and special conditions of contract. The clauses given in the Standard conditions listed in Part III of the RFP Format (**DPMF 11**), shall and Special Conditions listed in Part IV of the RFP Format (**DPMF 11**), as applicable in a particular contract, may be included in the RFP and subsequently in the Contract. No deviation from the text given in the Standard Conditions nor deletion of any of these clauses is allowed. In case a deviation from the standard clauses has to be considered/ allowed due to insistence of the Seller, then approval of Raksha Mantri will be required. Before seeking approval of Raksha Mantri, legal opinion shall be obtained.

**6.13.2 Amplification of the Terms and Conditions**. The terms and conditions included in the specimen format of the RFP (**DPMF 11**) and the contract (**DPMF 12**) are self-explanatory. However, some of the salient terms and conditions are also explained in the succeeding Paragraphs for better understanding. The Standard Conditions of Contract are listed out from Paragraph 6.14 to 6.24, followed by the Special Conditions of Contract listed out from Paragraph 6.25 to 6.41.

## **6.14 Effective Date of Contract**

**6.14.1 Contract Effective Date**. The date of commencement of the obligations under a contract on the parties to a contract, is referred as the contract effective date. The effective date of commencement of contract shall invariably be indicated in each contract as per agreed terms and conditions. Normally, the date of signing of the contract is the effective date, except when specifically provided otherwise in the contract. Where specifically agreed to by the parties to a contract, effective date may be the date on which any of the following conditions, as applicable, is complied with:-

- (a) Furnishing of the Performance Bond/ Security in the form of Performance Bank Guarantee (PBG) by the Seller as given in Paragraph 6.28.
- (b) Obtaining of the Export Licence/ authorisation from Seller's Government for supply of stores by the Seller and a confirmation in writing sent to the Buyer within specified days of signing of the contract.
- (c) Receipt of the Advance Payment Bank Guarantee (APBG)/

Letter of Guarantee within specified days of signing of the contract.

- (d) In case of bulk production, the deliveries, supplies and performances or services shall commence from the date of issuing Bulk Production Clearance (BPC) certificate. This is particularly relevant in Design & Development contracts where a prototype is to be certified prior to series production. In case of contracts involving advance sample, the date of clearance of advance sample by Inspection/ QA agency shall be taken as the date of BPC. Specific timelines for activities such as design approval, submission/ clearance of advance samples, issue of BPC, etc. shall be mentioned in the RFP and also in the contract.
- (e) Date of issue of the End-User Certificate. The buyer shall normally provide the End-User Certificate within 30 days of signing the contract.

## 6.15 Liquidated Damages (LD)

**6.15.1** Compensation of loss on account of late delivery (actually incurred as well as notional) where loss is pre-estimated and mutually agreed to, is termed as Liquidated Damages (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 LD is as follows:-

- (a) Whatever the quantum of the loss sustained, the claim shall not exceed the sum stipulated in the contract.
- (b) Only reasonable sum shall be calculated as damages, which in a given situation, may be less than the sum stipulated.
- (c) What is a reasonable sum, depends on facts of individual cases.
- (d) Court may proceed on the assumption that the sum stipulated reflects the genuine pre-estimates of the parties as to the probable loss, and such clause is intended to dispense with proof thereof.
- (e) The distinction between penalty and LD has been abolished by the Indian Contract Act, 1872 and in every case, the Court is not bound to award more than 'reasonable compensation' not exceeding the amount so named.

### 6.15.2 Quantum of LD.

- (a) As a general rule, if the vendor/ contractor fails to supply the stores/ goods/ any instalment thereof or fails to perform services, conduct trials, installation of equipment, training and MET as per schedule specified in a contract, the CFA, without prejudice to the rights of the purchaser to any other remedy for breach of contract, may recover from the contractor, a sum equivalent to 0.5% of the price {total cost (including elements of GST, freight/ transportation and other variations like PVC/ERV etc.) of stores/incidental Works/Services, which the contractor has failed to deliver within the period agreed for delivery in the contract, for each week or part thereof. The total damages shall not exceed 5% of the Price {total cost (including elements of GST, freight/transportation and other variations like PVC/ERV etc.) of stores/incidental Works/Services. Any extension given by the buyer for delay attributable to buyer or on account of Force Majeure Clause is to be factored in delivery period.
- (b) In case of inordinate delay this maximum deduction shall be 10% of the Price (total cost), as stated above, of stores/ incidental works/services supplied with delay.
- (c) **Inordinate Delays:** Inexcusable delays of more than one-fourth (25%) of the total delivery period shall be treated as inordinate delays.

Note 1 : LD accrues only in case of delayed supplies. Where or as far as no supplies have been made under a contract, upon cancellation, recovery of only the loss occasioned thereby can be made, notwithstanding the fact that prior to the cancellation, one or more extensions of DP with reservation of the right to LD, are granted.

Note 2 : LD shall be equally applicable in Consultancy and Non-Consultancy (Outsourcing) Contracts as per the modalities covered in Chapter 12.

Note 3: In contracts involving variation clauses (i.e. PVC, ERV or statutory variations), LD will be applicable on the value as varied by the operation of the relevant variation clause(s).

**6.15.3 Guidelines for Levying of LD.** The following guidelines would be followed while taking decision for imposition of LD:-

<b>Ser</b>	<b>Circumstances</b>	<b>Quantum of LD</b>
(a)	Delay in supplies where the seller was responsible for the entire delay.	Full LD, subject to it not exceeding 5% (10% in case of inordinate delay) of the Price/ Total cost of the goods/ incidental works/ services supplied with delay {total cost (including elements of GST, freight/transportation and other variations like PVC/ERV etc.)}.
(b)	Delay in supplies where the seller was responsible only for a part of the delay, and the remaining part was either due to circumstances beyond seller's control or attributable to the buyer.	Full LD for the period for which the Seller was responsible for the delay, subject to it not exceeding 5% (10%, in case of inordinate delay) of the value of the goods/ services supplied with delay {total cost (including elements of GST, freight/transportation and other variations like PVC/ERV etc.)}. LD may be waived for the remaining period.
(c)	Delay in supplies where the entire delay was due to circumstances beyond the control of the seller or on account of the buyer.	LD may be waived in full for the entire period.

**6.15.4 Imposition and Waiver of LD:** Decision to impose or waiving off of LD shall be taken by the CFA in consultation with IFA in all cases wherein concurrence of IFA has been taken as per the provisions of the Delegation of Financial Powers.

**6.15.5 Consequential Damages (CD).** Consequential Damages may be imposed over and above LD in case of time-critical turnkey projects.

Where considered necessary, this provision shall be included in the RFP and the contract.

**6.15.6 Limitation of Liability.** Except in cases of criminal negligence or willful misconduct, the aggregate liability of the contractor

to the Procuring Entity, whether under the contract, in tort or otherwise, shall not exceed the total contract price provided that this limitation shall not apply to the cost of repairing or replacing defective equipment or to any obligation of the supplier to indemnify the Procuring Entity concerning IPR infringement. This clause shall be one of the Special Conditions of contract to be included in Part IV of RFP and contract, wherein the language may be agreed mutually to bring in further clarity (if required) without altering its intent.

## **6.16 Termination of Contract**

**6.16.1 Termination of a Concluded Contract.** Without prejudice to any other remedy for breach of contract such as removal from the list of registered suppliers, the Buyer shall have the right to terminate the contract in part or in full in any of the under-mentioned cases, by giving Termination Notice to the Seller any time after the default, but prior to the intended termination date:-

- (a) When the Seller fails to honour any part of the contract, including failure to deliver the contracted stores/ render services/ achieve milestones in time as per contract for causes not attributable to Force Majeure.
- (b) When the Seller is declared bankrupt or becomes insolvent.
- (c) 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 90 (ninety) days.
- (d) When the item offered by the Seller repeatedly fails in the inspection and/ or the Seller is not in a position to either rectify the defects or offer items conforming to the contracted quality standards.
- (e) When the Seller is found to have made any false or fraudulent declaration or statement or utilised the services of any person, party, firm or institution engaged as an agent to get the contract, wherein payment has been made to such agents, or Seller is found to be indulging in corrupt and unethical or unfair trade practices, directly or indirectly, to influence the award of contract and also during execution of the contract.
- (f) Any special circumstances that are to be recorded to justify the termination of a contract.
- (g) As per decision of the Arbitration Tribunal.
- (h) When both parties mutually agree to terminate the contract.

**6.16.2** Before terminating a contract and taking further action, it may be desirable to obtain legal advice. Termination of a contract shall be approved by the CFA in consultation with the IFA, where the original contract was concluded with the concurrence of Integrated Finance. In cases where CFA decides to seek legal advice, consultation with IFA must be done in all cases irrespective of whether original contract was concluded with the concurrence of Integrated Finance.

**6.16.3** If the contract is terminated in part or in full due to reasons attributable to performance of the contract by the contractor/ supplier including indulgence in corrupt and unethical and unfair trade practices, recourse may be taken to any one or more of the following actions depending on the nature of default:-

- (a) Forfeiture of the performance security/ performance bank guarantee, in part or in full.
- (b) Upon such terms and in such manner as it deems appropriate, goods/ services similar to those undelivered may be procured and the Seller shall be liable for all available actions against him in terms of the contract.
- (c) However, the Seller shall continue to fulfil the contract to the extent not terminated.

**6.16.4** If the supplier becomes bankrupt or becomes otherwise insolvent or undergoes liquidation or loses substantially the technical or financial capability (based on which he was selected for award of contract), at any time and the contract is terminated by the Procuring Entity by giving a written notice to the supplier, no compensation shall be paid to the supplier. Such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to Procuring Entity. Suitable provisions to this effect should be incorporated in the tender document as well as in the resultant contract.

**6.16.5** In case of an unforeseen situation compelling Procuring Entity to cancel the contract, a suitable notice has to be sent to the supplier for cancellation of the contract, in whole or in part, for its (Procuring Entity's) convenience, inter alia, indicating the date with effect from which the termination will cease to become effective. This is not Procuring Entity's legal right – the contractor has to be persuaded to acquiesce. Depending on the merits of the case, the supplier may have to be suitably compensated on mutually agreed terms for terminating the contract. Suitable provisions to this effect should be incorporated in the tender document as well as in the resultant contract.

**6.16.6 Deduction of Extra Expenditure**. Any extra expenditure incurred by the Buyer due to termination of the contract due to reasons attributable to performance of the contract by the contractor/ supplier including indulgence in corrupt and unethical and unfair trade practices or due to insolvency of the contractor/supplier is also liable to be deducted from the Performance Bank Guarantee (PBG)

**6.17 Denial Clause**. In case the delay in delivery is attributable to the seller or to a non-Force Majeure event, the buyer may protect itself against extra expenditure during the extended period by stipulating a denial clause (over and above levy of LD) in the letter informing the seller of extension of the delivery period. In the denial clause, any increase in statutory duties and/ or upward rise in prices due to the PVC clause and/ or any adverse fluctuation in foreign exchange, are to be borne by the seller during the extended delivery period, while the buyer reserves the right to get any benefit of a downward revision in statutory duties, PVC and foreign exchange rate. Thus, PVC, other variations and foreign exchange clauses operate only during the original delivery period.

#### **6.18 Taxes, Duties and Levies**

**6.18.1** In respect of foreign bidders, all taxes, duties, levies and charges which are to be paid for the delivery of goods/ services, including advance samples, shall be paid by the parties under the Contract in their respective countries.

**6.18.2** In respect of indigenous bidders, duties and taxes including GST/ Cess/ etc., levied by the Government on domestic goods/ services vary from product to product. Unless a different intention appears from the terms of the contract, statutory variation in duties or taxes are to be borne by the buyer (Procuring Entity) as per Section 64A of the Sales of Goods Act,1930. As a general policy, statutory variations in such duties and taxes are to be allowed during the period from the date of the tender to the date of acceptance of the tender (i.e. placement of the contract) and during the original/ re-fixed delivery period of the contract, so that both the seller and buyer are equally compensated for rise or fall in the price of the goods on account of such statutory variations.

**6.18.3** Sellers must be asked to indicate separately the relevant Taxes/ Duties likely to be paid in connection with delivery of completed goods/ services specified in RFP.

**6.18.4** If sellers are exempted from payment of any duty/ tax up to any value of supplies from them, they should be asked to clearly state that no such duty/ tax will be charged by them up to the limit of

exemption, which they may have. If any concession is available in regard to rate/ quantum of any duty/ tax, it should be brought out clearly. In such cases, relevant certificate will be issued by the buyer later to enable the seller to obtain exemptions from taxation authorities.

- 6.18.5** Sellers should be informed that in case any refund of any duty/ tax is granted to them by Central/ State authorities in respect of stores supplied under the Contract, they will pass on the credit to the buyer immediately along with a certificate that the credit so passed on relates to the duty/ tax, originally paid for the stores supplied under the Contract.
- 6.18.6** Any upward changes in levies, taxes and duties levied by Central/ State/ Local governments on final product as a result of any statutory variation taking place within Contract period, shall be allowed reimbursement by the buyer, to the extent of actual quantum of such duty/ tax paid by the seller. Similarly, in case of downward revision in any such duty/ tax, the actual quantum of reduction of such duty/ tax shall be reimbursed to the buyer by the seller. All such adjustments shall include all reliefs, exemptions, rebates, concessions, etc., if any, obtained by the seller.
- 6.18.7** Levies, taxes and duties levied by Central/ State/ Local governments on final product will be paid by the buyer on actuals, based on relevant documentary evidence. Sellers are required to include the same in the pricing of their product. Taxes and duties on input items/ raw materials and any variations thereof, will not be paid by buyer, and they may not be indicated separately by sellers in the bids.
- 6.18.8** Liquidated damages or any other recoveries should not be shown by sellers as deductions on the invoice, and taxes/duties shall be applicable only on the net balance payment due.
- 6.18.9** In case of Price Variation or Exchange Rate Variation, or any other variation, taxes/duties shall be applicable on the net invoice value after the variation is taken into account.
- 6.18.10** In case of profiteering by the seller relating to taxes/duties, the Procuring Entity shall treat it as a violation of the Code of Integrity in the contract and take any or all punitive actions there under, in addition to recovery and action by the Tax authorities under the Act.
- 6.18.11** For imported stores, the seller shall quote prices thereof exclusive of customs duty and shall specify separately the CIF/ CIP/ any

other INCOTERMS (as applicable) prices and total amount of customs duty payable. They will also indicate correctly the rate of customs duty applicable along with Indian Customs Tariff Classification (ITC-HS) applicable. Customs duty if paid by the seller, will be reimbursed on actuals on production of necessary documents. Else, if Customs Duty Exemption Certificate (CDEC) is provided by the buyer, the seller shall be exempt from payment of Customs Duty.

**6.18.12** Subsequent to the reimbursement of customs duty, the sellers will submit to the Payment Authority concerned, a certificate to the effect that they have not obtained any refund of customs duty subsequent to the payment of duty to the Customs authority by them. In addition, they shall also submit to the Paying Authority concerned a certificate immediately after a period of three months from the date of payment of the duty to customs authorities to the effect that they have not applied for refund of the customs duty subsequent to the payment of duty to the customs authorities by them.

**6.18.13** In case the sellers obtain any refund of customs duty, subsequent to the payment of the same by him to the customs authorities and reimbursement of the customs duty to him by the Payment Authority, they should forthwith furnish the details of the refund obtained and afford full credit of the same to the buyer.

## **6.19 Arbitration**

**6.19.1** If a dispute arises between the Buyer and the Seller, and it does not get resolved through mutual discussions within 21 days, the parties may agree for arbitration and the case shall be referred to a single arbitrator or to an Arbitration Tribunal. The venue of arbitration should be the place from where the contract has been issued. MoD may prepare a panel of arbitrators for selection by the CFAs of the Ministry. Service HQs/ other Organisations have the power to appoint Arbitrators within their delegated financial powers. However, in case of non-appointment of arbitrator by either of the contracting parties as per the contract provisions, either party may approach the court of law for appointing an independent arbitrator. The decisions taken by the selected arbitrator/ arbitration tribunal (as the case may be), after due consideration of factors brought out by both parties, shall be final and binding on both parties. The standard Arbitration clauses shall be as per the Indian Arbitration and Conciliation Act, 1996, as amended from time to time. Procuring Entities may obtain legal advice, if deemed necessary. The standard arbitration clauses are placed at **Appendix H**.

**6.19.2** Purchase officers must consult the Legal Advisor (Defence) and Government counsel in all cases of arbitration.

**6.19.3** To avoid lengthy arbitration proceedings and subsequent appeals, etc., efforts shall be made to ensure effective defense and timely presentation of the case to the arbitrator/ arbitration tribunal. Documents to be filed in the matter of resolution of dispute, if any, shall be carefully scrutinised before filing, to safeguard government interest.

**6.19.4 Arbitration Awards.**

- (a) Arbitration/ court awards should be critically reviewed. In cases where there is a decision against government/ public sector enterprise (PSE), the decision to appeal should not be taken in a routine manner, but only when the case genuinely merits going for the appeal and there are high chances of winning in the court/ higher court.
- (b) In cases where the Ministry/ Department/ Organisation has challenged an arbitral award and, as a result, the amount of the arbitral award has not been paid, 75% of the arbitral award (which may include interest up to date of the award) shall be paid by the Ministry/ Department/ Organisation to the contractor/ concessionaire against a Bank Guarantee (BG). The BG shall only be for the said 75% of the arbitral award as above and not for the interest which may become payable to the Ministry/ Department/ Organisation should the subsequent court order require refund of the said amount.
- (c) The payment may be made into a designated Escrow Account with the stipulation that the proceeds will be used first, for payment of lenders' dues, second, for completion of the project and then for completion of other projects of the same Ministry/ Department/ Organisation as mutually agreed/ decided. Any balance remaining in the escrow account subsequent to settlement of lenders' dues and completion of projects of the Ministry/ Department/ Organisation may be allowed to be used by the contractor/ concessionaire with the prior approval of the lead banker and the Ministry/ Department/ Organisation. If otherwise eligible and subject to contractual provisions, retention money and other amounts withheld may also be released against BG.
- (d) Provisions of Manual for Procurement of Goods issued by Ministry of Finance shall be referred with regard to Dispute Resolution.

**6.20 Force Majeure.** A Force Majeure (FM) means extraordinary events or circumstance beyond human control such as an event described as an act of God (like a natural calamity) or events such as a war, strike, riots, crimes (but not including negligence or wrong-doing, predictable/seasonal rain and any other events specifically excluded in the clause). An FM clause in the contract frees both parties from contractual liability or obligation when prevented by such events from fulfilling their obligations under the contract. An FM clause does not excuse a party's non performance entirely, but only suspends it for the duration of the FM.

**6.20.1** As per this clause, neither party shall bear responsibility for the complete or partial non-performance of any of its obligations (except for failure to pay any sum which has become due on account of receipt of goods under the provisions of the contract), if the non-performance results from such Force Majeure circumstances.

**6.20.2 Intimation regarding Force Majeure.** The party for which it becomes impossible to meet obligations under this contract due to Force Majeure conditions, is to notify, in written form the other party regarding the beginning and cessation of the above circumstances immediately, but in any case, not later than 14 days from the moment of their beginning.

**6.20.3 Certification of Force Majeure.** Certificate of a Chamber of Commerce (Commerce and Industry) or other competent authority or organisation of the respective country shall be sufficient proof of commencement and cessation of the above circumstances.

**6.20.4 Extension of Time.** In such circumstances, the time stipulated for the performance of an obligation under the contract is extended correspondingly for the period/ time duration of the circumstances and their consequences.

**6.20.5 Right to Terminate Contract.** If the impossibility of complete or partial performance of an obligation lasts for more than 90 days, either party to the contract reserves the right to terminate the contract totally or partially upon giving prior written notice of 30 days to the other party of the intention to terminate the contract without any liability, other than reimbursement on the terms provided in the agreement/ contract for the goods received.

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

**6.21.1 Undertaking by the Seller.** The Seller would be required to sign an undertaking to refrain from use of undue influence or inducement, directly or indirectly, to any person in service of the

buyer or otherwise, in obtaining or execution of the contracts. Any breach of the undertaking would attract penal action/initiation of contractual remedies through a process of Show Cause Notice. The undertaking will be in the form of an 'Integrity Pact', as per format at **DPMF 14** [Paragraphs 5.13.10 to 5.13.12 (Chapter 5) refer in this regard].

## **6.22 Access to Books of Accounts**

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

## **6.23 Patents and Other Industrial Property Rights**

**6.23.1 Quoted Prices to be Inclusive of Charges on Account of Copyright, etc.** The prices stated in the contract shall be deemed to include all amounts payable for the use of patents, copyright, registration charges, trademarks and any other industrial property rights.

**6.23.2 Indemnity**. The Seller shall indemnify the Buyer against all claims, including claim by any third party at any time on account of the infringement of any or all the rights mentioned in Paragraph 6.23.1, whether such claims arise in respect of manufacture or use. It shall be the responsibility of the Seller to complete the supplies, irrespective of the fact of infringement of any such rights.

## **6.24 Non-Disclosure of Contractual Documents/ Information**

**6.24.1 Non-Disclosure of Contract Information**. Except with the written consent of the Buyer/ Seller, either party shall not disclose the contract or any provision, specification, plan, design, pattern, sample or information thereof to any third party, unless required by either Government of the parties or by the Seller's suppliers solely for the purpose of performing the obligations under the contract.

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

## **6.25 Payment of Advance**

**6.25.1 Advance Payment to Sellers.** Ordinarily, payments for services rendered or supplies made are released only after the services have been rendered or supplies made. However, it may become necessary to make advance payments in the following types of cases:-

- (a) Advance payments demanded by firms holding maintenance contracts for servicing of air-conditioners, computers, other costly equipment, etc.
- (b) Advance payments demanded by firms against fabrication contracts, turnkey contracts, long-term sustainment contracts, PBL contracts, training contracts, Maintenance Repair Overhaul (MRO) contracts, Repair Order Contracts (ROC), etc.
- (c) **Quantum of Advance.** Advance payments should not exceed 30% of the contract value (excluding taxes and duties) or the amount payable for six months in case of maintenance contracts. In case of payment to State Government or Central Government agency or a Public Sector Undertaking, the advance payment limit shall be 40% of the contract value (excluding taxes and duties).
- (d) **Relaxation of the Prescribed Ceiling.** The ceiling mentioned above may be relaxed only with the approval of the Secretary of the Department concerned, after concurrence of Secretary (Defence Finance)/ FA (DS).
- (e) **Stage/ Part Payments.** If stage/ part payments are proposed to be made on achievement of milestones, it shall be clearly mentioned upfront in the RFP with the approval of CFA and the concurrence of the IFA, wherever required, as per the delegation of financial powers.
- (f) **Securing the Advance.** While making any advance payment, adequate safeguards in the form of bank guarantee, etc., shall be obtained from the firm. A sample format for the Advance Payment Bank Guarantee (APBG) is placed at **DPMF 26**.
- (g) **Interest-free.** Since the provision of advance payment leverages the difference in interest rate and considering the additional cost of Bank Guarantee for advances for the bidder, interest-free advance payments may be considered with the approval of competent authority and finance concurrence. Where an interest-free advance is permitted, a clause in the

tender enquiry and the contract may be stipulated that if the contract is terminated due to default of the contractor, the advance payment would be deemed as an interest-bearing advance at the interest rate (e.g., the interest rate of the General Provident Fund – GPF) prevailing on the date of release of advance payment, plus 2% to be compounded quarterly. In appropriate cases, the competent authority may stipulate advance payments with suitable interest rates (e.g., the interest rate of the General Provident Fund – GPF) to be recovered along with the instalments of recovery of advance payment.

**6.25.2 Payment of Advance**. The advance payment shall be made to the Seller within 30 days of submission of all documents completed in all aspects as specified in the contract for drawal of advance.

## **6.26 Price Variation Clause (PVC)/ Price Adjustment Clause**

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

- (a) Price Variation Clause (PVC) may be provided only in long-term contracts, where the delivery period extends beyond 18 months. In short-term contracts, firm and fixed prices shall be provided for. Where a Price Variation clause is provided, the price agreed upon shall specify the base level, viz. the month and year to which the price is linked, to enable variations being calculated with reference to the price levels prevailing in that month and year.
- (b) A formula for calculation of the Price Variations that have taken place between the Base level and the scheduled delivery date shall be included in this clause. The variations are calculated by using indices published by Governments or Chambers of Commerce or multilateral organisations such as IMF or World Bank, periodically.
- (c) The Price Variation clause shall also specify cut-off dates for material and labour, as these inputs taper off well before the scheduled delivery dates.
- (d) The Price Variation clause shall provide for a ceiling on Price Variations, particularly where escalations are involved. It may be a percentage per annum or an overall ceiling or both. The buyer shall 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 the buyer.

- (e) The clause shall also stipulate a minimum percentage of variation of the contract price above which Price Variations are admissible (e.g. where resultant increase is lower than two per cent, no Price Adjustment will be made in favour of the seller).
- (f) Where advance or stage payments are made, there shall be a further stipulation that no Price Variations are admissible on such portions of the price, after the dates of such payment.
- (g) Where deliveries are accepted beyond the scheduled delivery date subject to levy of liquidated damages as provided in the Contract, the liquidated damages (as a percentage of the price) shall be applicable on the price as varied by the operation of the Price Variation clause.
- (h) No Price Variation shall be admissible beyond the original scheduled delivery date for defaults on the part of the seller.
- (i) Price Variation may be allowed beyond the original scheduled delivery date upto the re-fixed delivery date, by specific alteration of that date through an amendment to the contract in cases of Force Majeure or where alteration of the dates is due to reasons attributable to the buyer.
- (j) Where contracts are for supply of equipment, goods, services etc., either imported (subject to customs duty and foreign exchange fluctuations) and/ or locally manufactured/ supplied, (subject to applicable taxes and duties) the percentage and element of duties and taxes included in the price shall be specifically stated, along with the selling rate of foreign exchange element taken into account, in the calculation of the price of the imported item. The mode of calculation of variations in duties and taxes and foreign exchange rates and the documents to be produced in support of claims for such variations, shall also be stipulated in the Contract.
- (k) The clause shall also contain the mode and terms of payment of the Price Variation admissible.
- (l) Consultation with IFA must be done for vetting of Price Variation Clause irrespective of whether the contract is being concluded within inherent power or otherwise.

**6.26.2 Formula for Calculating Price Variation.** The formula for calculating Price Variation, along with detailed explanation, is given in Paragraph 33 of Part IV of **DPMF 11** (Format of RFP).

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

### **6.27.1 ERV Clause:**

(a) This clause is only to be included in the contracts concluded with DPSUs/ Indian Vendors, in case the delivery period exceeds one year from the date of contract, which involves import content (i.e. foreign exchange). To work out the variation due to changes (if any) in the exchange rate(s), the base date for ERV to be admissible (ERV Reckoning date) will be the due date of opening of tenders or seven days prior to the due date of opening of tenders (the purchase organisation is to decide and include the same in RFP). This ERV Reckoning date shall also be applicable in case of Option/ Repeat Order cases. The base exchange rate of each major currency used for calculating foreign exchange (FE) content in the offer, shall be the Bills for Collection (BC) Selling rate of the State Bank of India (SBI) on the base date and is to be clearly indicated in the RFP. The offer is to clearly indicate the import content for exact determination of ERV. The base exchange rate is also to be indicated in the offer. ERV shall not be admissible under following circumstances, which are also to be included in the RFP and the Contract:-

- (i) In case the delivery period is one year or less from the date of contract, which involves import content.
- (ii) If it falls within a percentage band to be decided by the buyer and specified in the RFP (e.g. if the variation in the rate of exchange remains within the band of plus/ minus 2.5%, ERV will not be admissible). This aspect will be specified in the RFP.
- (iii) During the extended delivery period, in case it is extended due to reasons attributable to the seller.

(b) ERV shall be payable/ refundable depending upon exchange rate (BC Selling rate of SBI) as prevalent on the date of transaction with reference to the base exchange rate (BC Selling rate of SBI) on the ERV Reckoning date. The amount of FE component of the imported goods and services shall be adjusted for the impact of ERV in terms of Indian Rupee (INR), based on the exchange rate (BC Selling rate of the SBI) prevailing on the date of each transaction. ERV shall be paid within 30 days of submission of such a claim complete in all aspects by the Seller. Procedure and periodicity for claiming ERV is to be defined in the RFP/Contract. Following options may be adopted for preferring ERV claims by the Seller:-

- (i) Variation from the base exchange rate on the ERV Reckoning date may be given up to the midpoint of manufacture. In case the firm has already indicated the time schedule within which materials shall be imported by the firm, the cut-off date(s) within the delivery schedule for the imported material may be fixed for admissibility of ERV.
- (ii) Once in each quarter, half yearly, annually or any other terms as mutually agreed, which are to be defined in the RFP/Contract.
- (c) 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. ERV benefits arising out of downward trends should be passed on to Procuring Entity.
- (d) Consultation with IFA must be done for vetting of Exchange Rate Variation Clause irrespective of whether the contract is being concluded within inherent power or otherwise.
- (e) Other conditions, as described in Paragraph 6.26 for Price Variation, shall also be applicable.

**6.27.2 Documentation for Claiming ERV.** The following documents shall be submitted in support of the claim on account of ERV:-

- (a) A bill of ERV claim, enclosing worksheet.
- (b) Banker's Certificate/ debit advice detailing FE paid & Exchange rate (BC Selling rate of the SBI) as on date of transaction.
- (c) Copies of import orders/ agreements placed on their foreign suppliers by the Sellers.
- (d) Invoice of the foreign suppliers to the Seller for the relevant import orders.

**6.28 Performance Security Deposit**

**6.28.1** The Performance Security Deposit is meant to compensate the buyer for any loss suffered due to failure of the seller to complete his obligations as per the contract. Performance Security is payable by the supplier at the rate of 3% to 10% of the contract value (including taxes and duties) and is to be taken from every successful bidder (except in cases mentioned in Paragraph 6.28.5), irrespective of the registration status of the firm. The band of 3-10% shall stand amended as and when Rule 171(i) of GFR 2017 is revised by Ministry of Finance. The Performance

Security Deposit is to be submitted to the buyer generally within 30 days of signing of the contract or as indicated in the RFP. The Performance Security Deposit, payable to the buyer, is furnished by the Supplier in the form of a Performance Bank Guarantee (PBG)/ Electronic PBG (e-PBG) issued by an Indian Public or Private Sector Scheduled Commercial Bank (SCB) in India. It may also be taken in the form of Insurance Surety Bonds, Account Payee Demand Draft, Fixed Deposit Receipt (FDR) from any Indian Public or Private Sector SCB or online payment in an acceptable form safeguarding the purchaser's interests in all respects. Demand Draft, etc., which has a short validity period of three months, are not to be accepted. The amount of PBG shall be clearly mentioned in the contract. In case of AMC/Long Term Support Contracts, the value of PBG shall be calculated on the basis of cost of first year AMC/ Long Term Support Contract and the PBG shall be valid upto throughout the period of whole of AMC/Long Term Support Contract. In the AMC/ services contracts, the amount of PBG held with the buyer may be reduced proportionately after satisfactory completion of service each year.

**6.28.2** The PBG shall remain valid throughout the duration of the contract up to completion of supplies and continue thereafter as Warranty Bank Guarantee (WBG) up to 60 days beyond the date of completion of all contractual obligations including warranty. This obviates the need to obtain a fresh WBG from the Seller on commencement of the warranty period, with corresponding return of the Performance Guarantee. If the total Delivery Period (DP) and the warranty period exceeds a period of two years, the CFA may take a decision at the beginning of the contract period, as to whether a separate WBG may be taken upon completion of supplies. In such cases, fresh WBG may be submitted by the Seller within 45 days from the date of return of the PBG. Final payment to the Seller shall be made only on receipt of fresh WBG. This option of separate WBG may be exercised only when the balance payment due, to the Seller, is greater than or equal to the value of the PBG.

**6.28.3** In case the execution of the contract is delayed beyond the contracted period and the purchaser grants extension of DP, with or without Liquidated Damages (LD), the supplier shall get the Bank Guarantee (BG)/ FDR revalidated, if not already valid. In the event of the Seller's failure to submit the BGs, the Buyer may deduct from the Seller as agreed, a sum of 0.5% of the value of the BG for every week or part thereof of delay as LD. Provisions of Paragraph 6.15.2 are also relevant in this regard. Necessary clause for the deduction of LD is to be included in the RFP and the Contract.

**6.28.4** Bank Guarantees submitted by the tenderers/ suppliers as Performance securities need to be immediately verified from the issuing bank before acceptance. Features and procedures for acceptance, confirmation and verification of BGs are given in Paragraph 14.9.

**6.28.5** PBG may not be taken in case of small value purchases up to ₹5 lakh, particularly for COTS/ common user items or branded commercial products, which are to be accepted on the manufacturer's guarantee. In the case of DPSUs/ PSUs/ other entities, including Academic and Scientific institutions under GoI, an Indemnity bond may be accepted in lieu of PBG only for procurements being undertaken on ab initio Single Vendor/ nomination basis. Provisions of Paragraph 14.9 (Chapter 14) are also relevant.

**6.28.6** **Forfeiture of Performance Security.** Buyer will have the option to forfeit the Performance Security/ PBG of the vendor for the goods/ services supplied with delay. In case the contractor/ vendor fails to fulfil or defaults on any contractual obligations as mutually agreed upon, forfeiture of PBG, in part or in full, may be made on the orders of the CFA depending upon the merit of the case. This shall be without prejudice to other actions that may be invoked against defaulting contractor/ vendor as per the provisions of this Manual.

**6.28.7** **Release of PBG.** On fulfilment of the contractual obligations with no dues pending from the firm, PBG/WBG shall be returned to the Contractor without interest within 60 (sixty) days of completion of all such obligations including the warranty under the contract. Return of Bid/ Performance Securities should be monitored by the CFA or by an officer authorised by the CFA and delays should be avoided. The details of these securities may be listed in the e-Procurement Portal, so as to make the process transparent and visible.

**6.28.8** **Formats of BG and Indemnity Bond.** Sample formats of BG and Indemnity Bond are placed at, **DPMF 15** and **DPMF 16** respectively.

## **6.29 Inspection**

**6.29.1** **Self-Inspection.** Under normal circumstances, the stores ordered may be accepted on the guarantee and warranty of the Seller. In such cases, however, the Seller shall get the stores inspected by its Quality Assurance Department and furnish a certificate that the stores conform to the specifications laid down in the contract.

**6.29.2 Inspection by the Buyer.** However, where the contract specifies actual inspection by the Buyer, the Seller shall arrange for the inspection, in consultation with the Buyer. The stages of inspection, review and acceptance shall be as per specific contract requirements. The following guidelines shall apply where inspection is required to be carried out:-

- (a) The stores shall be inspected in accordance with the provisions of the contract.
- (b) Where inspection by the inspector is specified, the seller will give him sufficient advance notice of the date in writing, on which the goods will be ready for inspection. The seller will also provide the inspector all the necessary facilities including appliances, technical documents, tools, material, etc., 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 buyer may direct, such materials as he may require for tests or analyses.
- (c) If any of the products, whether finished or in the course of production, are rejected by the inspector, they shall be marked and segregated in such a distinctive manner, to the satisfaction of the inspector, so as to ensure that they are identified as rejected products.
- (d) The Buyer shall not be liable to pay for any rejected supplies or any costs of inspection thereof.
- (e) The Seller shall at his own expenses and within the period of delivery, as specified in the contract, replace or make good, to the satisfaction of the inspector, any articles rejected on inspection.
- (f) The decision of the inspector regarding mode, method, rejection or acceptance of the specified items/ entire batch/ lot shall be final.
- (g) The stores shall be offered for inspection sufficiently in advance, considering the time involved for inspection and transportation so as to reach consignee premises before expiry of stipulated delivery period.
- (h) The Buyer reserves the right to inspect the stores and get them rectified by the Seller as per timelines specified in Paragraph 6.41.2 below or as mutually agreed to in the Contract.

- (i) The time given to the Seller for submission of drawings (if applicable) for approval of the Buyer and submission of draft Quality Assurance Plan (QAP) for approval of the QA agency, should be specified in the RFP and the Contract.
- (j) Where contracts signed with suppliers have clauses of pre-inspection at the firms' premises, all costs associated with travel and stay of Buyer's representatives shall be borne by the Buyer, to ensure independence of the inspecting team and provided for in the contract.

### **6.30 Packaging and Dispatch**

**6.30.1** The stores are required to be packaged as per the terms and conditions of the contract and should be checked for correctness accordingly. The stores are required to be packaged to withstand normal condition of shipment/ transportation and at consignee premises. In case the stores are not packed as specified in the contract, then the PBG should be retained until it is certified by the QA staff that deviation has not resulted in any adverse effect to the consignment.

### **6.31 Payment**

#### **6.31.1 Payment Terms**

- (a) Payment terms are of great importance both for the purchaser and the supplier as the cost of finance plays an important role in deciding the cost of an item or service being contracted for. Normally, 95% of the contract amount is released against provisional receipt of the item at the consignee's premises along with inspection note and other documents. Balance 5% is released after the stores have been properly checked and accounted for. 100% payment after delivery, inspection, and issuance of CRV may be accepted in case of specific request from the seller. Part supply and corresponding part payment will be admissible if provided for in the RFP/contract.
- (b) In case of contracts where payments are based on achievement of certain milestones or outputs, the terms and conditions of such payments are set out in the contract, wherein the amount of advance payment, if any, is specified, as are the timings of the payment and the amount of advance payment security to be provided by the vendor/ firm. The advance payment is to be set off by the procuring entity in proportionate instalments against each billing statement/ payment or as per the terms of the contract, until it has been fully set off.

**6.31.2 Paying Authority.** The specific office of the Principal Controller/Controller or the Unit Accounts Office, which is responsible for making payment, shall be clearly mentioned in the RFP and the contract. All bills from suppliers/vendors for payment are to be routed through the Procurement Entity.

**6.31.3 e-Payments.** It shall be mandatory for the suppliers/ vendors to indicate their bank account numbers and other relevant e-payment details to enable payments through Electronic Clearing Services (ECS)/ National Electronic Funds Transfer (NEFT)/ Real-Time Gross Settlement (RTGS) mechanism, instead of through cheques. A copy of the model mandate form, prescribed by Reserve Bank of India (RBI), is to be submitted by suppliers/ vendors for receiving payments through ECS. The details given in the mandate form shall also be incorporated in the supply order/ contract. A copy of the ECS mandate form to be submitted by the suppliers/ vendors (who are customers to the bank) is placed at **DPMF 17**. For ease of tracking e-payments by the Seller, the paying authority shall intimate the transaction and invoice details to the Seller, through suitable electronic media, upon release of e-payment against the Seller's invoice.

**6.31.4 Documents to be submitted for Claiming Payment.** The documents to be submitted for audit and payments depend upon the nature of procurement and the terms and conditions of a particular supply order/ contract:-

(a) **Documents to be submitted to the Audit Authority along with Advance Copy of the Supply Order/ Contract.** The budget allotment letter(s) conveying allocation of funds under the code heads of expenditure concerned, are required to be sent as and when the allocations are made or made available digitally through IT based systems developed by MoD. In addition, the documents listed below are to be submitted in advance to the audit authority. In case documents listed below are not sent in advance to the audit authority, they may be called for by such authority at the time of payment of bills/ post audit, where applicable:-

- (i) Ink-signed/ digitally signed copy of the Supply Order/ Contract Agreement/ Accepted Tender (AT) Note.
- (ii) An ink-signed/ digitally signed copy of sanction of the CFA indicating UO Number and date of IFA's concurrence, where applicable.
- (iii) PAC certificate/ OEM's Certificate/ any other certificate that may be peculiar to the procurement.

- (iv) Specimen signatures of sanctioning and countersigning authorities (in case of ink-signed documents).
- (v) GST Identification Number (GSTIN)/ Permanent Account Number (PAN) of the supplier/ vendor.
- (vi) A copy of the techno-commercial evaluation and rejection details, if any, in case of two bid system
- (vii) A copy of the Comparative Statement of Tenders (CST) with price bids
- (viii) A copy of TPC/PNC proceedings, if held

(b) **Documents to be submitted to Paying Authority for Payment along with the Bill.** Depending upon the peculiarities of the procurement being undertaken, documents may be selected from the list given below and specified in the RFP and Supply Order/ Contract:-

- (i) An ink-signed copy of the Contingent Bill/ Seller's Bill.
- (ii) An ink-signed copy of the Commercial Invoice.
- (iii) A copy of the Supply Order with UO Number and date of IFA's concurrence, where required under delegation of financial powers.
- (iv) CRVs in duplicate.
- (v) Inspection note.
- (vi) Relevant documents/ proof of payment in support of the claim for statutory and other levies, such as, Customs duty clearance certificate, proof of payment for EPF/ ESIC contribution with nominal roll of beneficiaries, etc., as applicable. GST Challan may not be insisted upon for release of payments as its compliance is being monitored by the Government (GST Data Analytics Wing) through a robust and well-established online system, unless there is compelling evidence of GST evasion by the firm.
- (vii) Exemption certificate for GST/ Customs duty, if applicable.
- (viii) Copy of APBG, if any.
- (ix) Guarantee/ Warranty Certificate, if applicable.
- (x) Copy of Integrity Pact, Performance Bank Guarantee/ Indemnity Bond, where applicable.
- (xi) DP extension letter with CFA's sanction (with or without LD), UO Number and date of IFA's concurrence/ note of CFA and IFA in case the advise of IFA has been overruled.

- (xii) Details for electronic payment, if these details are not incorporated in the Supply Order/ Contract or in case there is a change in these details.
- (xiii) User acceptance.
- (xiv) Any other document/ certificate that may be provided for in the Supply Order/ Contract.
- (c) In case of procurement through GeM, the payment procedure including the documents required shall be as per the procedures prescribed by GeM.
- (d) The bills alongwith required documents shall be forwarded to the paying authorities by the procuring entity/contract concluding authority under the signature of authorised officers.

**6.31.5 Settlement of Payment.** The settlement of payment of the firm shall be made as stipulated in the Supply Order/ Contract or within 30 days from the date of receipt of Contingent Bills (CBs) by the paying authority. Any documents/ clarifications, if needed, may be sought through e-mail/ Fax to avoid delay in payments. Documents sought through e-mail should be digitally signed or scanned images of original documents and must be from an official mail ID details of which are already made available to the paying authority. Resubmitted CBs are to be cleared on priority without pipelining with existing CBs in sequence.

## **6.32 Delivery**

**6.32.1** Timely delivery, as per the Delivery Period (DP) stipulated in the Contract/ Purchase Order, is an important procurement objective as timely availability of items is vital. The DP shall be properly specified in the contract with definite dates and these are to be deemed to be the essence of the contract. The DP stipulated in contracts shall be specific and practical. Vague and ambiguous terms are to be avoided while framing the DP as these shall not be legally binding. The stores are considered to have been delivered only when these are handed over to the consignee after due inspection by the designated inspecting agency. In certain cases, where the contractor offers stores for inspection during the last few days of contract DP or on the last day of the contract DP, the inspector may inspect the store and sentence it as per standard franking clause. As per the standard franking clause, the fact that the stores have been inspected after the DP and accepted by the inspectorate does not bind the purchaser to accept delivery, unless at his discretion, he agrees to accept delivery thereof. The stores are accepted without prejudice to the rights of the Purchaser.

**6.32.2 Date of Delivery in Advance Payment Cases.** The date of delivery, in cases where the delivery period is linked with receipt of Advance payment, shall be reckoned from the date of release of advance payment by the Buyer to the Seller ( $T_0$ ), provided the Seller submits the documents mandated for release of advance by the Buyer within 45 days (or as indicated in the RFP) of signing of the contract. In the event of the Seller not submitting the said documents within 45 days (or as indicated in the RFP) of signing of the contract, the delivery date will be reckoned from the 45<sup>th</sup> day (or as indicated in the RFP) irrespective of the date of submission of the documents and release of advance payment.

**6.32.3 Correctness of the Quality and Quantity.** On receipt at the consignee's premises, the stores are to be checked for ascertaining the correctness of quantity, quality and documents. In case the stores are found deficient in any way, the consignee has the right to reject the stores even if these were inspected and cleared by the inspector. In case of any discrepancy in quantity and quality, the consignee should raise a Discrepancy Report within 3 days and 15 days respectively and forward to the Contract Operating Officer for necessary action/raising appropriate claims as per the terms and conditions of the contract. Provisions of Paragraph 6.41 are also relevant.

**6.32.4 Failure to Deliver within the DP.** When the supplies do not materialise by the stipulated contract delivery date, the purchaser has the option of:-

- (a) Issuing a performance notice.
- (b) Extending the delivery date with imposition of LD and denial clause, which implies denial of increase in price, taxes, duties, etc., taking place during the extended period.
- (c) Re-fixing the delivery date. Cancelling the contract and re-purchasing the non-supplied quantity.
- (d) Undertake Risk and Expense Purchase.
- (e) Initiation of other remedial measures as per the terms and conditions of the contract.

**6.32.5 Course of Action on Failure of/ Delay in Supply.** For deciding on these options, the Procuring Entity has to balance the time factor required for making re-purchase and whether the supply can be arranged earlier than the period of extension sought for, at cheaper rates, from alternative sources and in the latter case, whether the indenter can reasonably wait to take advantage of lower trend in prices. Extension shall be granted only where the CFA is convinced that supplier shall come forward during extended DP. Where the case for DP extension is under process,

the inspection team or the buyer may conduct inspection. Sample formats of correspondence with the Seller while exercising various courses of action are placed at **DPMF 27** (Performance Notice), **DPMF 28** (Correspondence with Seller after breach of Contract), **DPMF 29** (Extension of DP for FOB/FAS/CIF Contracts), and **DPMF 30** (Extension of DP for other than FOB/FAS/CIF Contracts).

#### **6.32.6 Maximum Period of Extension:**

The maximum period of extension of delivery period that can be granted by the CFA under delegated powers should be such that the total period - the original delivery period plus the extension – does not exceed twice the original delivery period. Extension beyond this period may be granted by the CFA with concurrence of IFA, irrespective of the case falling within the delegated powers of CFA with or without consultation of Finance. All such cases will be reported quarterly by the CFA to the next higher CFA.

#### **6.32.7 Re-fixation of Delivery Period:** Delivery period can be re-fixed in the following circumstances:

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

#### **6.33 Warranty Clause**

**6.33.1** A warranty clause shall be incorporated in every contract, requiring the supplier to, without charge, repair or rectify defective goods or to replace such goods with similar goods free from defect. Any goods repaired or replaced by the supplier shall be delivered at the buyer's premises without costs to the buyer. Date of commencement of warranty period (date of delivery or Joint Receipt Inspection (JRI), etc.) is to be indicated in the contract.

#### **6.34 Tolerance Clause**

**6.34.1** To take care of any change in the requirement during the period starting from issue of RFP till placement of the contract in exceptional circumstances due to reasons to be recorded which were not considered during the planning stage as well while seeking AoN from the CFA, a plus/ minus tolerance clause [upto 25 percent] may be incorporated in the RFP, reserving the

Buyer's right to increase or decrease the quantity of the required goods/ services up to that limit without any change in the terms, conditions and per-unit prices quoted by the Seller. While awarding the contract, the quantity ordered can be increased or decreased by the Buyer within this tolerance limit. However, due care is to be exercised while specifying the tolerance limits in individual cases, since higher the limit, more is the uncertainty for the bidders in formulating their prices, which may result in the bidders quoting higher prices. Moreover, before signing of the contract for the newly arrived quantity sanction of appropriate CFA for the total quantity shall be taken. IFA shall be consulted in case financial powers of the CFA is to be exercised in consultation with IFA as per the delegation of financial powers.

**6.35 Option and Repeat Order Clauses.** Provision for option and repeat order clauses shall not be made as a matter of course in the RFPs as these clauses have an impact on price. Either or both these clauses may be provided in the RFP only in exceptional circumstances, where the consumption pattern is not predictable. Repeat Order and/or Option Clause may be exercised more than once, provided altogether these orders do not exceed 50% of the original order quantity.

**6.35.1 Option Clause.** Under this clause, the purchaser retains the right to place orders for additional quantity up to a maximum of 50% of the originally contracted quantity at the same rate and terms of the contract. Such an option is available during the original delivery period of contract provided this clause had been incorporated in the original contract with the supplier. Option Clause may be exercised more than once, provided altogether these orders do not exceed 50% of the original order quantity. The DP shall be fixed for the additional quantity on the lines of the DP in the original order. Option quantity during extended DP is to be limited to 50% of balance quantity after original Delivery Period. Other conditions that govern exercising of Option Clause are as follows:-

- (a) It may be advantageous to the purchaser to exercise the option clause against an outstanding indent for which Acceptance of Necessity has been approved by CFA, in accordance with the terms and conditions of contract.
- (b) The option clause may be exercised on approval of the CFA, within whose powers total value of original supplies plus value of the option clause falls, in consultation with IFA, where applicable as per the delegation of financial powers, during currency of the contract.
- (c) This clause may be exercised in case of procurement from single vendor/ OEM as well as in multi-vendor contracts.

However, in multivendor contracts, great care is to be exercised before operating the option clause.

- (d) It shall be ensured that there is no downward trend in the market prices and no fruitful result accrues by floating fresh RFP when items are urgently required.
- (e) Caution is to be exercised while invoking option clause in case a supplier has not supplied any items within the original DP. If it becomes necessary to do so in exceptional cases, due justification is to be given by the sponsoring authority for necessity of placing further orders on such supplier.
- (f) If the contract also contains the repeat order clause, it may be kept in mind while placing order under the option clause that the total quantity under the option clause and the repeat order cannot exceed fifty percent of the originally ordered quantity.
- (g) Order under this clause is not placed to split the requirement to avoid obtaining the sanction of the next higher CFA at the time of concluding the original contract.

**6.35.2 Repeat Order.** Wherever considered necessary, provision may be made in the RFP and the Contract for Repeat Order. A Repeat Order of up to a maximum of 50% of the original ordered quantity against a previous order may be placed at the same cost and terms and conditions as per the original order/ contract with the approval by the CFA and concurrence of Integrated Finance, wherever required as per the delegation of financial powers. Repeat Order Clause may be exercised more than once, provided additional quantity ordered by exercising option clause and /or repeat order clause does not exceed 50% of the original order quantity. Other conditions governing placement of Repeat Order are as follows:-

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

- (f) The requirement is for stores of identical nature/specifications, nomenclature, etc. Minor improvements in spec(s) or phasing out of products due to obsolescence shall not be precluded from the purview of repeat order but this aspect is to be very carefully examined from the point of view of interchangeability of the product offered as an improved substitute.
- (g) The repeat order is to be placed within 6 months from the date of completion of the supply against the original order.
- (h) This clause may be exercised in case of procurement from single vendor/ OEM as well as in multi-vendor contracts. However, in multi-vendor contracts, great care is to be exercised before operating the repeat order clause.
- (i) The CFA shall be decided taking into consideration the value of the originally ordered quantity and the Repeat Order quantity.
- (j) In case of orders for small quantities ( 1 to 7), the Repeat Order quantity may be rounded off to the next whole number.

**6.35.3 Option and Repeat Order Clause, when used in tandem.** In cases, where both Option and Repeat Order clauses are utilized in tandem, maximum quantity of procurement, under these two clauses together, cannot exceed 50% quantity of the original ordered quantity.

### **6.36 Risk and Expense Purchase**

**6.36.1** Risk and expense purchase clause may be included in the RFP and the contract, if considered necessary. Risk and Expense purchase is undertaken by the Procuring Entity in the event of the seller failing to honour the contracted obligations within the stipulated period and where extension of DP is not approved. While initiating risk and expense purchase at the cost and expense of the seller, the Procuring Entity shall satisfy himself that the seller has failed to deliver and has been given adequate and proper notice to discharge his obligations. Such risk and expense purchase must be contracted within six months from the breach of contract. The seller shall be liable for any loss which the Procuring Entity may sustain on that account. In other words, whenever risk and expense purchase is resorted to, the seller is liable to pay the additional amount spent by the buyer, if any, in procuring the said contracted goods/ services through a fresh contract/ local purchase/ etc., i.e. the defaulting seller has to bear the excess cost incurred as compared with the amount contracted with him. The manner and method of such procurement shall be at the entire discretion of the Procuring Entity, and it shall not be necessary for the Procuring Entity to notify the seller of such procurement.

**6.36.2** Risk purchase at the cost and expense of the seller may not always be a practical proposition as it may not be feasible to enforce recovery without legal action. This clause is rarely invoked in case of import contracts for this reason. In cases where the item is of proprietary nature or there is only one qualified firm to supply the items and there is a remote possibility of procuring the same item from an alternative source, it is imperative that instead of having risk and expense purchase clause, the contract has a performance guarantee clause to cover any such default. Hence, due care must be taken while taking a decision to include the risk and expense purchase clause in a RFP and the contract.

### **6.37 Apportionment of Quantity**

**6.37.1** If there is an apprehension that the L1 may not have the capacity to supply the entire requisite quantity, it shall be mentioned in the RFP that the order may be placed on L2, L3 and so on for the balance quantity at L1 rates, provided this is acceptable to them. Even if there was no prior decision to split the quantities and it is discovered that the quantity to be ordered is far more than what L1 alone can supply, the balance quantity shall be offered to the L2 for supply at L1 rate and if the latter is unable to meet the requirement or the rate is not acceptable to him, then the offer is to be made to L3, L4, etc., in that sequence before moving on to the next higher bidder to supply the remaining quantity at L1 rate. Where it is decided in advance to have more than one source of supply (due to vital or critical nature of the item), the ratio of splitting shall be indicated in the RFP.

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

**6.38.1** There may be occasions when excess or short supplies are made by the vendors due to various reasons like, exact multiples of the standard units of measure, or where it is difficult to mention exact weight in case of steel plates, etc. A clear indication shall be made in the RFP if this clause is to be applied in any particular case. These variations in supplies may be accepted with the approval of CFA, subject to the cost not exceeding 5% of the original contract value in case of excess supplies and not exceeding 10% of the original contract value in case of short supplies. This is subject to the conditions that total contract value remains within the financial powers of CFA sanctioning the procurement. All the contract conditions including conditions governing performance of the vendors will remain operative.

### **6.39 Buy Back Offer**

**6.39.1** When it is decided to replace existing old item(s) with new item(s), a suitable clause shall be incorporated in the RFP so

that the prospective and interested bidders may formulate their bids accordingly. Depending on the value and condition of the old item(s) to be traded, the time as well as the mode of handing over of the old items to the successful bidder, are to be decided, and relevant details in this regard suitably incorporated in the RFP. Suitable provision shall also be made in the RFP asking the bidders to quote the prices for the items to be offered by them with rebate for the old item and also without any rebate (in case they do not want to lift the old item), to enable the Procuring Entity to either trade or not to trade the old item(s) while purchasing the new one(s).

#### **6.40 Fall Clause**

**6.40.1** The price charged for stores supplied under the contract by the Seller shall in no event exceed the lowest prices at which the Seller sells the stores or offers to sell stores of identical description, under the same terms and conditions, to any entity/ agency including the Purchaser during the period or until the performance of all Supply Orders placed during the currency of the contract is completed. If at any time, during the said period, the Seller reduces the sale price, sells or offers to sell such stores to any entity/ agency at a price lower than the price chargeable under the contract, he shall forthwith notify such reduction or sale or offer of sale to the purchaser/ contracting authority and the price payable under the contract for the stores shall stand correspondingly reduced. The provisions of fall clause shall, however, not apply to 'Exports/ Deemed Exports' by the seller/ supplier and Sale of goods such as drugs, which have expiry date.

#### **6.41 Claims**

**6.41.1** In case of any discrepancy (Qualitative/ Quantitative), the Buyer shall promptly notify the Seller in writing of any claims arising during inspection at consignee's end. The time period for notifying the claims should be as per the contract. CFA shall constitute a Committee with a chairman and appropriate number of members including technical member(s) for acceptance/rejection of the delivered goods. The Committee so constituted shall raise the quantity and quality claims after due approval of the CFA.

**6.41.2** It is to be clearly mentioned in the RFP that the purchaser shall promptly notify the seller in writing of any claims arising during inspection/ JRI at consignee's end and within the Warranty period specified in the contract. The Quality and Quantity claims should be submitted to the seller in the prescribed formats (**DPMF 18** and **DPMF 19**). The time period generally acceptable for notifying the claims, which may be indicated in the RFP, is as follows:-

(a) **For Quantitative Discrepancy.** In case of non-conformity of quantity to those specified in the packing list (shortage inside packing) on condition that the equipment arrived in undamaged packing, the claim is to be lodged within 45 days of completion of JRI and acceptance of goods.

(b) **For Qualitative Discrepancy.** In case of non-conformity of quality to the Quality and Quality Assurance norms of the equipment, as specified in the Contract for new / repaired / overhauled equipment while in use and in storage, etc.

(i) **PRI / JRI.** The findings of defects or deficiencies in quality noticed during the Pre Receipt Inspection (PRI)/ Joint Receipt Inspection (JRI) shall be presented within 45 days of completion of PRI / JRI.

(ii) **Warranty.** The discrepancy or defects in quality noticed during the Warranty period shall be intimated at the earliest through appropriate mode of communication including electronic mode but not later than 45 days after expiry of the Warranty period as specified in the contract.

(c) **Particulars to be Specified in the Claim.** The claim shall specify the quantity and description of the defective new/ repaired equipment, subject of and reason for the claim. In case of claims for repaired equipment, it shall also specify the equipment running parameters before and after repair of the equipment by the Seller. In case of any deviations, the Seller may be required to prove the quality of work undertaken in accordance with acceptable guidelines as stated in the Contract. Sample formats of Quality and Quantity claims are placed at **DPMF 18** and **DPMF 19** respectively which may be appropriately modified for specific cases.

(d) **Settlement of Claims:** The Seller will settle the claims within 45 days from the date of the receipt of the claim, 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 extend the Warranty Bank Guarantee so that it remains valid for 60 days from the date of rectification of defects and acceptance by the buyer.

## **CHAPTER 7**

### **FOREIGN PROCUREMENT OF GOODS AND SERVICES AND CONDITIONS OF CONTRACT**

#### **SECTION I – FOREIGN PROCUREMENT OF GOODS AND SERVICES**

##### **7.1 Introduction**

- 7.1.1** In the interests of promoting self-reliance in the Defence sector in accordance with the 'Atmanirbhar Bharat Abhiyan', certain restrictions have been placed with regard to meeting Defence requirements through foreign procurements, as brought out in Paragraph 2.3.2 (Chapter 2), which include that all concerned may take an in-principle call that there will be no import of Defence equipment going forward and also that any import of Defence equipment, irrespective of the value, will require explicit approval of the Raksha Mantri or any other competent authority as may be designated by MoD from time to time.
- 7.1.2** Revenue procurement of spares/parts from foreign sources vis-a-vis from domestic sources shall be based on detailed critical analysis of factors such as criticality, available sources, financial implications, after sale support including training, technology, asset holding, quality requirement, existing contract conditions etc. Categorisation of spares/parts as critical/non-critical/high value/low value/technology intensive/general spares etc may be done so as to arrive at a purchase decision which is oriented towards enhanced domestic sourcing.
- 7.1.3** Revenue procurements of parts, spares of equipment procured from foreign OEM which are not under any warranty/AMC and not under any other long term service contract may be done from local vendors, if available. Long term requirement of such spares/parts together with the financial implications may be assessed commensurate with the life of the equipment so as to ascertain the potential market value and promote domestic investment/establishment of industries.
- 7.1.4** Revenue procurement of parts, spares of equipment procured from foreign OEM which are under warranty/AMC/ long term service contract may be continued till the buyer's and Seller's obligations are fulfilled as per the terms and conditions of the agreement. Similar steps as in the above para may be taken. Provisions as stipulated in Chapter 10 may be duly considered.

**7.1.5** As mentioned above, while all concerned may take an in-principle call that there will be no import of Defence equipment going forward, certain Defence items, such as spares and equipment support from foreign OEMs/ suppliers, may need to be obtained through imports, until they are indigenised and become available indigenously. Till then, imports would be required to ensure serviceability of existing imported assets at all times, and also to ensure value for money spent. In those cases where indigenous development/ production is not feasible, a categorical exception will have to be obtained from Raksha Mantri or any other authority as stipulated by MoD from time to time, to undertake ex-import procurement. For undertaking any such Defence imports, after complying with the restrictions/ directions mentioned above, it is of paramount importance to lay down comprehensive procedures and policies in respect of foreign procurements in line with MoD's procedures/ policies, as well as international procurement practices, for implementation by all concerned. While all proposals for procurement of goods and services are to be processed as per the procedures laid down in other Chapters of this Manual, some special features relating to foreign procurements are explained in this Chapter. Paragraph 2.1.10 (b) (Chapter 2) is also relevant.

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

**7.2.1** Foreign OEMs and vendors may continue to be registered by the Service HQs/ other Organisations as per existing procedure prescribed to meet their specific needs, until the arrangement for registration of Indian vendors as stated at Paragraph 3.2 (Chapter 3) is extended to foreign vendors and common guidelines are framed. Defence Attachés and Commercial Counsellors in the Indian Embassies/ High Commissions abroad may be approached to verify the credentials and capability of the foreign firms, as far as possible, prior to their registration. The following broad guidelines may be followed mutatis mutandis by registering authorities for registration of foreign firms:-

- (a) **Information Gathering.** Information received from all possible sources like Purchase/ Technical/ Line Directorates, Capital Acquisition Wing of MoD and Service HQs/other Organisations, Indian Embassies/ High Commissions abroad, Embassies/ High Commissions of foreign countries in India, web sources, direct communication from vendors, etc., may be used to initiate the process of registration. The Registering Agency at Department of Military Affairs (DMA)/other Organisations should maintain a centralised database of such information.
- (b) **Assessment Stage.** Credentials and capability of a foreign

firm may be verified with the help of Defence Attachés and/ or Commercial Counsellors in the Indian Embassies/ High Commissions abroad. Comments/ recommendations of the Defence Attachés/ Commercial Counsellors may be sought with respect to the following factors:-

- (i) Grant of export licence to the firm concerned by the Government of that country for export of military/ dual use goods, as applicable.
- (ii) Technical capabilities of the firm in terms of manufacturing facilities, process capability, skilled manpower, testing equipment and process, capability to develop and/ or comprehend technical standards and product specifications.
- (iii) Quality Assurance system of the firm.
- (iv) Organisational soundness of the firm to discharge the business commitments (including financial, managerial, statutory compliances, etc.)
- (v) Financial credibility and soundness to undertake export of goods; performance of the firms with other countries for export of military goods.
- (vi) Firm's willingness to accept SCoC/ RFP terms as per DPM. If the firm is not itself the OEM, arrangement/ agreement between the firm/authorised dealer and the OEM for product/ spares support for the equipment.
- (vii) Verification of location, address and channels of communication with the firm.

(c) On receipt of recommendations/ comments from the Defence Attachés/ Commercial Counsellors in the Indian Embassies/ High Commissions abroad and even in case of non-receipt of such reports within an acceptable time frame, the Registering Agency at Service HQs/other Organisations would frame its recommendations based upon available details and facts.

(d) Enlisted vendors for capital acquisition cases under Defence Acquisition Procedures (DAP) 2020 may also be appropriately considered with regard to their capability to supply spares, parts and for carrying out repairs and undertaking maintenance operation.

(e) **Restrictions under Rule 144 (XI) of the General Financial Rules (GFR) 2017.** Government of India may impose restrictions from time to time, including prior registration and/ or screening, on procurement from a country or countries or a class of countries, on grounds of Defence of India, or matters directly or indirectly related thereto including national security; no procurement shall be made in violation of such restrictions. The restrictions that are currently imposed and amendments made till date are placed at **Appendix A**.

### **7.3 Vendor Selection**

**7.3.1 Indication of Prospective Vendor(s).** Details of registered vendors and likely sources of supply are to be indicated in the indent. Vendors already registered with Army, Navy, Air Force, DRDO, DPSUs and other Organisations/ Departments of MoD for similar items, will be treated as registered vendors and may be considered for issue of Limited Tender Enquiry. Thus, the registering agency should include all foreign vendors registered with other Services/ Departments of MoD. However, specific needs of the Organisations/ establishments are to be kept in mind and complied with.

**7.3.2 Selection of Vendor.** A careful selection of the authorised and registered vendors is to be made for the range of items/ components/ spares listed in the Schedule of Requirements (SoRs) by the Procuring Agency for the purpose of issuing the RFP.

### **7.4 Technical Specifications**

**7.4.1** All verifiable and measurable technical parameters in terms of size, weight, performance, quality, operating environment, power, utility life, storage and shelf life, etc., as applicable to the equipment being procured, should be listed clearly, objectively and unambiguously. The specifications should meet the basic needs of the organisation without including superfluous and non-essential features, which may result in unwarranted expenditure. Specifications of indigenously manufactured products which are compatible with the imported products may be duly considered as that may have a bearing on deciding whether the item can be sourced locally or through import. They may also be firmed up right in the beginning of the project, and enough safeguards may be built in, so that cost and timelines do not escalate because of mid-course modification(s).

### **7.5 Inspection Clauses**

**7.5.1** The RFP should clearly provide for Pre-Dispatch Inspection (PDI) and/ or Joint Receipt Inspection (JRI), as required. In the case

of PDI, to the extent possible, the RFP should mention the broad scope of such inspections, the likely number of such inspections, the composition of the teams and the duration of the inspections.

## **7.6 Quality Assurance**

**7.6.1** The goods/ services supplied under the contract should conform to the standards, which should be clearly mentioned as a part of the technical specifications in the RFP. The latest authoritative standards, issued by the institution concerned in India, in the absence of which, standards applicable in the country of origin, of the goods/ services to be procured, could also be considered as acceptable standards and, if so decided, it should be mentioned in the RFP. In such situations, the RFP should also state that the details of such standards would be submitted by the prospective bidder while submitting his bid. All the items should be supplied and accepted along with OEM certification only. The quality assurance requirements should be specified both in terms of testing norms as well as methodology. In case of medical devices/ equipment, wherever the Indian standards are available, these would be sufficient and the indenting organisation shall not insist on any foreign specification or standards like USFDA or CE certification, etc. In case of medical devices/ equipment, where Indian standards are not available, in order to ensure quality of the devices/ equipment being purchased, the indenting organisation would be free to lay down the standards of ISO or USFDA or CE certification in such cases.

## **7.7 OEM Certificate in Case of Vendors/ Stockists**

**7.7.1** In case the bidder is not the OEM, it would be necessary for the bidder to furnish the agreement certificate with the OEM from whom the spares are to be sourced by the bidder, along with the bid.

**7.7.2** However, where OEMs do not exist, minor aggregates and spares can be sourced from authorised vendors subject to quality certification by the designated certification agency as the case may be.

**7.7.3** In case of weapon systems/ platforms/ major equipment where the OEM wishes to discontinue production of spares/parts for operational or any other reasons, the Services must take measures to procure such spares/parts from the OEM as per the assessed requirement based on remaining technical life of weapon systems/ platforms/ major equipment before production is stopped by the OEM.

**7.7.4** In case of failure of the Services to procure spares/parts as per norms specified at para 7.7.3 above, procurements may also be made from those stockists who purchase bulk spares in auctions sold by the OEMs. In such cases, the stockists can be treated as authorised vendors for the spares, provided they can furnish a certificate from the OEM from whom these are bought, regarding genuineness of the spares, along with their bids. While undertaking procurement in such cases, reasons for failure to undertake procurement as per norms in Para 7.7.3 may be duly recorded and duly considered by the CFA.

## **7.8 Mode and Terms of Delivery and Transportation**

**7.8.1** The delivery terms are to be expressed in terms of latest Incoterms as per International Chamber of Commerce (ICC). As per the revised policy of the Government, all public procurement import contracts involving ocean freight of dry or liquid bulk cargoes are to be finalised only on Free On Board (FOB)/ Free Alongside Ship (FAS) basis, and in case of any departure therefrom, prior approval of the concerned administrative Department of MoD may be obtained. However, imports involving ocean freight of general liner cargoes, project cargoes, heavy lift, containers, break bulk cargoes, etc., can be made either on FOB/ FAS basis or on Cost & Freight (CFR)/ Cost, Insurance & Freight (CIF) / Carriage and Insurance Paid To (CIP)/ Delivery At Place (DAP) basis. All importing Organisations/ Departments/ DPSUs are allowed to make their own shipping arrangements without the need to route their requirements through Chartering Wing of Ministry of Shipping if such arrangements cannot be made by the Chartering Wing in the desired timeframe. However, before processing any contract involving import of goods through air, latest instructions in this regard may be ascertained and followed.

## **7.9 Delivery Schedule**

**7.9.1** The prescribed delivery schedule should be firm and not open-ended. Normally, the delivery schedule should be fixed in such a manner that it is completed within 90 to 180 days of the signing of contract, unless the circumstances warrant a longer delivery schedule. A staggered delivery schedule may be laid down, if necessary. It should be clearly mentioned in the RFP that the delivery schedule shall be counted from the date of signing of the contract by both the parties and include a reasonable time (which should also be specified) for the supplier to deliver the supplies and then claim the payment. The date of delivery of the goods will be the date of Freight Forwarder's receipt, Clean Master Airway Bill or Clean Bill of Lading or ACT (acceptance) as per latest Incoterms and is to be specified in the contract.

## **7.10 Mode of Payment**

**7.10.1** Payments for foreign procurements are usually made in foreign currency. The normal mode of payment to foreign vendors is through irrevocable Letter of Credit (LC) or Direct Bank transfer (DBT). The paying authority is the organisation of the Principal Controller/ Controller of Defence Accounts concerned.

## **7.11 Letter of Credit (LC) Payments**

**7.11.1** LCs are opened by PCDA/CDA within 45 days of receipt of readiness of the supplier (through the Service HQrs/Organisations) to supply the goods/services as per the contract terms and conditions. The LCs are normally opened for a quarter i.e. 90 days as the LC opening charges are generally for a quarter, unless otherwise specified in the contract. LC may also be opened earlier, based on mutually agreed terms.

## **7.12 Direct Bank Transfer (DBT) Payments**

**7.12.1** Payment through DBT against supply as well as advance should preferably be made within 30 days of receipt of clear payment documents or as specified in the contract, unless insisted otherwise by the foreign vendor.

## **7.13 Terms of Payment**

**7.13.1** Where the payment is to be made through LC, it should be opened within 45 days of receipt of notification of readiness of goods for delivery and the receipt of PBG, if applicable, from the foreign vendor. The vendor should normally be given 45 days from the date of signing of contract for notifying such readiness. The period may be varied, as per requirement, but it should be decided while processing the proposal and indicated in the RFP. The period for notification of readiness of goods and opening of LC should be so fixed that LC is opened at least 90 days prior to the expiry of the DP, or as specified in the contract. The period mentioned in the RFP should not be varied, particularly in Global Tender Enquiry and Limited Tender Enquiry cases.

**7.13.2** If the seller is ready for early delivery, vis-à-vis the stipulated original DP, based on the readiness notification, on the Seller's request, LC may be opened on an early date. However, the last date of delivery/latest date of shipment in the LC/ SWIFT 700 application shall be shown as mentioned in Seller's readiness notification. This, however, shall not be construed as amended DP. In case the Seller is unable to deliver within this period, extension charges in respect of the LC, if applicable, shall be borne by the Seller.

**7.13.3** It should also be mentioned in the RFP that the LC would be valid for 90 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 LC outside India should be borne by the foreign vendor.

**7.13.4** In case of extension of delivery period, both LC and delivery period shall be extended and if the delay is attributable to the vendor, the extension of LC charges shall be borne by the supplier. In such cases of extension in the delivery period, the vendor shall invariably extend the validity period of the APBG/ PBG/ WBG. While extending the LC, it may be ensured that the extended validity of LC covers the extended delivery period.

**7.13.5** Payment through DBT should preferably be made for all payments below USD 1 lakh and such payments should be made within 30 days of receipt of clear payment documents or as specified in the contract, unless insisted otherwise by the foreign vendor.

**7.13.6** Normally, no part LCs would be opened for part-shipments, unless staggered delivery is specifically provided for in the contract, in accordance with the Delivery Schedule. However, in multiple-line indents, where part order is ready for dispatch with uncertainty on readiness of balance items, part LCs may be opened for receipt of part consignment within the DP.

**7.13.7** In Repair & Overhaul (ROH) contracts, where dispatch of equipment(s) for repair and overhauling is not certain, part LC may be opened before their dispatch for overhauling.

#### **7.14 Exchange Rate**

**7.14.1** Exchange Rate applicable for various currencies prevailing on the last date of submission of the commercial bids as indicated in the RFP, shall be taken into account for working out the prices in INR terms, for comparison. The exchange rate shall be as per BC Selling rate of the State Bank of India on the last date of submission of the commercial bids as per RFP. Paragraph 5.30.3 (Chapter 5) is relevant in this regard.

#### **7.15 Installation, Commissioning and AMC**

**7.15.1** If the equipment/ spare parts are required to be installed and/ or commissioned and training is to be imparted, relevant information in this regard should be provided in the RFP and concomitant

modifications made in other clauses of the RFP. In case Annual/ Composite/ Comprehensive Maintenance Contract is required, the period for which such contract is required, and the scope of services expected of the vendor, should be clearly spelt out. Provisions as provided for in Chapter 9 may be referred to while processing such cases.

#### **7.16 Apportionment of Quantity**

**7.16.1** Provisions of Paragraph 6.37 (Chapter 6), of this Manual shall be applicable in the case of foreign procurements also.

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

**7.17.1** Provisions of Paragraph 6.38 (Chapter 6) of this Manual shall apply in this regard.

#### **7.18 Force Majeure**

**7.18.1** Provisions of Paragraph 6.20 (Chapter 6) of this Manual, are applicable for foreign procurements also, and are to be included in the RFP and in the contract.

#### **7.19 Claims**

**7.19.1** It is to be clearly mentioned in the RFP that the purchaser shall promptly notify the foreign supplier in writing of any claims arising during inspection/JRI at consignee's end and within the Warranty period specified in the contract. The Quality and Quantity claims should be submitted to the foreign seller in the prescribed formats as given in **DPMF 18** and **DPMF 19** respectively. The time period generally acceptable for notifying the claims, which may be indicated in the RFP, is as follows:-

(a) **For Quantitative Discrepancy.** Within 90 days from the date of delivery of the consignment at ultimate consignee in case of delivery by Air or Road and within 120 days from date of delivery of the consignment at ultimate consignee in case of delivery by Sea.

(b) **For Qualitative Discrepancy.**

(i) **PRI / JRI** - The quality claims for defects or deficiencies in quality noticed during the Pre receipt Inspection/ JRI shall be presented within 45 days of completion of Inspection/ JRI and acceptance of goods, which shall be rectified within 90 days by the Seller.

(ii) **Warranty.** The discrepancy or defects in quality noticed during the Warranty period shall be intimated at the earliest but not later than 45 days after expiry of the Warranty period as specified in the contract. The Seller shall rectify the same within 90 days of receiving the intimation.

## **7.20 Warranty Clause**

**7.20.1** All stores to be supplied should be free from all defects and faults in material, workmanship and manufacture and should be consistent with the established and accepted standards and fully conform to 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 and commit to replace them free of cost inclusive of all freight and handling charges, in case the buyer at ultimate consignee does not find the stores in accordance with the order. Such replacement will be done within 90 days of the claim report raised by the purchaser. These standard conditions will also apply in respect of replaced stores. The warranty shall remain valid for 12 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 18 months after the date of shipment from the place of loading, whichever period concludes earlier, or as specified in the contract.

## **7.21 Applicability of Law**

**7.21.1** It is to be mentioned clearly in the RFP that the contract shall be made, interpreted and governed in accordance with the laws of the Republic of India.

## **7.22 Signing of the Contract/ Placement of Supply Order**

**7.22.1** The draft Contract/ Supply Order, duly vetted by the IFA, where required as per delegation of financial powers, should be put up for CFA's approval before concluding the Contract/ placing Supply Order, with the vendor. The Contract/ Supply Order should be signed by an officer authorised by the CFA to do so. The Contract should be signed on each page by the authorised officer of CFA and by the representative of the vendor. The vendor/authorised representative will duly acknowledge acceptance of the contract.

## **7.23 Special Provisions**

**7.23.1 Where OEMs are Not Permitted to Deal Directly.** If the legislation of a foreign country does not permit the OEMs to respond directly to the RFPs, RFP may be issued to the government designated

agency on Single Tender Enquiry basis. In case any other vendors/ firms are also permitted to respond to RFPs in addition to the government designated agencies, such cases may be processed on competitive basis in accordance with the LTE powers of CFAs.

**7.23.2 Procurements Governed by General Contracts.** In case of procurements under Long-term General agreements/ Umbrella contracts/ Main agreements/IGAs between the Government of India and the Government of the country concerned as defined in Para 1.3.20, provisions of such contracts/ agreements will prevail over provisions of this Manual with regard to contract finalisation. Other aspects of the procurement/contract which are not specified in the Long-term General Agreements/ Umbrella Contracts/ Main Agreements/IGAs etc. may be finalised duly considering provisions stated in this Manual.

**7.23.3 Urgent Procurement Through Indian Embassies Abroad.** Spares/ components that are required urgently from sources abroad may be procured through the Indian Embassies/ High Commissions. On obtaining Acceptance of Necessity and approval of RM or any other competent authority as may be designated by MoD from time to time (as per Paragraph 7.1), an urgent indent should be forwarded to the Embassy concerned for procurement under the financial powers of the Commercial or Defence Attaché (DA) concerned. The Attaché concerned should register the indent and obtain quotes. The Attaché will accord expenditure sanction with concurrence of IFA, who may be Counsellor-coord in Indian Embassy or any other authority nominated by Indian Ambassador in that country. In case the quotes received are higher than the delegated financial powers of the DA and the vendor does not agree to reduce the cost, the case should be referred to the Service HQs/ Department concerned of the Ministry of Defence for seeking Expenditure Angle Sanction of the appropriate CFA.

**7.23.4** Procurement of goods/ services of foreign origin from indigenous firms/ suppliers shall be treated as import purchases in the following cases:-

- (a) Where the movement of goods/ supply of services from the foreign country to India is occasioned directly as a result of the sale.
- (b) Where there is a privity of contract between the foreign supplier and the Defence Department/ purchaser.

## 7.24 Incoterms

**7.24.1** Since 1936, Incoterms are used in International Documentary Credits in respect of mode/ style of delivery of goods, which have been recognised as practical and cost saving tools, used worldwide for smooth international trading practice. The RFP should indicate the applicable Incoterms for delivery of goods and incorporate them in the contract to avoid disputes at a later date. A guide to Incoterms 2020 is placed at **Appendix J**.

## 7.25 Insurance

**7.25.1** Wherever necessary, the goods supplied under the contract, shall be fully insured in a freely convertible currency, against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the contract. If considered necessary, insurance may cover "all risks" including war risks and strike clauses. The amount to be covered under insurance should be sufficient to take care of the overall expenditure to be incurred by the Procuring Entity for receiving the goods at the destination. Insurance of imported goods/ equipment would need to be arranged on a very selective basis and only for cases where the value of individual shipment is expected to be in excess of ₹5 crore. Procuring Entities who are entering into large number of import contracts, may enter into annual insurance arrangements for all imports during the year with Insurance Companies, instead of insurance of each individual imports separately on the basis of "Open Cover (all risk)". Where delivery of imported goods is required by the purchaser on CIF/ CIP basis, the seller/supplier shall arrange and pay for marine/air insurance, making the buyer the beneficiary. Where delivery is on FOB/ FAS basis, marine/ air insurance shall be the responsibility of the purchaser.

## **SECTION II - CONDITIONS OF CONTRACT FOR FOREIGN PROCUREMENT**

### **7.26 Standard and Special Conditions of Contract**

**7.26.1** As brought out in Paragraph 6.12 (Chapter 6), in order to facilitate a clear understanding of the conditions of contract, a set of standard conditions, generally applicable to all contracts, is formulated and made available to all firms dealing with the department. The Standard Conditions of Contract (SCoC) are made available to the firms at the time of registration itself. It is desirable that the SCoC are publicised on the Central Public Procurement Portal, the Defence eProcurement Portal and on the organisations' concerned web portal as well. The Tender Enquiry should invariably make a reference to the applicability of SCoC, and bidders are expected to conform to the SCoC. The contract must stipulate that the SCoC are applicable, in addition to any special conditions specific to the contract, which might have been mutually agreed to between the parties.

**7.26.2 Conformity of the Contract with Agreed Terms and Conditions.** All contracts must be in conformity with the standard and special conditions as mentioned in the RFP and as per the recommendations of the CNC, if held, as accepted by the CFA.

**7.27 Debarment.** Provisions for Debarment of Suppliers as per Paragraph 3.7 (Chapter 3) shall be applicable in case of foreign procurements also.

### **7.28 Prices to be Lowest and All-Inclusive**

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

### **7.29 Terms of Payment**

**7.29.1 Intimation Regarding Readiness of Goods for Dispatch.** The Seller will be required to notify the Buyer within a specified period about the readiness of goods for dispatch. Provisions of Paragraphs 7.11 and 7.13 are also relevant in this regard.

**7.29.2 LC and DBT.** The payment should be arranged by way of LC/DBT through any Bank authorised by the Ministry of Defence to the bankers of the foreign supplier. The provisions of Paragraph 14.5 (Chapter 14) of this Manual may be kept in view as regards

opening of the LC. DBT payment should be made within 30 days of receipt of clean Bill of Lading/ Airway Bill / Proof of shipment and such other documents as are provided for in the contract, but such payments will be subject to deductions of such amounts as the Seller may be liable to pay under the agreed terms of the contract. No advance payments should be made, unless specified in the RFP. If so specified in the RFP and in the Contract, advance payment shall be as specified at Paragraph 6.25 (Chapter 6). Advance payment may be made against appropriate Bank Guarantee and proforma invoice as per the terms of the contract. Other provisions as per Paragraphs 7.10 to 7.13 shall also be applicable.

**7.29.3 Confirmation of Bank Guarantees.** Bank Guarantees shall be from any Indian Public or Private Sector Scheduled Commercial Bank (SCB) (as notified by RBI) or First Class banks of international repute whose details have to be furnished in the commercial bid. In case of international banks, the Buyer reserves the right to consult Parliament Street Branch of State Bank of India, New Delhi and as per their recommendations, seek confirmation of Bank Guarantee(s) by counter guarantee from an Indian Public or Private Sector SCB at Seller's cost. Guidelines on confirmation of BGs of Foreign Banks by Indian Banks are placed at **Appendix K**.

### **7.30 Standard Terms of Delivery**

**7.30.1** Paragraph 7.8 provides for the mode of transportation, which should be decided keeping in view that timely delivery is the essence of a contract. Standard terms governing delivery of goods/services are as follows:-

- (a) Delivery of goods/services shall be effected within specified days from the date of signing the contract, and the date(s) of delivery/ stage deliveries shall be the date of clean-on-board Bill of Lading/ Airway Bill/ as per the Incoterms agreed to in the RFP. Further, each contract will clearly specify the date of delivery/ date on which the items will be ready for inspection. The prescribed delivery schedule(s) should be firm and not open-ended. Provisions of Paragraph 7.9 will also be applicable.
- (b) Where inspection by the Procuring Entity prior to delivery is provided for, no stores will be considered ready for delivery until the Procuring Entity or his authorised representative certifies in writing that the stores have been inspected and approved by him.
- (c) The stores will be shipped by sea/ air as specified in the contract. All costs of packing, insurance as per applicable

Incoterms, internal transportation, fees of forwarding agents, warehousing charges, port trust, dock and harbour dues and all other expenses, as may be incurred for the purpose and up to the point of delivery of the stores on board the nominated ship/ aircraft, shall be paid by the seller. Provisions of Paragraph 7.8 shall also apply.

- (d) The contract or any part thereof, if delivered in more than one instalment, shall be deemed to be complete, and the contract price for the delivered goods would become payable to the seller, only when all terms and conditions relevant to that delivery as per the provisions of the contract have been completed.
- (e) The goods/services are considered as delivered by the Seller and accepted by the Buyer, when they conform to the following:-
  - (i) **In Respect of Quantity.** According to the number of packages in sound external condition and the weight as shown in the shipping documents.
  - (ii) **In Respect of Quality.** According to the quality stated in the logbooks/ certificates and as specified in the contract.

### **7.31 Inspection**

**7.31.1** Provisions for Self-Inspection as per Paragraph 6.29.1 (Chapter 6) shall be applicable, if provided for in the RFP and the contract.

**7.31.2** **Inspection by the Buyer.** However, where the contract specifies actual inspection by the Buyer, the Seller will arrange for the inspection, in consultation with the Buyer. The guidelines for Inspection by the Buyer shall be as per Paragraph 6.29.2 (Chapter 6) subject to the provisions of Paragraph 7.5.

### **7.32 Packaging and Dispatch**

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

- (a) The Seller shall be responsible for any loss or damage or expenses incurred by the Purchaser because of inappropriate packages.
- (b) Packages containing articles classified as hazardous should be packed and marked in accordance with the requirements of the appropriate regulations governing their dispatch by sea or air.

- (c) The Seller shall also comply with the detailed packaging and dispatch instructions, if specified in the contract.
- (d) The responsibility of sending dispatch documents will rest with the Seller. Detailed shipping instructions issued from time to time by the Buyer will apply.

### **7.33 Warranty and Claims**

- 7.33.1** Provisions as per Paragraphs 7.21 and 7.22 will be applicable. Provisions as contained in Chapter 9 shall also be duly considered in applicable cases.
- 7.33.2** **Warranty for Use and Storage in Indian Conditions.** The Warranty shall be applicable for use and storage of stores in Indian Climatic Conditions or any special conditions as specified in the RFP/Contract.
- 7.33.3** **Technical Life.** Technical life of the unit to be delivered for replacement will not be less than the remaining technical life of the faulty/ defective/ deficient unit being replaced, or the actual life of such a unit as specified in the contract, whichever is more.
- 7.33.4** **Time Frame for Raising the Claim.** The time frame for raising the quantitative and qualitative claims, as well as quality claims during warranty shall be as given in Paragraph 7.21.

### **7.34 Force Majeure**

- 7.34.1** As mentioned in Paragraph 7.20, provisions of Force Majeure, as per Paragraph 6.20 (Chapter 6) shall be applicable in case of foreign procurements also.

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

- 7.35.1** **Undertaking by the Seller.** Provisions for submission of an undertaking by the Seller to refrain from use of undue influence, as per Paragraph 6.21 (Chapter 6) shall be applicable in case of foreign procurements also.

### **7.36 Access to Books of Accounts**

- 7.36.1** **Access to Documents/ Information.** Provisions of Paragraph 6.22 (Chapter 6) shall be applicable in case of foreign procurements also.

### **7.37 Patents and Other Industrial Property Rights**

**7.37.1** Provisions of Paragraph 6.23 (Chapter 6) shall be applicable in case of foreign procurements also.

### **7.38 Government Regulations**

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

**7.38.2** **Passing on of the Obligation to a Third Party.** Provisions of Sub-Paragraphs 6.10.2 (n) and (o) will also apply to foreign procurements.

### **7.39 Customs Duty Drawback**

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

### **7.40 Non-Disclosure of Contractual Documents/Information**

**7.40.1** Provisions of Paragraph 6.24 (Chapter 6) shall be applicable in case of foreign procurements also.

### **7.41 Training**

**7.41.1** The Seller shall, if so indicated in the RFP/ Contract, provide facilities for the practical training of trainees from India and/ or their active employment on the manufacturing processes of the stores, as well as Quality Assurance procedures. Training may also be imparted in India at the site.

### **7.42 Aspects not Covered**

**7.42.1** Any aspects not specifically covered in this Chapter, and applicable in case of Foreign Procurement will be as per the relevant provisions in other Chapters of this Manual.

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## **CHAPTER 8**

### **RATE CONTRACT**

#### **8.1 General**

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

**8.1.2 Definition.** A Rate Contract (RC), also known as Price Agreement (PA)/ Framework Contract is an agreement between the purchaser and the supplier for supply of specified goods (and allied services if any) at specified price and terms & conditions (as incorporated in the agreement) during the period covered by the Rate Contract. No quantity is mentioned nor is any minimum drawal guaranteed in the Rate Contract. The Rate Contract is in the nature of a standing offer from the supplier firm. The firm and/ or the purchaser is/ are entitled to withdraw/ cancel the RC by serving an appropriate notice on each other giving 15 (fifteen) days time or as per mutually agreed terms/ period duly mentioned in the RFP. However, once a supply order is placed on the supplier for supply of a definite quantity in terms of the rate contract during the validity period of the rate contract, the supply order becomes a valid and binding contract, and the supplier is bound to supply the ordered quantity.

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

- (a) Items required by several users on recurring basis and having clear specifications, if not available on Government e-Marketplace (GeM).
- (b) Fast moving items with short shelf life or storage constraints.
- (c) Items with minimum anticipated price fluctuation during the currency of the RC. Items with high probability of considerable price fluctuation should not be considered to be covered by RC except for short term contract.

- (d) Spares/ repairs of modules as part of post-sales support of equipment in service. However, this will not include the items under rate repair contracts as provided for in Chapter 9 of this Manual.
- (e) Till such time the provision for RC becomes available on GeM, RC cases may be processed through DePP.

**8.1.4 Purchase of Goods/ Services Directly under RC.** Goods/ services for which Central Procurement Agency has rate contracts, can be procured directly from the suppliers. Apart from the original RC holding firm, the term 'Supplier' includes the authorised dealers/ distributors/ agents of the RC holding firm, provided the latter has predisclosed the name/s of these agents/ authorised dealers at various locations or the local stockists/ authorised dealers can substantiate their claim by producing a certificate from the RC holding firm to the effect that they are the firm's authorised stockist/ distributor/ agent/ dealer or can show an agency agreement between the supplier and the RC firm as proof thereof. The purchase must be accompanied by a proper manufacturer certification. While resorting to such procurement, it should be ensured that the prices to be paid for the goods do not exceed those stipulated in the rate contract and the other salient terms and conditions of the purchase are in line with those specified in the rate contract. The Purchaser should also make its own arrangement for inspection and testing of such goods, where required and payment can be made by their respective paying agencies. In the case of drugs, consumables, FOL, hygiene chemicals, etc., the inspection may be done by DGQA/ NABL accredited Labs but any costs incurred thereon should be borne by the Suppliers.

**8.1.5 Items Already on Central Procurement Agency Rate Contract.** No Rate Contract should normally be concluded by lower formations for items in respect of which Rate Contracts are already in place by Central Procurement Agency/ Designated Agency. If, however, it becomes necessary to enter into rate contracts for items which are already on Rate Contract by Central Procurement Agency/ Designated Agency, the reasons for doing so should be recorded and CFA's approval be taken after consulting Integrated Finance. Other Services/ Organisations may also avail valid Rate Contracts concluded by Central Procurement Agency/ Designated Agency, provided the terms and conditions are adhered to and there is no downward trend in prices.

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

**8.2.1 Authorities Competent to Conclude Rate Contracts.** Rate Contract or Price Agreement for goods and services should be concluded

only by the authorised Central or Local Procurement Agencies. The RC concluding agency should post the descriptions, specifications, price and other salient details of all the rate contracted goods, appropriately updated, on its website and Defence e-Procurement Portal <<https://defproc.gov.in>>.

**8.2.2 Long-Term Product Support**. The Price Agreement for long-term product support should be concluded with the approval of the authorities to whom such powers have been specifically delegated. Long-Term contracts for procurement of spares and repairs of modules through Rate Repair Contracts (RRCs) shall be ensured as part of post-sales support of equipment in service. Service HQs/ other Organisations are to ensure conclusion of RRCs to enable faster placement of Orders for provisioning of spares/ repairs of defective equipment, to maintain requisite inventory levels.

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

**8.3.1 Period/Extension of Rate Contract**. A Rate Contract should normally be concluded for a period up to two years. RRC and Long-Term Product Support Contracts may be concluded for a period up to five years. All contracts concluded for less than two years (five years for Long-Term Product Support) may be extended by the CFA so that the total period of RC including extension, does not exceed two / five years (as applicable). The period of the rate contract, including any extension contemplated upto two / five years, as applicable, shall be stated upfront in the RFP.

**8.3.2** It should be ensured that new rate contracts are made operative right after the expiry of the existing rate contracts without any gap for all rate contracted items. If a case for new rate contract has been initiated, but it is not possible to conclude new rate contracts due to some special reasons, timely steps are to be taken to extend the existing rate contracts with same terms, conditions, etc., for a maximum period of upto three months at a time, after obtaining 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 extension. Such an extension of an RC beyond a period of two / five years (as applicable) would need the prior approval of the Secretary of the Department concerned at MoD in consultation with MoD (Fin). Also, while extending the existing rate contracts, it shall be ensured that the price trend is not downward.

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

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

**8.4.2** On each occasion any supply Order is placed against the Rate Contract so concluded, the appropriate CFA depending upon the value of the Supply Order, either with or without IFA Concurrence, as per delegated Financial Powers, shall accord AoN and Expenditure Angle Sanction in one go.

## **8.5 Process of Concluding Rate Contracts**

**8.5.1 Indent/ Requisition.** A Rate Contract can be concluded based on estimated requirements, over the period of RC, of various users under the authority processing an RC proposal. It is desirable to indicate a wholesome requirement after consulting other organisations/ establishments to get economical rates before issuing RFP for RCs. The contract concluding authority must scrutinise the estimates for their completeness in terms of authority for raising the indent, specifications of the item, desired delivery schedule, packing and preservation, etc.

**8.5.2 Selection of Firms.** Rate Contracts should normally be concluded only with the registered firms/ vendors, based on their capacity assessment by the designated Registering/ Inspecting Agency. In respect of new items being brought on Rate Contract for the first time, RC can be awarded to unregistered firms/ vendors also on the basis of favourable technical capability, capacity and financial status. The following aspects are to be considered while framing criteria for award of Rate Contracts:-

- (a) Rate Contracts shall be awarded after inviting online tenders.
- (b) Rate Contracts shall be awarded to the suppliers registered for broad category of items/ products or services, with eligible suppliers obtaining certificate of registration or the suppliers having green channel status as per Paragraph 3.9.3 (Chapter 3) or BIS licences for the tendered items, and fulfilling the laid down eligibility and qualification criteria, including availability of ISI mark, etc. Suitable stipulations are to be incorporated in the tender enquiry documents to this effect. In respect of new items being brought on rate contract for the first time where there is no registered supplier (for the subject items), the requirement of registration can be relaxed with the approval of competent authority. The award of such rate contracts will, however, be subject to the suppliers' satisfactory technical and financial capability.
- (c) Some of the tenderers (who are otherwise registered) may also be holding current rate contracts and/ or held past rate contracts for the required goods/ services. Their performance against such earlier/ current rate contracts shall be critically reviewed before they are considered for award of new rate contracts. Specific performance and achievement criteria as

on a selected cut-off date, is to be evolved for this purpose and incorporated in the tender enquiry document. The tenderers will be asked to furnish the relevant details (along with their tenders) to enable the purchaser to judge their performance and achievement against the past/current rate contracts. These criteria are to be evolved and decided by the purchase organisation during procurement planning stage for incorporation in the corresponding tender enquiry documents.

**8.5.3 Price Negotiations**. Price negotiations with the tenderers should be as per provisions contained in Paragraph 5.19.3 to 5.19.7 (Chapter 5). Other relevant provisions of the Contract should be as per Chapter 6.

**8.5.4 Signing of Rate Contract**. Provisions of Paragraph 6.9 (Chapter 6) may be referred to.

## **8.6 Conclusion of Parallel RCs**

**8.6.1 Parallel Rate Contracts**. In case it is observed that a single supplier does not have enough capacity to cater to the entire demand of an item or where it is desirable to have a wider vendor base due to criticality of the items, it may become desirable to conclude parallel RCs with more than one firm. The CFA, based on the merits of each case, may decide the number of firms to be awarded RC for an item so that Direct Demanding Officers will have a wider choice. Efforts should be made to conclude parallel RCs with firms located in different parts of the country to cater to users over a wider geographical spread. Clause of Apportionment as per Paragraph 6.37 (Chapter 6) may also be applied, if required.

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

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

**8.7.1 Special Conditions**. Certain conditions of rate contract differ from the usual conditions applicable for other contracts. Such important special conditions relevant to rate contracts, as well as certain general conditions, are as follows:-

(a) Earnest Money Deposit (EMD) is not applicable in case of registered firms but will apply in case of bids from unregistered firms.

- (b) In the Schedule of Requirements, no quantity is mentioned; only the anticipated drawal may be mentioned without any commitment.
- (c) The purchaser reserves the right to conclude more than one rate contract for the same item.
- (d) Since 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, the purchaser as well as the supplier may withdraw from the rate contract by serving suitable termination notice to each other. The prescribed notice period shall generally be fifteen days or as specified in the RFP or as per mutually agreed terms/ period mentioned in the Contract.
- (e) In case of an emergent requirement, the purchaser may purchase the same item through a separate contract with a new supplier.
- (f) Usually, the terms of delivery in rate contracts are free delivery at consignee's site. This is so, because the rate contracts concluded by Central Purchase Agency are to take care of the users spread all over the country.
- (g) 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. A sample format of Supply Order against Rate Contract is placed at **DPMF 31**.
- (h) The purchaser and the authorised 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.
- (i) Provisions of Price Variation clause as per Paragraph 6.26 (Chapter 6) may be applicable in Rate Contracts if included in conditions of contract at the discretion of CFA based on market dynamics.
- (j) The Rate Contract shall be guided by "Fall Clause".

**8.7.2 Fall Clause.** Fall clause is a price safety mechanism in rate contracts. The fall clause provides that if the rate contract holder reduces its price or sells or even offers to sell the rate contracted goods following conditions of sale similar to those of the rate contract, at a price lower than the rate contract price, to any person or organisation 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 7 days' time to intimate their revised prices, if they so desire, in sealed cover to be opened in public on the specified date and time and further action taken as per standard practice. On many occasions, the parallel rate contract holders attempt to grab more orders by unethical means by announcing reduction of their price (after getting the rate contract) under the guise of Fall Clause. This situation is also to be dealt with in similar manner as mentioned earlier in this Paragraph. It is, however, necessary that the purchase organisations keep special watch on the performance of such rate contract holders who reduce their prices on one pretext or other. If their performance is not up to the mark, appropriately severe action should be taken against them as per Guidelines at Chapter 3.

**8.7.3 Performance Security.** Depending on the anticipated overall drawal against a rate contract and, also, anticipated number of parallel rate contracts to be issued for an item, the authority concluding the Rate Contract(s) shall obtain performance security @3%-10% of the estimated value of overall drawl against the RC from the Rate Contract holders. In case period of RC is more than one year, Performance Security shall be obtained on the basis of the anticipated annual drawl and it would need to be ensured that the security is renewed annually before its expiry. A suitable clause to this effect is to be incorporated in the tender enquiry documents. Provisions at Paragraph 6.28 (Chapter 6) may also be referred. Performance Security shall not be demanded in the supply orders issued against rate contracts.

**8.7.4 Action for Violation of RC Conditions.** Wherever, there are failures against the Rate Contract in terms of timely delivery, quality of goods/ services or any other violation of the conditions of the Rate Contract, such failures should be timely reported by the DDOs to the Agency/Authority concluding the Rate Contract for initiating suitable action against the Rate Contract holders, including initiating recovery from pending bills/performance security.

## **8.8 Payment**

**8.8.1** Payment for supplies obtained under Rate Contracts against individual Supply Orders shall be as per Paragraph 6.31 (Chapter 6).

## **8.9 Aspects not Covered**

**8.9.1** Any aspect(s) not specifically covered in this Chapter, will be as per relevant provisions in other Chapters of this Manual.

## **CHAPTER 9**

### **REPAIR/ MAINTENANCE CONTRACTS**

#### **A. REPAIR CONTRACTS**

##### **9.1 General**

**9.1.1 Peculiarity of Repair Contracts.** The contracts for repair/ maintenance of equipment are generally formulated and processed in the same manner as the contracts for procurement of stores. However, in some respects, repair/ maintenance contracts are different from procurement contracts as they have some unique features related to their processing, as also in respect of the terms and conditions of contracts, as set out in this Chapter.

**9.1.2 Applicability.** The provisions of this Chapter shall apply to all repair/ maintenance contracts, other than repair of ships/ submarines which are covered in Chapter 13. In the case of equipment sourced from foreign OEMs, efforts may first be made to identify/ develop domestic vendors to undertake repairs/ maintenance. In the interim period, if required, repairs/ maintenance may be undertaken from foreign OEM/ OEM authorised agencies/ other possible foreign sources, after obtaining approval of Raksha Mantri or the competent authority as designated by MoD from time to time [as per provisions of Paragraph 2.3.2 (Chapter 2)].

##### **9.2 Unique Features in Processing of Repair Contracts**

**9.2.1 Preparation of Indents.** The repair indent is to be prepared by the Repair/ Maintenance Agency or Technical establishment concerned, which shall clearly specify the type of equipment, quantity, type of repairs, history of previous major repair(s), name of the manufacturer (OEM), Total Technical Life (TTL), assessed cost of the repair, etc. The amount shall preferably be assessed or, if such assessment is not feasible, obtained through a nonobligatory budgetary quote from all possible sources, including the OEM concerned.

**9.2.2 Selection of Vendor.** In the case of indigenous highly specialised equipment, depending on their complexity, the repair/ maintenance shall preferably be carried out by the OEM and in case the OEM expresses inability to undertake the repairs/ maintenance, any agency authorised by the OEM may be approached. In the event of there being no OEM authorised agency to undertake repairs/ maintenance, other possible domestic sources possessing the requisite capability to undertake the repairs/ maintenance, may be approached. The technical capability to undertake repair/

maintenance shall be verified by the Repair/ Maintenance Agency or

Head of Technical establishment concerned. The contractor has to be made accountable for the performance of the equipment post repair. Provisions of suitable PBG and Warranty Guarantee are to be included in the contract. In the case of other non-specialised equipment/ Local Repair Contracts, the repairs/ maintenance may be undertaken directly through trade, if considered feasible, within the delegated powers of the CFAs.

**9.2.3 Request for Proposal.** The Request for Proposal (RFP) is to be carefully drafted and shall invariably include the following:-

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

### **9.3 Terms and Conditions Unique to Repair/ Maintenance Contracts**

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

- (a) The Customer shall deliver the repairable equipment to the Contractor as per negotiated/ agreed terms and conditions of the Contract between both the parties. The period of delivery may be varied but it is to be fixed in advance and indicated in the RFP/contract.
- (b) The equipment shall be dispatched for repair in the condition as specified in the Contract, fully equipped with the details of all

detachable and removable units/ parts.

- (c) Together with the equipment, the Customer shall send the technical documentation (Certificates, Logbooks, etc.), containing the total usage time, usage time after repair, the number of repairs, the reason for dispatching of the equipment for repair, and also information about the scheduled servicing. Documents shall have records of operating time and maintenance checks executed on the equipment.
- (d) The Customer shall not dispatch for repair, incomplete or damaged equipment for repair, which requires additional repair by the same Contractor and not provided for in the contract.
- (e) If available, the Customer shall provide the spares/ accessories for replacement along with the equipment, as per the terms of the Contract.

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

- (a) If during the process of repair, it is found that the equipment is incomplete, damaged or cannot be repaired in terms of the contract, the Contractor shall, if possible, install missing parts of the equipment or change parts of the equipment which cannot be repaired, only in consultation with the Customer.
- (b) The Customer shall pay additional cost to the Contractor for the new/ changed spare parts (units, sub-modules, PCBs, etc.). The cost of such parts shall be mutually agreed upon by both the parties to the contract and an Additional Agreement shall be signed by the Customer within 60 days (or as specified in the contract) after the date of handing over of the equipment to the Contractor. If there is no possibility of installing missing parts, the Contractor shall inform the Customer about this within 30 days from determination of the technical condition of the equipment, but not later than 60 days after receipt of the equipment for repair.
- (c) **Growth of Work (GoW) For Aviation Repair & Overhaul (ROH) Contracts.** Scope of Work (SoW) for aviation ROH contracts is usually non deterministic and dynamic in nature with regard to resources required for completion, due to possibilities of additional technical defects/ services/ maintenance nonconformities/ alterations, etc., being discovered during work execution. This results in unforeseen growth in Scope of Work which was not anticipated/ defined at the contract signing stage. Such growth of work is dependent on factors such as vintage/ condition/ exploitation pattern of the equipment, and maintenance philosophy in vogue. Additional financial sanction

up to 15% of contract value (including taxes and duties) may be catered for such growth of work in aviation ROH contracts at the AoN stage and in the contract, wherever required. If GoW has been sanctioned in the Contract by CFA, the Contract Operating Authority (COA) shall have the powers to accept variations within 15% of the approved estimates, or the approved ceiling of GoW on the basis of costs negotiated with the Bidder (within the ceiling of GoW approved by CFA). Wherever negotiated rates are not available, the prices shall be negotiated by the COA in consultation with the IFA (of COA) within the ceiling of GoW approved by CFA as part of the AoN and the negotiated cost is to be approved by COA (within the contracted sanctioned cost). Payments in all such cases would be made as per actual, subject to the respective ceiling of GoW. In such cases, provisions of Sub Paragraph 9.3.2 (b) shall not be applicable. A post servicing/ ROH report would be drawn up for distribution to all, including the CFA.

**9.3.3 Repair Order Contract (ROC).** Under this contract, the process normally involves evaluation of the Scope of Work (SoW), followed by undertaking repair/ service. If historical data is not available, the ROC may be placed in two phases, viz. initial contract for assessment/ Teardown Testing and Evaluation (TT&E), followed by a separate supplementary contract for undertaking repairs/ services.

**9.3.4 Door-To-Door Repair Contract.** Under this contract, the Contractor is responsible for collection of the unserviceable items, repair and delivery post repairs from/ to a pre-designated location of the consignee. The responsibility of the Contractor and the predesignated location should be clearly defined in the RFP and the Contract.

**9.3.5 Rate Repair Contract (RRC).** RRC is an agreement between the buyer and the seller for repair of an anticipated number of repairable/ replaceable, at specified price, and terms and conditions, as incorporated in the contract, during the period covered under the Rate Repair Contract. Anticipated quantities of repairable/ replaceable is derived for the specified contract period based on the past repair data, or through any other scientific method. A fixed rate is negotiated with the seller for each item being sent for repair. During the period of contract, the repair cost of each item would remain the same.

**9.3.6 Sustenance Contract.** Weapon systems/ equipment which are procured without ToT/as per terms and conditions presented by the OEM/ in small quantity needs to be supported by their respective OEMs for sustenance throughout their life cycle. A follow on support through Sustenance Contracts like Performance Based Logistics (PBL)/ Follow-on-Support (FoS)/ Additional Support Agreement (ASA)/ Long Term Support Agreement (LTSA) etc., may accordingly

be required for sustenance of such equipment throughout their life cycle. The terms of such contracts may contain a provision to include/ exclude, specific services like replacement of unserviceable items/ repairs of repairable items/ Field Service Representative (FSR) support/ etc. Sustenance Contracts may be extended on mutual agreement between parties for the agreed duration and scope, with the approval of competent authority. Any additional services, if required, may be negotiated and agreed upon.

**9.3.7 Sustenance of Weapon Systems/ Equipment procured under IGAs through arrangements like Foreign Military Sales (FMS).** Repair/ maintenance contracts, including sustenance contracts of the weapon systems/ equipment procured under IGAs through arrangements like FMS process, may be processed based on mutually agreed provisions between the Governments of both the countries. Paragraph 1.3.20 (Chapter 1) is relevant in this regard.

**9.3.8 Procurement through MRO Hub in India.** In cases where ToT for setting up of MRO hub has been transferred to an Indian entity, either as part of the original contract, or as part of a Joint Venture (JV), or through an Indian subsidiary of the OEM, cases for procurement of spares, repairs and service support may be progressed with such an Indian entity on STE/ PAC basis, provided there is no other technically qualified/ capable Indian vendor.

#### **9.4 Delivery**

**9.4.1 Date of Delivery to the Contractor.** The date of delivery of the equipment for repair, is the date on which the delivery-acceptance report is signed by the representatives of the Contractor and the Customer, or the date on which the equipment is handed over to the Contractor post repair assessment at the premises of the Customer, whichever is earlier.

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

#### **9.5 Guarantees**

**9.5.1 Technical Life, Breakdown, etc.** The following terms relating to guarantee of the repaired equipment shall be included in the RFP and the contract:-

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

(b) All the breakdowns and deficiencies, which may occur within the warranty period without a fault of the Customer, shall be set right within 45 days or as specified in the RFP/ Contract, and all the expenses are to be paid by the Contractor.

**9.5.2 Warranty/ Guarantee to be Specified.** Warranty and Guarantee periods of repaired/ replaced parts shall be specified in the RFP and the Contract.

## **B. MAINTENANCE CONTRACTS**

### **9.6 Annual/ Comprehensive Maintenance Contracts**

**9.6.1** Some goods, especially sophisticated equipment and machinery, need proper maintenance for trouble-free service. For this purpose, Annual or Comprehensive Maintenance Contracts may be entered into either with the manufacturer/ supplier of the goods, or with another eligible firm, not necessarily the manufacturer/ supplier of the goods in question, to provide maintenance support for a period to be specified beyond the warranty period. AMC for longer periods could be considered for specialised equipment requiring assured support so as to obtain best value for money, particularly in cases where vendors are limited. The Buyer is to decide this aspect on a case-by-case basis. Maintenance contracts shall commence only on completion of the warranty period of the procurement contract.

**9.6.2** While procuring maintenance services like Annual or Comprehensive Maintenance Contracts, it may be ensured that major upgradation/ modification/ repair of the equipment are not clubbed with the AMC Procurement.

**9.6.3 Annual Maintenance Contracts (AMC).** AMC shall include maintenance and incidental repair services by the Service Provider in order to ensure serviceability of the equipment covered/ services desired for predetermined annual periods. The spares consumed in execution of these services are to be provided by the Buyer, or cost paid to the Service Provider, in addition to the AMC charges. In some AMC instead of seeking total AMC rates, cost of services of specialist/s in terms of pre-determined man-day rates is also sought. Therefore, the rates for Services of Specialists (wherever applicable) and hiring Special Tools comprising all-inclusive man-day rates at shore, and on operational platforms, viz. ships at sea, aircraft, etc., are to be submitted as part of the bid. Similarly, pricing of recurring consumables and major spares may also preferably be sought and kept on record for future reference.

**9.6.4 Comprehensive Maintenance Contracts (CMC).** CMCs are concluded for a predetermined period, in multiples of annual

periods. The scope of CMC, in addition to services of the Specialists, as mentioned for AMC, include provisioning of spares, tools and equipment, as required for maintenance and repair of the equipment. In this arrangement, the OEM ensures that the down time of the equipment does not exceed the maximum period stipulated in the CMC. In such cases, CMC shall include all corrective and preventive maintenance of the systems, equipment and machinery in satisfactory working order, like Planned Preventive Maintenance (PPM), repairs, servicing, calibration, replacement of defective parts, sub-assemblies, equipment, preservation/ de-preservation, as applicable. CMC shall ensure performance of the equipment in the range and accuracies as specified in the RFP. The equipment proposed to be under CMC shall be listed along with their locations. An equipment repair logbook shall be maintained to keep a record of the equipment down time during defect rectification.

**9.6.5 Concluding of AMC/ CMC.** AMC/ CMC may be concluded for a period up to five years at a time, unless AMC/ CMC provisions are included in the main procurement proposal, in which case AMC/ CMC may be concluded for longer periods depending on the lifespan of the equipment. In case the period of AMC/CMC is envisaged in the RFP for more than one year, discounting cash flow technique ( as per details in para 5.33.5) may be adopted to arrive at the net present value for ranking of bids and to decide L 1 accordingly. A suitable provision in this regard may be incorporated in the RFP. The total value of the case for proposed period of AMC/ CMC will determine the CFA. If AMC/ CMC provisions are included in the main procurement proposal, then the total value of the case (including AMC/ CMC) shall determine the CFA. CFAs may also approve extension of existing AMC/ CMC cases with same terms and conditions/ price for a combined period of upto five years, provided:-

- (a) The combined value of original contract and extended contract falls within their delegated financial powers.
- (b) It is certified that there is no downward trend in prices.
- (c) Performance of existing Seller is satisfactory.
- (d) It is administratively convenient to do so.

**9.6.6 Special Conditions applicable for AMC/ CMC.** Some conditions of AMC/ CMC differ from the usual conditions applicable for other contracts. Some such important conditions are as follows:-

- (a) If the maintenance contract is to be entered into with the supplier of the goods, then suitable clauses for this purpose are to be incorporated in the RFP for procurement of the goods

itself, and while evaluating the offers, the cost component towards maintenance of the goods for specified number of years is also to be added in the evaluated tender value on overall basis, to decide the inter se ranking of the responsive tenderers. Equipment with a lower quoted price may carry a higher maintenance liability. Therefore, the total cost on purchase and maintenance of the equipment, over the period of the maintenance contract, is to be assessed to consider its suitability for purchase.

- (b) However, if the maintenance contract is to be entered into with an eligible supplier separately, then a separate tender enquiry is to be floated for this purpose, and tenders evaluated and ranked accordingly, for placement of the maintenance contract. Here, the supplier of the goods may also quote and his quotation, if received, is to be considered along with other quotations received.
- (c) The details of the services required for maintenance of the goods, the required period of maintenance and other relevant terms and conditions, including payment terms, are to be incorporated in the RFP.
- (d) The scope of work may include the following:-
  - (i) **Period.** The Service Provider shall provide AMC for a period as stipulated in the contract, covering repair and maintenance of the specified equipment and systems.
  - (ii) **Preventive Maintenance.** The maintenance of the equipment is to be carried out by the Service Provider at the Buyer premises. The equipment is to be maintained as per the Buyer specified maintenance schedules and equipment manuals. The number of visits by the Service Provider to the customer premises shall be at least once a quarter, or as agreed to in the contract. The preventive maintenance team visiting the unit shall be composite and possess sufficient expertise and spares to carry out preventive maintenance activities and resolve any pending unserviceability issues of the equipment.
  - (iii) **Breakdown Maintenance.** In addition to preventive maintenance, the Service Provider shall also be responsible to undertake breakdown maintenance of the equipment. Defects on the equipment as and when observed, are to be intimated to the Service Provider by telephone/ fax/email. The Service Provider shall depute a team for undertaking repairs of the equipment within two working

days (or as specified in the RFP) from the reporting of the defect, in order to make the equipment operational. The Service Provider shall diagnose, test, adjust, calibrate and repair/ replace the goods/ equipment during the AMC/ CMC period. However, defective hard disks, strong devices, if any, of the equipment, are not to be returned to the Service Provider and shall be retained for destruction/ safe custody. The down time of the equipment shall commence from the time a defect is reported by the user, and the log of the same is to be maintained.

- (iv) **Calibration.** Periodic inspection and calibration schedules (to be defined by the Buyer), shall be provided by the Service Provider, to ensure operational availability of the equipment. Requisite certificates may be rendered whenever major repairs/ maintenance on equipment is undertaken.
- (v) **Spares.** The spares (sourced from the OEM/ OEM authorised vendor) shall be provided by the Buyer, or the cost of spares paid to the Service Provider in addition to the AMC charges, or supply of all parts, including consumables, if any, and material required for the optimal performance of the equipment, as per the Buyer defined specifications, shall be the responsibility of the Service Provider, as applicable in the terms of the contract.
- (vi) **Response and Repair Time.** During the AMC/ CMC period, the Service Provider shall carry out all necessary servicing/ repairs to the equipment/ system under AMC/ CMC at the current location of the equipment. The response time of the Service Provider shall not exceed the time specified in the contract from the moment the breakdown intimation is provided by the Buyer. Prior permission of the Buyer shall be required in case certain components/ sub-systems are to be shifted out of location. However, the remaining part of the equipment/ system shall be maintained in a serviceable condition to minimise downtime. Maximum repair turn-around time for equipment/ system shall also be as specified in the contract.
- (vii) **Software.** The Service Provider shall provide support for maintenance of the software(s) during the period of AMC/ CMC, which may include the following:-
  - (aa) Upgrades, patches, fixes to the Operating System (OS) and the application software.
  - (ab) Backup and restoration of software, as and when required.

- (ac) No malware certificate.
- (ad) Version of the software and Independent Verification and Validation (IV&V) certificate as per the applicable Capability Maturity Model (CMM) Level, depending on the criticality of the equipment.
- (ae) Method of checking the health of the software and debugging methods.

(viii) **Obsolescence Management.** The obsolescence management for the equipment delivered under the scope of contract may form part of CMC Services. The obsolescence management shall include providing "Form, Fit and Function" replacement of any system/ sub-system rendered obsolete during the period of CMC.

- (e) The terms of payment for the maintenance service shall depend on the nature of the goods to be maintained as well as the nature of the services desired. Generally, payment for maintenance is made on a half yearly or quarterly basis.
- (f) A Service Level Agreement (SLA) may be incorporated in complex and large maintenance contracts. SLA may indicate guaranteed levels of service parameters like percentage up-time, availability of equipment and performance output levels to be ensured from the equipment, channel of registering service request, response time for resolving the request, channel for escalation of service request in case of delay or unsatisfactory resolution of request, monitoring of Service Levels, provision of help lines, complaint registration and escalation procedures, non-degradation in performance levels after maintenance, maintenance of an inventory of common spares, use of genuine spares, and so on. LD clause in such maintenance contracts may be included for aspects like unacceptable delays in responses, degradation in performance output of machines, etc.
- (g) It is to be indicated in the RFP, whether the maintenance charges are to be inclusive of visiting charges, cost of spares/ consumables/ etc. If costs of spares are to be borne by the Procuring Entity, then a guaranteed price list is to be asked for, along with the bids. It is also to be clarified, whether room/ space, electricity, water connection, and so on, would be provided free of cost to the Service Provider.
- (h) A suitable provision in the form of Fall Clause, as per Paragraph 6.40 (Chapter 6) is to be incorporated in the RFP indicating that the prices charged by the Service Provider shall not exceed the

prevailing rates charged by him from others for similar services. While claiming payment, the Service Provider is also to give a certificate to this effect in the final bill.

(i) **Termination of Contract.** Sometimes, during the tenure of a maintenance contract, especially with a longer tenure, it may become necessary for the Buyer to withdraw the maintenance contract due to various reasons as brought out in Paragraph 6.16 (Chapter 6). For this purpose, a suitable provision is to be included in the RFP. Depending upon the cost and nature of the goods to be maintained, a suitable notice period (say one to three months), for such cancellation to come into effect, is to be provided in the documents. The maintenance contract could be terminated at any time without assigning any reason after giving a suitable notice as per RFP/ agreed to in the Contract. The Service Provider shall not be entitled to claim any compensation against such termination. However, while terminating the contract, if any payment is due to the Service Provider for maintenance services already performed, the same shall be paid as per the contract terms. In case total payments, including advance payment, if any, made to the Service Provider are more than the payments due for the services performed by the Service Provider, the difference in amount shall be returned by the Service Provider to the Buyer as per the mode specified in the contract or the buyer may resort to measures such as recovering from the bank guarantee.

## **9.7 Aspects not Covered**

**9.7.1** All other provisions of a Repair/Maintenance contract not covered in this Chapter, will be as specified in Chapter 6 or as per relevant provisions in other Chapters of this Manual.

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## **CHAPTER 10**

### **PROMOTING SELF-RELIANCE THROUGH INNOVATION AND INDIGENISATION**

#### **10.1 Introduction**

**10.1.1** Indigenisation refers to developing the capability and capacity to manufacture and produce the required goods and services within the country, which were either being imported or not in service so far. This typically involves a two-stage process, comprising the development of goods/services, followed by procurement of the product/s concerned, as opposed to the normal process of outright procurement. Towards this end, this Chapter lays down specific provisions for promoting indigenisation of defence goods and services, to result in greater indigenous production and manufacture of defence requirements.

#### **10.2 Atmanirbhar Bharat**

**10.2.1** With the articulation of 'Make in India' and 'Atmanirbhar Bharat' vision, the manufacturing of all kinds of defence equipment in the country has got tremendous impetus. However, self-reliance in the defence sector has two dimensions. First is the acquisition of new platforms and equipment that are indigenous. The second is the indigenous manufacture and repair of systems, components, spares and subassemblies to sustain the in-service platforms of foreign origin. Presently, repair and sustenance of foreign origin platforms entails considerable outgo of forex as well as continued dependency on foreign Original Equipment Manufacturers (OEMs) for spares, maintenance, repairs and overhauls. This impacts our strategic autonomy and defence preparedness. Achieving Atmanirbharta or self-reliance in both dimensions is a strategic imperative and should be seen as a national mission.

**10.2.2** *Atmanirbhar Bharat*, in the context of MoD, hence, refers to achievement of self-reliance in manufacturing and production of defence items, ammunition, spares, etc. as well as services within the country. The objective of self-reliance in defence is sought to be achieved through development of Defence items, spare parts etc. needed by the defence forces for sustenance and to ensure the availability of infrastructure required for manufacture and production of such goods/services within the country.

**10.2.3** Rule 153 (iii) of General Financial Rules provides that the Central Government may, by notification, provide for mandatory procurement of any goods or services from any category of

bidders, or provide for preference to bidders on the grounds of promotion of locally manufactured goods or locally provided services. Guidelines have further been laid down by Department for Promotion of Industry and Internal Trade vide Procurement Preference to Make in India (MII policy) order OM no. P-45021/2/2017-PP (BE-II)-part (4)vol-II dt 19<sup>th</sup> July 2024 and its amendments from time to time.

### **10.3 Applicability**

**10.3.1** The enabling provisions and procedures laid down in this Chapter are to be followed by the Defence Services and the Departments/ other Organisations as broad guidelines for processing and concluding development contracts for all goods and services covered by this Manual, and covers import substitutions of existing systems through indigenous design, development, repairs, reclamations, refurbishments, overhaul, fabrication, upgradation and product improvement of weapon systems, equipment, spares, services and all other related activities within the country.

### **10.4 Types of Indigenisation Contracts**

**10.4.1** Two main types of indigenisation contracts that can promote production of goods and services within the country are given below:-

(a) **Development Contracts.** Development contracts, unlike normal contracts/ supply orders, involve development work against given data/ technical specifications/ drawings or development of new product /technology without technical specifications or conduct of a technical life enhancement/ reliability improvements on a component, sub-system or a system of equipment, etc. Such contracts typically include uncertainties and risks during the development process, depending upon the complexity of the item under consideration. A sample format of Development Contract is placed at **DPMF 35**.

(b) **Fabrication Contracts.** Fabrication contracts refer to one-time contracts concluded with a contractor or an industry/ vendor for fabrication and supply of components, sub-assemblies or an assembly, which are not commercially available, against design drawings/ specifications to be supplied by the in-house agencies of MoD, namely Directorates of Indigenisation/ IIOs/ R&D Laboratories/ Establishments/ Workshops/ Depots/ Institutions etc.

Fabrication Contracts shall be concluded by following tendering procedures as in Chapter 5 of this Manual. A sample format of Fabrication Contract is placed at **DPMF 32**.

## **10.5 Indigenisation through Development Contracts**

**10.5.1** The Armed Forces operate and maintain weapon platforms which are either imported or indigenously developed in India. These systems are maintained and sustained by Base Workshops/ Base Repair Depots/ Equipment Depots/ Naval Dockyards/ Repair Yards etc. or by DPSUs or through OEM support. Constant changes in technology, bottle necks and dwindling support in supply chain from Foreign/ Indigenous OEMs, Obsolescence of systems, weapons/sensors, equipment, ammunition, clothing, etc., has necessitated indigenisation of imported equipment/ assemblies/ sub-assemblies and Indigenous weapon platforms to sustain them through their life cycle. The development contracts to conform to the existing laid down QRs/ enhanced QRs and meet the prescribed/ enhanced performance parameters, by undertaking the following:-

- (a) Design, development and fabrication of spares for Systems/ Sub-systems/ Equipment, etc.
- (b) Develop repair and sustenance technologies to carryout Repair and Overhaul, Life Extension, Reliability improvements, Obsolescence management, etc. through replacement/ refurbishment/Technology Insertions of Systems/ Sub-systems/Equipment, etc. The modifications to existing assets/systems for products/ solutions that, *inter alia*, result in time or cost saving or help to overcome a recurrent problem or enhancement of Operational efficiency.
- (c) Development and subsequent procurement through manufacture/ repair/ overhaul/ refurbishment of sub-systems/ subassemblies/ assemblies/ components/ system software / materials/ spares/ ammunition/ etc., not designed and produced in India, for product support of existing inventory of the Services/ICG/ other Organisations.
- (d) Develop and procure items comprising the entire/ part of an equipment and spares/ assemblies/ sub-assemblies/ maintenance being manufactured in India through Joint Ventures (JV)/ Transfer of Technology (ToT), etc. from foreign OEMs.

**10.5.2 Categories of Development contracts**. This category would

broadly fall into the following categories:-

- (a) **Import and Indigenous Substitution when Design/Specifications are Available.** Cases where Prototype models are to be developed and fabricated by the firm on the complete design data provided by the Indigenisation Agency/IIOs. This category need not necessarily entail design and development but will involve indigenous production. The design aspects for this category would always be based on a draft technical / design specification and other information to be provided by the Establishment/ Dte of Indigenisation/ Laboratory/ Workshop/ Depot or agencies involved in indigenisation as per para 10.10.
- (b) **Import and Indigenous Substitution when Design/Specifications are not available.** This category would consist of Systems/Sub-systems/Equipment for which design drawings and specifications, etc. are not available with indigenisation agency/establishment or ToT is not available. It entails indigenous design, development and production of goods and services. It may be undertaken under technical guidance and advice from the user or agencies involved in indigenisation as per para 10.10.
- (c) **Sustenance and Repair Know how.** This category would involve proposals related to development of Repair and Overhaul Processes, LE Checks, Reliability improvements, Technology insertions, etc, resulting in indigenous future production/ procurement. This category may involve collaboration/ consultancy with academia, institutes of repute, labs, Private industry etc. Development-cum-Production Partner(s) [DcPP(s)], viz. industry partner having capability for development/ upgradation and manufacturing, may be selected either by the buyer or by the research lab/ academic institution/ etc., in consultation with the buyer following fair, transparent and competitive process, for integral Design & Development (D&D) by the research lab/ academic institution along with the DcPP, and subsequent production by the DcPP.

#### **10.6 Eligibility for bidding for indigenization for Development categories.**

Indian vendors meeting the definition as per paragraph 1.3.16(a) (Chapter-1) without the additional conditions regarding ownership and control, will be eligible to bid for development category at para 10.5.2(a) above. Indian Vendors meeting the definition as per Paragraph 1.3.16 (a) (Chapter-1) including the conditions regarding ownership and control, will be eligible to bid for the development categories mentioned at para 10.5.2(b) and 10.5.2(c) above.

**10.7 Indigenous Content Requirement.** Indigenous Content (IC) in any given goods or service refers to the amount of value added in India. For the purpose of this Chapter, IC shall be arrived at, on the basis of the Base Contract Price (i.e. the Total Contract Price, less taxes and duties) of that item, besides meeting the conditions for Indian vendors and meeting the minimum 50% IC requirement as defined in Chapter 2 and its amendments from time to time. Bidders under development category also have to meet the commercial, financial and technical criteria for the vendors that may be determined by the Indigenisation Agency/ Directorate concerned, based on specific project requirements. A sample format for certification of Indian content by the vendor, is placed at **DPMF 33**. Indigenous content may be arrived at by excluding the cost of following elements of manufacturing/ production/ assembly (A sample format for computation of Indian content by the vendor, is placed at **DPMF 34** :-

- (a) Direct costs (excluding customs duties, freight/ transportation and insurance) of all materials, components, sub-assemblies, assemblies and products imported into India.
- (b) Direct and Indirect costs of all services obtained from non-Indian entities/ citizens.
- (c) All license fees, royalties, technical fees and other fees/ payments of this nature paid to agencies located outside India, by whatever term/ phrase referred to in the contracts/ agreements made by vendors.

**10.8 Procedure for Development Contracts.** All three categories of development contracts mentioned in para 10.5.2 may involve validations/ trials or field evaluations. Proposals for procurement under Development contracts, where reference prices of imports and their QRs may or may not be already available, will be processed as outlined in sub para below.

**10.8.1 Procedure for Development Contracts without Involving Validation/Trials.** Proposals under this Category may be processed as under and are to be read in conjunction with special provisions listed at Para 10.11: -

- (a) Exploration of capable sources/ vendors through issue of EoI in case applicable. EoI to include QRs, if available, or the functional characteristics/ technical details to the extent possible.
- (b) Obtaining AoN approval for the estimated development cost, cost of prototypes and the cost of Initial Order Quantity.
- (c) Issue of RFP to the identified capable vendors on OTE/LTE/ STE basis, as applicable

(d) Thereafter, normal processing as per provisions of Chapter 5 to be read in conjunction with special provisions at para 10.11

**10.8.2 Procedure for development contracts with Validation/ Trials.**

Proposals under this Category will be processed as under and is to be read in conjunction with special provisions listed at Para 10.11: -

- (a) Exploration of capable sources/ vendors through issue of EoI in case applicable. EoI to include QRs, if available, or the functional characteristics/ technical details to the extent possible.
- (b) Obtaining AoN approval for the estimated development cost, cost of prototypes and the cost of Initial Order Quantity.
- (c) The Indigenisation Agency shall decide whether a validation process (validation/trials) is required and, if so, it shall be indicated in the proposal for AoN.
- (d) Issue of RFP to the identified capable vendors on OTE /LTE/ STE basis, as applicable. The RFP would define a validation/ trials process, the scope and duration thereof shall also be finalised and indicated in the RFP. It is to be mentioned in the RFP that the vendors found technically compliant shall be required to provide specified quantities of the item on 'No-Cost, No-Commitment' (NCNC) basis for trial evaluation/ testing. The period within which the vendor is to submit the equipment/ sample after being found technically compliant shall be indicated in the RFP.
- (e) The RFP is to solicit technical and commercial offers separately and may also have a provision for pre-bid conference prior to submission of the offers, so that the technical and other issues are clarified to vendors.
- (f) The technical evaluation shall be a two-stage process for cases requiring validation/ trials. After the technical bids are opened, the TEC shall short-list the vendors that are technically compliant, and the TEC Report shall be approved by the CFA. Thereafter, the technically compliant vendors shall go through the process of evaluation/ testing. The evaluation/ testing shall ideally be completed within a period not exceeding eight months (or as specified in RFP) from receipt of the equipment/ sample from the vendors. The

Validation Trial/ Testing Report shall be again ratified by the TEC and approved by the CFA.

(g) **Opening of Commercial Offer After Trial Evaluation/ Testing.** The commercial offer shall be opened only after acceptance of the TEC/ Validation Trial/ Testing Report of those vendors who have been recommended as technically compliant. It is to be ensured that the commercial offer remains valid until placement of supply order/ signing of contract.

(h) **Dispensing with Trial Evaluation/ Testing.** For equipment available Commercial off-the-shelf (COTS), which are upgrades of in service items and have requisite International Standards (IS)/ Bureau of Indian Standards (BIS) or equivalent certification, the Service HQs/other Indigenous Organisations may accept the equipment on the basis of self-certification by the vendor without going through the validation/ testing process, provided it is confirmed by the QA Agency/ AHSP or any other technical agency concerned. However, in such cases also, the TEC Report shall be approved by the CFA.

(i) Thereafter, normal processing as per provisions of tendering vide Chapter 5.

**10.8.3 Procedure for Sustenance and Repair know how Development Category.** The Procedure for repair and Overhaul Technologies, conduct of a Technical Life Enhancement/ Technology Insertions on a component, sub-system, or a system of existing equipment etc, will be initiated by Indigenisation agencies as listed at Para 10.12. The procedure for processing the subject cases will be as per procedures enumerated at Chapter 5 Para 5.26.

**10.8.4** In case of proposals relating to import substitution through Joint Ventures (JV)/ Transfer of Technology (ToT) etc. from foreign OEMs, the Indian vendors, while responding to the RFP, shall ensure that their foreign partner(s) from whom technology transfer is obtained/purchased, are OEMs or their authorised licensees, design agencies or government sponsored export agencies. In addition, such foreign partner(s) should not have been debarred, banned, suspended or blacklisted by the Ministry of Defence. At the same time, guidelines in Paragraph 10.14.3, emphasising ownership of technology/ IPRs rather than payment of ToT fees/ royalty in perpetuity, may also be kept in view.

**10.8.5** All successful bidders of development contracts will be eligible for the special benefits extended for development projects/ contracts, as per Paragraph 10.18

## **10.9 Suo moto proposals.**

**10.9.1** The Suo moto proposals received from the industry/ manufacturers/ Start-ups/ MSEs, etc., may also be considered and progressed for implementation, if found viable and meet defence requirements. However, Indigenisation Agency/ Directorate may explore multivendor options through issuance of an EoI, if feasible, before progressing the case as a resultant single vendor case.

**10.9.2** In case a vendor offers a developed prototype/ indigenous solution on suo-moto basis, the same may be pursued by the vendor without any obligation of procurement by the Services. The vendor may participate in the open bidding process initiated by the Provisioning Agency subsequently.

## **10.10 General Guidelines**

**10.10.1** In view of the inherent nature of development contracts entailing uncertainties and risks, it is not possible to lay down a rigid set of guidelines/ rules covering all contingencies in such contracts. For the same reason, the norms/ procedures to be followed in case of development orders need to be flexible and industry-friendly, provide for requisite handholding, make allowances for uncertainties, and cater for mid-course corrections/ changes during contract execution, in order to facilitate successful fruition of indigenisation projects while conforming to the established procurement norms of the Government. Accordingly, Service HQs/other Organisations may formulate detailed SOPs/ instructions to be followed for processing such proposals, in consultation with MoD(Fin), which should be in broad consonance with the processes and procedures given in this Chapter, including the general guidelines given below:-

- (a) CFAs shall identify potential projects for indigenous development, which may include product replacement, refurbishment, improvement and upgradation, of items/ equipment/systems/ Sub-Systems/ spares/ ammunition/ ordnance stores/ etc., in consultation with the industry. The list of identified projects are to be given due publicity and shared with the industry for soliciting proposals. AoN is to be accorded by the appropriate CFA after considering the development cost, cost of prototypes and the cost of Initial Order Quantity.
- (b) Considering the unique nature of procurement, costing and various other aspects having financial bearing, CFA shall consult IFA as per extant delegation of financial powers.

(c) **Initial Order Quantity (IOQ).** Initial Order Quantity refers to the total quantity of the developed item, over and above the specified number of development prototypes, which may be included for the Development projects in the Contract, for procurement post successful development of the indigenised/ prototype item. IOQ is to be justified at the time of seeking AoN and shall be included in the RFP. Based on the type of item, IOQ may be arrived at using either of the following, as may be considered necessary by the Line Directorate/ Indenting Agency/ Provisioning Agency/ CFA:-

- (i) Immediate urgent/ operational requirement.
- (ii) Requirement covering a period of up to five years including requirement of provisioning agencies
- (iii) Minimum Order Quantity (MOQ)/ Economic Order Quantity (EOQ).

(d) Scaling will be dispensed with for initial procurement of import substitution when design/ specifications are not available category under Sub-Paragraph 10.5.2(b) and for sustenance know how category at 10.5.2(c) but not for import substitution category when design/ specifications are available category at Sub-paragraphs 10.5.2(a). Service HQs/other Organisations shall, however, subsequently initiate a case for scaling for import and Indigenous substitution when design/ specifications are not available category under Sub-paragraph 10.5.2(b) and sustenance know how category at 10.5.2(c), where applicable.

(e) Capacity, capability and ability of the new industries/ vendors (DAs/ DcPPs) to execute the work of the desired quality in the required time schedule, should be evaluated by IIO/ Indigenisation Directorate/ Design Bureau/ Local Technical Committee, etc. on the basis of their design, research & development capability in the specified field. Physical capacity verification may be undertaken, if deemed necessary by Local Technical Committee. A sample format for this purpose is placed at **DPMF 47**.

(f) **Parallel Development Clause.** In order to achieve the aim of self-reliance, it is imperative to empower and encourage the indigenous defence industry through wider participation of local vendors. In cases where the required quantity of an item is high/ recurrent and multiple Indian vendors are participating in a bid, an attempt shall be made to distribute the requirement in certain proportions (to be

stated up front in the RFP), in order to incentivise multiple players and develop a wider vendor base. PAC status may be awarded to successful local vendors post successful trials. In the event the development of an alternate source is not considered necessary, the IIO/ Indigenisation Agency shall justify why alternate source development is not merited. Where development of second/ wider vendor base is considered necessary, development of indigenous sources may be progressed as follows:-

- (i) In cases where specific approval has been taken in the AoN to have more than one source of supply, ratio of splitting the supply (preferably 50-70% to L1 vendor and the balance distributed equally among L2 & L3 vendors, however, L3 may be considered only in exceptional circumstances) will be pre-disclosed in the RFP, and negotiations will be done with the L1, L2 and L3 vendors, as applicable, provided the L2 and L3 vendors agree to accept the price, terms and conditions quoted by/ negotiated with the L1 vendor. However, in case other vendors do not agree to match the price of L1, then the full order may be placed on the L1 firm. Splitting between more than 2 vendors may be counterproductive in terms of standardisation of sustenance and life cycle support system. If there are more than two/ three successful bidders, a suitable certificate of technical compliance may be issued by the Procuring Entity to the QR-compliant vendor(s), after placement of Supply Order/ signing of Contract, as per Paragraph 5.18.10 (Chapter 5).
- (ii) If development of an additional vendor is required for a product which already has a developed vendor base, a separate indent may be placed for development of an additional indigenous source by earmarking a prescribed quantity, as defined in Sub-Paragraph 10.10.1 (f) (i) above. Cost reasonability in such cases may be considered by the PC/CNC based on the number of established vendors, development cost, quantity in the order, time elapsed since development of the original vendor base and any other factor/s considered relevant. The prescribed quantity should ensure that the quantity covered is viable for economic production. The source already developed is not to participate in the development order being placed for development of the second/ third source(s).

- (g) The products being developed through indigenization would need to undergo rigorous trials, testing and certification by agencies concerned like DGQA, DGAQA, CEMILAC, etc. The procedures to be followed for this purpose will be as per the guidelines/ SOPs/ instructions issued by Service HQs/ other organizations from time to time, in consultation with the concerned trials, testing and certification agencies.
- (h) Since, Indigenisation, as opposed to outright procurement of goods and services, entails development of indigenous technology / sources for items which were either hitherto being sourced through import or are not readily available in the country, provisions of Rule 149 of GFR on GeM are not to be applied.
- (i) Even if one tenderer/ individual or firm/vendor is found capable to undertake development cum production based on market exploration through an open EoI/ OTE the case may be progressed as a Resultant Single Vendor Case.
- (j) All successful bidders under the Import Substitution categories of development contracts will be eligible for the special benefits extended for development projects/ contracts, as per Paragraph 10.18.

#### **10.11 Special Provisions for Undertaking Development Contracts.**

**10.11.1** Proposals under the development contracts, where reference prices and QRs may or may not be available, will have special provisions as applicable as under: -

- (a) EoI shall be published on DEFPROC/ CPPP Website inviting Vendors to participate into the Development Category project. Indigenisation cases shall be progressed ahead even if only one EoI respondent is found meeting the technical eligibility criteria.
- (b) In the multiple vendor cases, if a single prototype is received at trial stage, Indigenisation Agency may proceed with the process and complete trials and testing, provided the vendor agrees to hold the original commercial bid till completion of the procurement process. However, suitable opportunity may be provided to other vendors for submission of prototype with the approval of CFA. The provisions for extension of timelines for submission of prototypes may be mentioned in the RFP.

(c) A trial methodology is be incorporated in the RFP where applicable. Following are the special provisions: -

(i) **Single Vendor Situation Post Conduct of Trials.** In multi-vendor cases, a single vendor situation may emerge post conduct of Field Evaluation trials. The procurement process may be continued as planned. In such situations, efforts should be made to complete the D&D process before expiry of original validity of commercial bid.

(ii) **Supplementary Trials.** On completion of all trials, when no equipment has fully met all the RFP parameters, Supplementary trials may be conducted in case if the vendors can modify their offered items to meet the certification parameters as mentioned in the RFP. The provisions of Supplementary trials along with the number of times such trials would be permitted may be included in the RFP.

(d) **Revision of Commercial Bid.** Situations would arise when the validity of the commercial offers submitted by vendors expire before acceptance of Prototype. In such cases, vendors would be given an option to extend the validity of the commercial offer for a specified period to be decided by CFA in consultation with IFA.

(e) **Negotiations with L2 Vendor.** If the bidder, whose bid has been found to be the lowest evaluated bid withdraws post successful completion of Field Trials and whose bid has been accepted, fails to sign the procurement contract as may be required, the Procuring Entity on being satisfied that it is not a case of cartelization and the integrity of the procurement process has been maintained, may, for cogent reasons to be recorded in writing, offer the next successful bidder an opportunity to match the financial bid/negotiated price of the first successful bidder, and if the offer is accepted, award the contract to the next successful bidder at the financial bid/negotiated price of the first successful bidder, subject to reasonability of the price bid being established by the CNC.

(f) **Negotiations in Cases of Splitting of Source of Supply.** In cases, where specific approval has been taken in the AoN to have more than one source of supply, ratio of splitting the supply will be pre disclosed in the RFP and negotiations will be done with both the L1 and L2 vendor, provided

the L2 vendor agrees to accept the price and terms and conditions quoted by/negotiated with the L1 vendor.

- (g) **Offer of Latest Specifications at CNC Stage.** In cases, owing to longer gestation time, the L1 vendor may offer latest specifications for obsolescence management of the equipment at no additional cost, at the CNC stage. The CNC will be empowered to negotiate and recommend acceptance of the same to the CFA provided all parameters are met. Necessary Validation may accordingly be carried out in these cases.
- (h) **Acceptance Test Procedure (ATP).** ATP for the equipment of L1 vendor finalised during the Technical Trials will be submitted during the process of the CNC and included in the draft contract.
- (i) **Limited Tender Enquiry (LTE).** Un-registered vendors may also be considered for the purpose of LTE with the explicit approval of CFA based on evaluation of open EoI/ OTE. However, their registration would be mandatory before placement of order on them.
- (j) **Single Tender Enquiry (STE).** Design/ development from a single source may be resorted to with the prior approval of the CFA, for reasons which must be clearly and unambiguously be brought out in writing, at the time of seeking AoN. In addition to the provisions contained in para 5.9 of Chapter 5 of DPM, STE may additionally be resorted to, under the following circumstances: -
  - (i) Non-proprietary items, when only single response is available, despite competitive bidding.
  - (ii) Where any other mode of bidding is not considered appropriate in the interest of national security.
  - (iii) Products developed through iDEX scheme (post development of prototype).

## **10.12 Agencies involved in Indigenisation**

- 10.12.1** Indigenisation projects may be taken up by Indigenisation Agencies/ IIOs of Service HQs/ other Organisations of MoD, or other agencies nominated for this purpose by the Service HQs/ other Organisations, such as the Services Technology Board, Base Workshops, Naval Dockyards, BRDs, Technology

Development Acceleration Cell (TDAC), etc. Such projects may be undertaken either through the Indian private industry, including MSMEs/ Start-ups/ consortia of industries, etc., or by the DPSUs/Scientific/ Technical Organisations/ Societies of GoI, as well as by the relevant in-house agencies/ organisations of MoD (in partnership with DRDO, where required).

**10.12.2 Innovation & Indigenisation Organisation (IIO).** To provide an impetus to indigenisation, each Service HQs/other Organisations may, if not already done so, establish an Indigenisation Organisation (IIO), within existing resources. DAP-2020 already provides for establishment of IIOs for capital acquisition cases. The Services may designate a separate IIO for revenue procurement cases or also entrust the existing IIOs with the following mandate for revenue procurement cases.

- (a) Be responsible for spearheading indigenisation for Import Substitution.
- (b) Identify projects for import substitutions.
- (c) Undertake advance planning and consultations with stakeholders.
- (d) Facilitate conduct of feasibility reports.
- (e) Assign responsibilities and hold task owners/ Project Facilitation Teams accountable for delivery.
- (f) Closely monitor and ensure periodic update on all indigenisation projects.
- (g) Employ project/ programme implementation experts, as also latest execution/ monitoring techniques and software, to ensure timely completion of all indigenisation projects.
- (h) Development of alternate vendors for all indigenised items.

**10.12.3 Project Facilitation Team.** Indigenisation agencies/ IIOs may constitute a Project Facilitation Team (PFT) to act as the primary interface with the industry during the development stage. PFT may consist of representatives from the User, Inspecting/ Certification Authority, IFA/representative of IFA as required and other experts if considered necessary, in order to closely monitor progress of the project. The PFT shall be, *inter alia*, responsible for the following functions: -

- (a) Assist in preparation and issue of EoI.
- (b) Assist in analysis of EoI responses and shortlisting of Development cum Production Agency (DcPA).

- (c) Assist/handhold DcPAs by providing clarifications related to functional or operational aspects of the equipment under development, as may be sought by the DcPAs from time to time, during the design and development of prototype.
- (d) Assist in finalisation of trial methodology, duly specifying the fundamental points that need to be addressed for validating the essential parameters and facilitate provisioning of trial range/ test facilities/ consumables/ etc., as mentioned in the EoI. Procedures/ policies are to be laid down by the IIOs for prototype development, trial evaluation and subsequent induction of such items.
- (e) Assist in preparation of PSO/RFP, as applicable.
- (f) Assist in conversion of Preliminary QRs into SQRs/ QRs, prior to commencement of Field Evaluation/ User Acceptance Trials, based on the technological threshold reached by the DcPAs.
- (g) Coordinate conduct of Field Evaluation/ User Acceptance Trials.
- (h) Closely monitor the progress of each case, particularly the work being undertaken by the vendors, as well as, recommend rescheduling/re-costing/foreclosure, where required, to the CFAs.

### **10.13 Perspective Planning and Annual Plans**

**10.13.1** A Perspective Indigenisation Plan of 3 to 5 years shall be framed by each Service HQs for items to be used in equipment/ systems/ subsystems that progressively need to be developed indigenously and for its further improvement and upgradation. This plan is to be shared with other Service HQs and with HQ IDS to ensure that there is no duplication of effort. HQ IDS shall also ensure that the Consolidated Perspective Indigenisation Plan of the Defence Services is shared with the Indian Industry, unless security considerations require otherwise. Within this overarching Plan, an Annual Roll-on Plan (RoP) shall be prepared, prior to commencement of the FY, which will form the basis of the Prioritised Annual Indigenisation Task which shall be approved by the Service HQs. On these lines, other Organisations may also draw up similar Plans and take suitable action.

## **10.14 Measures to boost indigenous manufacturing by the Private sector**

**10.14.1 Positive Indigenisation Lists.** To promote indigenisation, Positive Indigenisation Lists containing names of weapons/ platforms, are being notified by the MoD from time to time. These lists provide increased opportunities to the Indian industry to enter into the defence manufacturing space, as items in the lists are to be procured from indigenous sources only. To the extent that any item(s) in the lists fall under revenue category, procurement of such items shall also be undertaken from domestic sources and will follow the procedures given in this Manual.

**10.14.2 Level Playing Field.** With a view to providing a level playing field for the indigenous private industry vis-a-vis foreign vendors, Procuring Entities may ensure that no discrimination is made against domestic vendors in respect of Buyer Nominated Equipment (BNE), Customs Duty Exemption, and trial and testing procedures for indigenous and foreign products. At the same time, in any procurement proposal where some quantity is proposed to be imported and the balance proposed from indigenous sources, efforts may be made to ensure awarding maximum quantities to indigenous vendors, with limited number/bare minimum to foreign vendors.

**10.14.3** With a view to providing further boost to indigenous vendors, efforts may also be made to develop the SQRs/QRs as per India's capabilities. Also, considering the need to extend the principle of *Aatmanirbharta* to the field of defence technology, emphasis may be placed on ownership of technology/ IPRs, to avoid payment of ToT fees/ royalty in perpetuity.

## **10.15 Terms of Payment**

**10.15.1 General.** The normal terms of payment are 100% payment within 30 days' time after receipt and acceptance of the materials in good condition or the date of receipt of supplier's bill, whichever is later. However, an amount equivalent to the amount of PBG, may be withheld as performance guarantee (where Security Deposit has not been taken) during the warranty period as mutually agreed with the contractor.

**10.15.2 Optional.** Alternatively, payment upto 90% against proof of dispatch taking into consideration aspects like the reputation and past performance of the suppliers and pre-inspection of the goods at the suppliers' premises may be considered where necessary. Such payments for dispatch by road will be made only if the goods are at suppliers' cost.

**10.15.3 Advance Payment.** Advance payments to Development Agency may be provided during the development phase to facilitate development of the prototype under Import Substitution categories. Advance payments can be given up to thirty percent of the contract value to private DAs/DcPPPs/ Vendors and up to forty percent to Central/ State Govt Agency or a Public sector undertaking. While making any advance payment as above, adequate safeguards in the form of bank guarantee etc. should be obtained from the firm.

**10.15.4 Interest Free Advance Payment.** Interest-free advance payments may be considered with the approval of competent authority and finance concurrence. Interest Free Advance Payment Clause if included in the tender enquiry/ contract and if the contract is terminated due to default of the contractor, the advance payment would be deemed as an interest-bearing advance at the interest rate as applicable and revised from time to time.

**10.15.5 Stage Payments.** The initial advance paid should be adjusted against the successive stage payments due to the DAs/ DcPPPs. The stage payments, if any, should be spread over the period of execution of the projects/contract and made in suitable instalments keeping in view various stages of development/ manufacture. These stages should be pre-determined, and it should be ensured that the payments made are in consonance with work performed by the firm/contractor and linked to verifiable milestones viz. Preliminary Design Review, Detailed Design Review, purchase of raw materials and realisation of prototype etc. The quantum of payment will generally not exceed 50% of the estimated expenditure incurred by the contractor up to that stage. About 20 to 25% amount as last instalment should be released only after the completion of the project or rendering of the services/supplies to the entire satisfaction of the authority placing the order.

## **10.16 Post Contract Management.**

(a) **Issue of Documents/ Samples/ Raw Materials.** Samples, drawings, documents, specifications, raw materials, etc., which are envisaged to be provided to the firm as part of the contract/ DO, are to be issued on loan issue to civil firms. Such issues will be effected by the procurement/ provisioning/ indenting agency of the Services Establishment/ Unit, towards which, a copy of the contract/ DO must be given to such agencies. All loan issues must be clearly mentioned in the RFP and can be authorised by the CFA sanctioning the project.

(b) **Return of Documents/ Samples.** Documents, specifications, drawings, samples issued on temporary loan to the firm must be taken back after completion of the contract obligations. Loss or damage to these loan issues shall be recoverable from the contractors. Some samples/ items/ raw materials issued on loan may not be returned back, as they may undergo destructive test as part of specifications generation. Such items are to be mentioned in the RFP/ contract and these will be treated as write-off loss without any financial liability on the firm and shall be regularised by the CFA sanctioning the project.

(c) **Long Term Support.** A long-term support clause should form part of RFP/ Contract. Reference is made to article 2.7 of Chapter 2. It may additionally contain the following: -

- (i) Post warranty period, the Seller agrees to undertake the repair of the items, test set up, assemblies/ sub-assemblies and stores supplied under this contract for a period upto 10 years, from the date of acceptance of the item/ services at additional costs as mutually agreed to.
- (ii) In the event of any obsolescence during the above mentioned period of 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.

**10.17 Types of Development Contracts.** Various types of contracts can be adopted for development contracts depending upon the nature, complexity and time span of the development cum procurement of the items. These are described below.

(a) **Firm-Fixed-Price Contract.** Firm fixed price contract means a contract in which a lump sum amount is agreed upon for development/indigenisation and supply of the equipment based on data/specifications supplied and which is not subject to any adjustment during the performance of the contract due to any reasons whatsoever. The firm or the contractor assumes full financial responsibility in the form of profit or loss. This type of contract is best suited when reasonably definite design or performance specification is available and when Government can estimate reasonable price of development/indigenisation.

(b) **Fixed Price Contract with Escalation.** This is the same as the firm-fixed-price contract, except that upward or downward revision of contracted price can be allowed on occurrence of certain contingencies beyond the control of the firm/contractor

such as increase/decrease in wages or cost of material. An escalation formula must be included in such contracts and a ceiling of escalation should also be fixed in the case of long-term contracts. Price variation clause can be provided only in long term contracts where the delivery period extends beyond 18 months. The conditions prescribed for price variation clause elsewhere in the DPM will apply whenever such a clause is included in the developmental cum procurement contracts.

#### **10.18 Special Benefits for Vendors Undertaking Development Contracts.**

**10.18.1** Unlike normal procurements, success of indigenisation projects is not assured owing to indeterminable nature of work and risks inherent in the development/ manufacturing processes. Hence, following provisions are extended for development cum procurements contracts/ supply orders:-

- (a) **Waiver of Liquidated Damages (LD) Clause.** Since development stage inherently have a number of indeterminable parameters due to complexities, processes and agencies involved, LD clause is waived off and is not mandatory for development contracts orders mentioned at para 10.5.2 above in the development stage or till development of prototype, so as not to dissuade private sector industry from participating in the indigenization process. LD shall be included only where deemed necessary post prototype development, for procurements made subsequent to successful development and for supply of the quantities included in the procurement order at the rate of 0.1% per week/part of the week, subject to maximum of 5%/(10% in case of inordinate delay, as defined in para 6.15.2 of this manual) of the total cost.
- (b) Submission of Earnest Money Deposit is not mandatory.
- (c) In such projects there can be a situation where only one vendor responds during EoI/OTE and meets the criteria laid down or only one vendor submits prototype after issuance of project sanction order or only one vendor is finally qualified/ found to be eligible for placement of supply order. In such cases, the tendering action must not stop solely on the ground that a situation of single vendor has arisen but it can move ahead and taken to the finality if CFA (in consultation with IFA as per delegation of financial power) is satisfied at any stage of tendering action on reasonable grounds that the case is fit to be

taken further in the national interest and no violation of procurement rules has been till such time.

- (d) Submission of PBG shall be applicable only after the prototype has been successfully developed, viz. on completion of certification, user trials and final delivery of the developed prototype.
- (e) There will also be an assurance of orders on successful development and trials of the prototype, and the title/ ownership/ IPR, where applicable, will be retained by DcPA or held jointly with the Service concerned, as mentioned in the RFP. In case the DcPA closes down its business or is acquired by a foreign firm, the DcPA will hand over the IPRs to the Services. Conditions governing management of IPR will be included in the RFP/ EoI.
- (f) Post development of prototype, all subsequent procurements may be made from the vendor(s) concerned for an additional period of upto five years (beyond the period catered for by the Initial Order Quantity), if requirement is anticipated during the additional period and no alternative source is available/developed. Such subsequent procurements would not be treated as single vendor cases, and only a commercial RFP would be issued to them directly. Pricing of the goods/ services for this additional period will need to be fixed while finalizing the Development Contract, and such a provision, if it is to be made applicable, will need to be stated upfront in the RFP.
- (g) 'Change Management' clauses will be applicable for rescheduling/ re-costing/ foreclosure, on the recommendations of the PFT, with the approval of the next higher CFA (not below Command/ equivalent level), in consultation with IFA, where required as per delegation of financial powers. These provisions are intended to cater for situations where project(s) fail to progress as per pre-determined milestones/ undue time and cost overruns/ prototype(s) fail during staff evaluation/modifications and improvements in specifications, including cases where advance payment has been provided by the buyer during the development phase. However, no foreclosure will be done after issue of the Project Sanction Order (PSO), other than for reasons of default/non-adherence to the PSO by the DAs/DcPPs.

(h) In case of foreclosure, a Board of Officers, in consultation with the PFT, will assess the total expenditure incurred by the DAs/DcPPs on development till foreclosure, excluding expenditure on certain predefined list of items/activities such as land and buildings, investments, payment of interest, fines or penalties, and advocacy. If the assessment of expenditure shows that the payment made by the buyer does not commensurate to the milestones/deliverables as per contractual terms, the excess payment shall be recovered from the BGs submitted by the vendor or from the vendor.

#### **10.19 Booking of Expenditure**

**10.19.1** In order to galvanise efforts for *Atmanirbhar Bharat*, there is a need to earmark funds and monitor expenditure in respect of revenue procurements from the domestic sector. Special prefix category codes promulgated by the CGDA for booking of expenditure incurred towards revenue procurement of stores from indigenous sources, should be indicated in the Project Sanction Order/Development Contract/ Supply Order.

#### **10.20 Conditions of Contract**

**10.20.1** Standard conditions, as well as special conditions of contract are to be included in the RFP and in the contract. The successful bidder will conclude an Agreement as per the sample format at **DPMF 31**. Issue of RFP to the identified capable vendors on OTE /LTE/ STE basis, as applicable

**10.21 Aspects not covered**. All Indigenisation and development contracts proposals shall be processed as per the provisions and procedures given in this Chapter. Any aspect(s) not specifically covered in this Chapter, shall be as per the relevant provisions contained in other Chapters of this Manual.

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## **CHAPTER 11**

### **INFORMATION AND COMMUNICATION TECHNOLOGY (ICT) PROCUREMENT**

#### **11.1 General**

**11.1.1** This Chapter sets out the policy and procedures to be followed for the procurement and management of Information and Communication Technology (ICT) related goods, services, schemes and projects which are in the nature of revenue procurement. For further details regarding items excluded, please refer to Para 11.3.2.

#### **11.2 Terminology**

**11.2.1 ICT Goods and Services.** ICT goods and services refer to the entire range of ICT equipment, software, off-the-shelf automation solutions, customised/ bespoke software development; solutions for enterprise-wide applications, security/ encryption solutions; ICT schemes and turnkey projects procurement and integration; training; services for information security, Vulnerability Assessment (VA), consultancy, development, maintenance, support, administration; and management of ICT infrastructure, including procurements related to Inter-Government Agreements (IGAs).

**11.2.2 ICT Equipment.** ICT equipment means any IT/ ICT related equipment such as desktop computers, laptops, work stations, all-in-one PCs, servers, monitors, printers, audio-visual (AV) equipment, software, network equipment, Information Security related equipment [Firewalls Intrusion Detection/ Prevention System, Unified Threat Management (UTM), Interface Devices, Encoders, Dongle/ Soft key based software licences/ Bulk Encryption Units (BEUs), other encryption equipment/ solution/ devices, IP Encryptors, etc.], storage devices {Network Attached Storage (NAS), Storage Area Network (SAN), Object Storage, etc.}, portable IT devices (digital notebooks, digital data pads, palmtop computers, etc.), kiosks, any kind of smart devices, related racks, cable trays, consumables, peripherals and ancillaries and any new IT/ ICT equipment introduced by the industry in the future.

**11.2.3 Standard System Bundle.** Standard system bundle means all the components, combination of hardware, software, installation/ commissioning services, consultancy/ maintenance/ AMC services, training and documentation included in a standard

package, where an ICT system/ hardware/ software is procured, e.g. procurement of computing hardware with standard software and related maintenance services.

**11.2.4 Audio-visual (AV) Equipment.** AV equipment means audio-visual training/ presentation materials or aids, such as digital cameras and data projectors, video conference equipment, data wall (LED/ LCD/ Laser/ any other latest technology) and projection/ display screens (Plasma, LED, etc.).

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

**11.2.6 ICT Services.** ICT services refer to the application of technology and technical expertise to enable organisations in the creation, management and optimisation of processes and procedures. ICT services cover both IT and ICT services, and may include AMCs, hiring of equipment and services, consultancy, R&D efforts, design/ development/ implementation of enterprise resource planning (ERP)/ information security solutions, patch management, VA/ penetration testing, environmental hardening of ICT equipment, maintenance/ administration support of ICT infrastructure (server farms, data centres, hardware, software, networking equipment, etc.), digitisation efforts, hiring of resident engineers/ software designers/ developers/ cyber and information security professionals, training, hiring of Internet services, etc., all related to IT/ ICT services.

**11.2.7 Post Implementation Support.** Post Implementation Support like warranty, AMC, RRCs etc. are the expertise or back-end technical support in terms of knowledge, hardware and services support, to effectively manage the successful running of the program/ project after successful completion and implementation.

**11.2.8 Handholding for Software Projects.** Handholding for Software Projects implies providing the User with the technical expertise, knowledge transfer, source code sharing, guidance, updation/ upgradation (patch management), version control, assistance and information to implement and manage the software projects, bug fixing and refinements based on User feedback, where applicable.

### **11.3 Applicability of Provisions**

**11.3.1** The provisions contained in this Chapter shall apply to procurement of all ICT goods, services, schemes and projects classified as revenue procurement. The provisions contained elsewhere in this Manual shall be applicable to ICT procurements and contracts, to the extent the subject is not specifically covered in this Chapter.

**11.3.2** The provisions of this Chapter shall not be applicable to acquisition of ICT enabled weapon systems/ aircraft/ ships/ platforms/ etc., and ICT equipment/ systems that are categorised as capital acquisitions and are hence processed under DAP-2020 provisions, as amended from time to time.

### **11.4 Planning Stage**

**11.4.1 Perspective Planning for ICT Projects.** The Perspective Planning process shall comprise the ICT Roadmap for each Service/ Organisation covering a five-year horizon. While formulating the Roadmap, the Services/ Organisations are to look at ICT systems' development in a holistic manner and not follow a piecemeal approach. Commonality of software and platform within and across the Services and other MoD organisations (e.g. ICG. etc.) is to be considered and isolated developments of system/ software by different field formations with the same objectives, are to be avoided to ensure standardisation and optimisation of resources. However, any requirements specific to the Services/ Organisation for ensuring islands of security to contain vulnerabilities, may also be factored.

**11.4.2 Annual ICT Plans.** The Annual ICT Plans of the Services/other Organisations shall contain the carryover plans from previous year(s), schemes where AoN has been accorded and new projects for which approval/ AoN is being sought during the current financial year. The annual budgetary requirement is to be worked out by each Service/ Organisation after taking into account the schemes likely to be included in the Annual ICT Plans and thereafter revised based on budget availability. The Annual ICT Plans are to be centrally approved by the competent authority in the HQs of respective Service/ other Organisations.

### **11.5 Complex ICT Projects**

**11.5.1** For faster turn-around as well as to ensure single-point responsibility, and also in the interests of economy and efficiency, complex ICT projects may be tendered out as a complete package (Standard System Bundle) comprising hardware, software and other elements of the project, to obtain a complete solution.

**11.5.2** Complex ICT projects may require Expression of Interest (EoI) and/ or engagement of consultant/ Detailed Project Report (DPR) stage(s) to firmup the scope, technical details, implementation aspects and cost estimates of the project before obtaining AoN. For simple projects, EoI/ engagement of consultant/ DPR stage(s) may be dispensed with, and AoN may be sought straight away on the basis of an SoC, after approval of the Annual ICT Plan.

**11.5.3 Expression of Interest (EoI) bids.** In the case of complex ICT projects, the project idea shall be shared in advance with the industry and pre-RFP consultations may be undertaken. The EoI stage may be undertaken before the RFP is formulated, in order to minimise the need to issue clarifications/ amendments thereto later. During this stage, an attempt should also be made to ascertain the available technological choices, bidder base and capability of these bidders to execute the project, in order to encourage competition, while ensuring participation of those who have the requisite financial capability, technical expertise and proven track record for delivering such projects. An EoI may be issued under the following circumstances:-

- (a) Where scope of work/ specifications are not clear. Hence, an EoI may help the nodal agency to define and refine the scope of work/ specifications/ identify suitable technologies through discussion with potential consultants/ bidders.
- (b) To conduct a market assessment for possible sources, service providers and consultants.
- (c) Expertise is required in identifying the best approach, where multiple approaches are possible.

**11.5.4 Engagement of Consultants.** In complex and turnkey ICT projects, where in-house expertise for conceiving the project, its implementation and methodology for development is not adequate, external experts, institutions/ consultancy firms/ academicians (from premier academic institutions) having required specialised knowledge/ capability, may be engaged as consultants to provide assistance in exploration of possible solutions and formulation of optimal software design and system architecture, establishing the feasibility of leveraging existing in-house network resources, selection of appropriate technology, converting the functional requirements into the desired technical specifications, preparation of Preliminary Project Report (PPR), providing assistance in preparation of RFP etc. For projects having longer gestation/ implementation period, a strategic/ long-term consultant may be engaged to oversee overall implementation

of the project. Engagement of Consultants shall be governed by provisions contained in Chapter 12 of this Manual.

**11.5.5 Preparation of DPR.** Depending upon the size and complexity of the project, a multi-disciplinary Team may be setup by the Sponsor Branch/ Directorate of the Services/other Organisations to prepare the DPR. The Team may comprise of internal reps of the Services/ Organisations and/ or external consultants who may be engaged for this purpose from various institutions/ industry segments/ academia/ etc. Apart from the detailed project plan, technical specifications, implementation roadmap, etc., the DPR shall also clearly bring out the scope of various deliverables, division of responsibilities between stakeholders, as well as the approximate overall cost and the estimates for each of the packages to be executed as part of the project.

## **11.6 Statement of Case (SoC) and Acceptance of Necessity (AoN)**

**11.6.1** Individual projects/ schemes/ etc., included in the approved Annual ICT Plan shall be processed as per priority, by preparing a SoC for seeking AoN approval from the CFA as per delegation of financial powers. The ICT component of a project {Hardware (HW)/ Software (SW) & other ICT equipment and IT/ ICT Services} shall not be less than 80% of the total package cost for a case to qualify as an ICT project.

**11.6.2** The SoC for seeking AoN, is to be prepared in accordance with the guidelines given in Paragraph 4.3.1 (Chapter 4). In addition, SoC of all ICT projects shall furnish the following details, as applicable:-

- (a) Outline programme of the project that is consistent with the User's requirements.
- (b) The procurement strategy, along with plan for supporting the software through its life cycle, and clearly defined test and evaluation requirements.
- (c) Utilisation of existing hardware, networks and infrastructure to the extent feasible and the details of requirement for creation of unique facilities.
- (d) Details of security and authorisation process and use of continuous runtime monitoring of operational software.
- (e) Modularity in the architecture, to support future capabilities and upgradation.
- (f) Intellectual property strategy.
- (g) Requirement of testing and acceptance procedure.

## 11.7 Bidding Process

**11.7.1** All bidding activities like preparation/ issue of RFP, Bid opening, Processing of bids, Techno-Commercial evaluation, Price evaluation, negotiations, etc., may be followed as per procedures given in relevant Chapters of this Manual. The features peculiar to ICT Procurement, as elaborated in succeeding Paragraphs, may be followed during the bidding process.

### **11.7.2 Pre-Qualification of Vendors.**

(a) For complex ICT projects, defining pre-qualification criteria for bidders based on professional competency, past accomplishments, turnover, etc., may be considered for short-listing proposals from prospective bidders. The criteria shall include the skill sets that the personnel working on the project must possess, not only by way of basic qualifications but experience on execution of projects. Evaluation of the pre-eligibility criteria shall be through a quantifiable matrix. Following factors are to be considered while establishing a set of pre-qualification/ eligibility criteria:-

- (i) Ensure that the criteria or conditions to participate in the bidding process are flexible and practical, allowing maximum bidders to participate in the process.
- (ii) The criteria have direct and perceptible linkage with the scope of work, project's financial worth and risk.
- (iii) The criteria are focused towards quality of solutions and bidder competence.
- (iv) Examples of criteria are (a) sales turnover and (b) experience in similar projects.
- (v) Individual criteria may be included or suitably modified to meet project specific requirements, depending on the nature of the project/ scope of work envisaged.
- (vi) Wherever specific/ specialist manpower requirements for project execution needs to be specified, it may be included as a prequalification criterion by specifying that the bidder shall have a certain number of required manpower on full time/ near full time basis. In such cases also, provisions of Paragraph 11.7.2 (a) (i) above need to be complied with.

(b) **Security Audit.** The bidder shall commit to provide all support required to address any security concerns and share their source code (if the same is deliverable), software

and the equipment design details, alongwith malicious code certificate to the User or its designated agency for sanitisation, verification and audit, to confirm that their equipment and software are free from any malware, trapdoors or other facilities that may lead to security breaches. The bidder shall also commit to security audit of developed systems by CERT-In empanelled agencies. In cases where the source code is not a deliverable, then provision shall be made for the bidder to extend their available facilities for audit of the source code by the designated team of the customer, if required.

(c) **Quality/ International Certifications.**

- (i) The requirement of quality certification is to be included only if it is inherently linked to the scope of work, e.g. BIS/ ISO 9001/ CMMI Level 3 or more (specifying development/ service/ acquisition models)/ other certification for quality systems/ ISO 27001 certification for information security projects/ etc.
- (ii) Requirement of compliance with international standards like IEEE, ITU, etc., may be included, depending upon the nature/ type of project or solution required, provided domestic standards are not available. In such situations, the standard-setting institutions concerned in the country may be informed suitably.

(d) **Other Aspects.**

- (i) The domestic industry shall be given product reservation/ price preference in all Defence procurements in ICT products, as per provisions of Paragraphs 2.1.10 (Chapter 2), wherever Trusted Source/ Trusted Product has been notified by a certified government agency.
- (ii) Efforts are to be made to adopt open source software in accordance with the GoI guidelines on the subject issued by MeitY from time to time.
- (iii) There should not be any export control restrictions on the technologies used in the tendered product, in the country of origin.
- (iv) Based on project specific requirements, the procurement process may focus on selection of firms having established and proven credentials/ track record.
- (v) Spyware and malware, if pre-loaded with electronic components/ embedded systems, pose a security threat. Accordingly, suitable pre-emptive measures and

restrictions on sourcing of certain hardware items, if any, may be incorporated. Further, a 'No Malicious Code' certificate is to be obtained from the seller.

- (vi) Undertaking from the bidder is to be insisted that the User shall not be subjected to any network audit or verification of end-use of any product by any foreign agencies/ government. User shall not have any restriction in terms of end-use of the equipment and shall be free to use and customise the equipment as per its needs. User will not require any approvals of any bidder/Technology Provider or any government for any use or customisations, regardless of the jurisdiction under which the bidder falls.
- (vii) Bidder should provide long-term support commitment of at least 5 years, with a commitment to redesign obsolete hardware, provide long-term spares, customised software upgrades, root cause analysis, and provide software interfaces and support required to integrate their equipment with other elements of the project including the Operations Support System (OSS). This may also include testing under expected peak load conditions, as applicable. Any prestandard implementation shall be upgraded for compliance with approved standards. The bidder should have a defined roadmap for offered products for the next five years.
- (viii) Bidder shall also have in-country labs/ R&D labs and facilities for doing network testing. This clause would be relevant only for ICT projects involving network design and implementation. These requirements must be mentioned in RFP.
- (ix) In the case of COTS software, the latest version needs to be provided. Further, the Bidder shall also give a commitment that no upgrade requirement would be projected at additional cost, during the implementation phase.

(e) The bidder will be required to give an undertaking that his firm is not involved in and/ or being investigated for malpractices. If, at a later stage, it is found that undertaking is false, entire bid security will be forfeited and the buyer shall resort to other measures as provided for in this Manual.

**11.7.3 Framing of the Request for Proposal (RFP).** RFP for ICT projects should be prepared carefully, duly taking inputs from the EoL stage/ Consultant report/ DPR and aspects specified in

Paragraph 11.7.2 above, in addition to guidelines specified in Chapter 5 and Paragraph 2.1.10 (Chapter 2). It should be framed in such a manner as to encourage maximum participation from competent vendors. Technical specifications should be framed duly keeping the provisions of Rule 144 of GFR 2017 and Paragraph 5.14 (Chapter 5) in view. The RFP clauses shall be framed with objective, clear, measurable and functional parameters, duly incorporating specific technical, qualitative and performance characteristics, keeping in view the scope of the project and needs of the procuring organisation, without including superfluous, ambiguous and non-essential features. The RFP shall be vetted by the Integrated Finance in those cases where financial powers are to be exercised with the concurrence of Integrated Finance. If pre-qualification is decided upon, RFP shall be given only to prequalified bidders.

**11.7.4 Terms of Reference (TOR) for Engagement of Consultants.** In case consultants are to be engaged for complex and turnkey ICT projects, TOR as given in Paragraphs 12.5.2 shall be included in the RFP.

**11.7.5 Evaluation Criteria.** Based on the nature and complexity of the project and scope of work envisaged, the proposals shall be evaluated as per one of the methods given in Paragraph 5.31.6 (Chapter 5).

## **11.8 Special Features**

**11.8.1 Change Management.** Following mechanism may be put in place at various stages of processing to cater for rapid changes in technology:-

- (a) **Technical Specifications.** Technical specifications should include use of words "or higher" after the indicated specifications, to cater for technology upgrades.
- (b) **Between Grant of AoN and Issue of RFP.** Any change/ upgradations (except minor corrections) in specifications of hardware or software (without change in envisaged scope or cost of project) between grant of AoN and issue of RFP, may be approved by CFA concerned, in consultation with respective technical directorate/ department. In case the change/ upgradation results in change in the scope or cost of the project, then fresh AoN shall be sought.
- (c) **After Issue of RFP and Before Bid Submission Date Extended Date.** Any amendments (except minor corrections)

if required after issue of RFP for changes that may have financial implications, will be made in consultation with the Integrated Finance as per the delegation of financial powers and with the approval of appropriate CFA. Amendments/ acceptance of any deviations without any implicit and explicit financial implications may be undertaken with the approval of CFA concerned, in consultation with respective technical directorate/ department/ Technical Evaluation Committee. Reasons/ justification shall be recorded while seeking such approvals. Such changes are to be promptly notified to all bidders.

(d) **Mid-Course Corrections.** The RFP/ contract should provide for mid-course corrections during the execution phase to cater for aspects like technological/ environmental related changes in the software/ hardware, additional integration and provision for any deviations in deliverables which are beyond the initial scope of work of the original contract, subject to the cumulative value of the financial implications of such mid-course corrections not exceeding -15% of the original contract value (including taxes and duties, etc.). These midcourse corrections are to be processed as 'Paid Change Requests' as part of the main contract. For each ICT project, the CFA shall appoint a suitable committee to assess and evaluate the proposed mid-course corrections and recommend each case for approval by the original CFA, in consultation with the IFA, where required as per the delegation of financial powers. The RFP/ Contract should include relevant clauses to this effect and clearly lay down the procedure to handle such mid-course corrections during the execution phase.

(e) **Accepting Minor Variations.** In case of ICT equipment and software, it is possible that vendors may offer technical specifications, which do not exactly match those mentioned in the RFP/ contract. Acceptance of minor variations in technical specifications as spelt out below, may, therefore, be stated upfront in the RFP:-

(i) **At TEC Stage.** The Technical Evaluation Committee (TEC), giving due reasons, may accept any minor variations in a technical parameter, as long as it satisfies the functional requirement/ objective of the User and is not of a specification lower than that specified in the RFP.

(ii) **At Final Acceptance Stage.** Supply of higher specification products due to non-availability of same specifications as ordered, may be accepted, provided the seller submits

a certificate from the OEM that the ordered specifications of the product have been upgraded and there is no addition/ reduction in price.

**11.8.2 Upgradation**. After implementation of the contract and on fulfilment of all contractual terms and conditions by the buyer and seller/ vendor, the requirement for upgradation of software/ hardware is to be periodically evaluated and if upgradation is considered necessary, the scope of upgradation may be finalised. Based on the estimated financial implications, a case for AoN of the proposed upgradation through an appropriate mode of tender may be processed for approval by the CFA concerned, in consultation with IFA, where required as per delegation of financial powers. In case the OEM/ original developer/ System Integrator emerges as the only capable vendor in terms of guidelines specified in Paragraph 5.22 (Chapter 5), the case may be treated as RSVS and processed accordingly.

**11.8.3 Maintenance Support**. Following aspects need to be included in the RFP for all ICT projects:-

- (a) Seller should provide maintenance support for all ICT projects/ products for a minimum period of five years including warranty, maintenance, spares, technical support and active obsolescence management. In addition, the Seller should give at least two years notice to the Buyer prior to closing the production line to enable a Life Time Buy of spares, as may be required.
- (b) In respect of bespoke/ customised software projects, scope of maintenance support should include resolution of bugs, incorporation of user feedback and associated changes/ additional features/ refinements required for better exploitation of the software.
- (c) **Annual Maintenance Contract (AMC) & Annual Technical Support (ATS)**.
  - (i) The project proposal may have a clause for upto 05 years of dedicated AMC/ ATS by the seller/ service provider. The decision for entering into AMC/ ATS shall, however, be at the discretion of the buyer. AMC provisions contained in Paragraph 9.6 (Chapter 9) are also relevant.
  - (ii) AMC/ ATS may either be an integral part of the main contract or may be contracted as a separate paid service between the Buyer and the Seller.

- (iii) Software updates, bug-fixes shall be provided by the developer at no additional cost during the lifetime of the software. ATS clause in the RFP may clearly distinguish and indicate upgrades and software maintenance aspects that the developer must address during the period of ATS. For ATS calculation, scope for the maintenance of software parts shall be defined.
- (iv) As per requirement, advanced/ focussed/ premium technical support may also be considered depending on the nature of the project.

**11.8.4 Proof of Concept (POC).** The need to include provision for POC in the evaluation process should be considered carefully on a case-by-case basis, and if decided upon, it should be undertaken in two to three clearly defined scenarios followed by structured evaluation of the failures/ successes. The evaluation process for demonstrating the POC shall be specified in the RFP. Wherever required, POC may be done along with the TEC as a concurrent activity, to save on time.

**11.8.5 Clauses to Safeguard Government Interests.**

- (a) The terms of IPR shall lay down the general terms for the assignment of property rights through patents, copyrights and trademarks. Usually, expenditure for the development of foreground software is borne by the Buyer and IPRs of the foreground software and any other software or applications developed as part of a project for delivery against the Contract being paid by the Buyer, would belong to the Buyer. The Buyer may include suitable IPR clause so as to retain the complete ownership of such software solutions/ end products (bespoke/ customised) developed under a project. This is particularly relevant for critical and strategic applications. In cases where the Software is not a deliverable and User is provided a licence and charged accordingly, then the IP resides with the Seller/ Technology Developer. In case the Seller/ Technology Developer is a foreign entity, efforts may be made by the Buyer to own/ acquire technology/ IPR, to avoid paying ToT fees/ royalty in perpetuity.
- (b) IPRs retained with any of the Services/ Organisations under MoD may, if required, be deemed to be in joint ownership amongst all the Services/ Organisations under MoD, without any need for formal permission to share the IPRs. The same may be indicated in the RFP.

(c) Selling customised solutions to some other country (replication) may not be allowed due to security reasons. Suitable protective clauses may be built in the contract to safeguard the interests of the Buyer.

**11.8.6 Information Security**. In order to ensure mitigation of cyber/information security threats in ICT procurement, selection of vendors with compliance to standards in information and cyber security, is essential. Based on project specific requirements, the procurement process may focus on selection of trusted firms having established and proven credentials/ track record. Information Security (Infosec) guidelines for procurement of ICT components in the projects are placed at **Appendix L** to aid suitable incorporation in the RFP.

**11.9 Guidelines Issued by Ministry of Electronics & Information Technology (MeitY)**

**11.9.1** The Procurement Entity may take inputs from guidelines issued by the Ministry of Electronics & Information Technology (MeitY) for procurement of ICT systems. In particular, following documents related to procurements commonly needed in e-governance projects (available on MeitY's website <<https://www.meity.gov.in>>) may be suitably adapted in such cases:-

- (a) Model RFP Template, Guidance Notes and Contract Agreement for selection of Implementing Agencies.
- (b) Model RFP Templates and Guidance Notes for Consulting Services.

**11.10 Aspects not Covered**

**11.10.1** Any aspect(s) not specifically covered in this Chapter, will be as per relevant provisions in other Chapters of this Manual.

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## **CHAPTER 12**

### **CONSULTANCY AND NON-CONSULTANCY SERVICES**

#### **SECTION I - PROCUREMENT OF CONSULTANCY SERVICES**

##### **12.1 General**

**12.1.1** This Chapter covers the procedure to be followed for procurement of Consultancy Services and procurement (outsourcing) of NonConsultancy Services, as defined below. Services that are not covered in either of these two categories will follow the procedure as laid down in other Chapters of this Manual.

**12.1.2 Consultancy Service.**

Consultancy Service means any subject matter of procurement (which as distinguished from 'Non-Consultancy Services' involves primarily nonphysical project-specific, intellectual and procedural processes where outcomes/ deliverables would vary from one consultant to another), other than goods or works, except those incidental or consequential to the service, and includes professional, intellectual, training and advisory services or any other service classified or declared as such by a procuring entity but does not include direct engagement of a retired Government servant.

Note: These Services typically involve providing expert or strategic advice e.g., management consultants, policy consultants, communications consultants, Advisory and project related Consulting Services which include, feasibility studies, project management, engineering services, finance, accounting and taxation services, training and development etc.

##### **12.2 Hiring of Consultants**

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

- (a) The inadequacy of capability or capacity of required expertise in-house.
- (b) The need to have a qualified consultant for providing a specialised service.

- (c) Need for impartial advice from a consultant acting independently from any affiliation, economic or otherwise, to avoid any conflict of interest.
- (d) The need in some cases for transfer of knowledge/ training/ capacity and capability building as a by-product of such engagement.
- (e) Need to acquire information about/ identifying and implementing new methods and systems.
- (f) Need for planning and implementing organisational change.
- (g) There may be internal capacity/ capability to do the job, but there are considerations of economy, time/ speed and efficiency of execution in relation to additional requirements/ commitments/ usage of staff/ management/ organisation, and technological/ material resources, money and time/ speed of execution.

### **12.3 Guiding Principles**

**12.3.1** Fundamental Principles of Public Procurement as mentioned in this Manual are also equally applicable to Procurement of Consultancy services. To ensure value for money during Procurement of Consultancy services, following additional principles shall be considered:-

- (a) Services to be procured should be justifiable in accordance with Paragraph 12.2.
- (b) Well-defined scope of work/ Terms of Reference (ToR) and the time frame, for which consultancy services are to be availed of, should be determined, consistent with the overall objectives of the Procuring Entity.
- (c) Equal opportunity to all qualified service providers/consultants should be ensured.
- (d) Engagements should be economical and efficient.
- (e) Transparency and integrity in the selection process.
- (f) Consultants should be of high quality.

### **12.4 Types of Consultants**

**12.4.1** The term consultants includes a wide variety of private and public entities, including consultancy firms, engineering firms, architectural firms/ consultants, construction management firms, management consultants, investment and merchant bankers, legal advisory firms, universities/ educational institutions, research institutions, Government agencies and individuals/ experts or

their Joint Ventures (JV), etc. The nature and type of consultancy depends on the specialised/ expert services required and complexity of the assignment. These can be grouped as under:-

- (a) **Consortium of Consultants.** In large and complex assignments, consultants may associate with each other to form a consortium to complement their respective areas of expertise, to increase the technical responsiveness of their proposal and make larger pools of experts available or for other reasons. Such an association may be for the long-term (independent of any particular assignment) or for a specific assignment. The consortium may take the form of a JV or a sub-consultancy.
- (b) **Consultancy Firms.** The main source of consultants is consultancy firms possessing diverse specialisations that provide teams of experts to the clients. In such cases, the bidders provide a variety of services, including project preparation, project implementation, supervision, training, advisory services and policy guidance.
- (c) **Individual Consultants.** Individual consultants are engaged for similar activities as consultancy firms, when a full team is not considered necessary. They may be independent experts not permanently associated with any particular firm, or they may be employees of a firm recruited on an individual basis. They may also be employees of an agency, institution, or university. They are normally recruited for project implementation supervision, training, provision of specific experts advice on a highly technical subject, policy guidance, special studies, compliance supervision or implementation monitoring. Individual consultants are not normally engaged for project preparation, unless the proposed project is simple and, generally, a repeat of an already established and successful project.
- (d) **Specialised Agencies or Institutions.** Specialised agencies or institutions (including Government/ Semi-Government agencies, universities, technical and professional institutions) may also, from time to time, be engaged to provide consultancy services. These services may be provided by individuals [as discussed in (c) above] or by teams [as discussed in (b) above].

## 12.5 Procurement of Consultancy Services - Process

- 12.5.1 **Identification of Services.** After careful examination of its requirements, the organisation should clearly identify the service/ specialised area/ domain in which it does not have requisite

expertise, duly ensuring it meets the criteria outlined in Paragraph 12.2, as also policy guidelines spelt out in Paragraph 12.3. At this stage, it must be ensured that the requirement of consultancy is assessed at a suitably high level echelon in the hierarchy, while also addressing the commonality aspect within the organisation, so that lower formations do not engage consultants for same/similar objectives. In-principle approval of the CFA may be obtained at this stage.

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

(a) **Preparation of the Statement of Case (SoC) and Terms of Reference (ToR).** The organisation shall prepare in clear, simple and concise language, a Statement of Case (SoC) incorporating the requirements, objectives and scope of the consultancy assignment. The SoC shall also establish the justification as to why it cannot be done inhouse. The ToR should be comprehensive and unambiguous and shall include:-

- (i) Procuring Entity's organisation background and Project background;
- (ii) Purpose and Service Outcomes Statement of the assignment;
- (iii) Detailed scope of work Statement including schedule for completing the assignment;
- (iv) Expected requirement of key professionals and kind of expertise;
- (v) Capacity-building programme and transfer of knowledge, if any;
- (vi) Deliverables - List of reports (or documents, data, maps, surveys, designs, drawings), schedule of deliveries, and period of performance;
- (vii) Background material, Data, reports, records of previous surveys, and so on, available and to be provided to the consultant;
- (viii) Facilities such as local conveyance, office space, office machines, secretarial assistance, utilities, local services, etc., which would be provided to the consultant by the Procuring Entity;
- (ix) Institutional and organisational arrangement.
- (x) Procedure for review of the work of consultant after award of contract.

(b) **Estimation of Cost.** The organisation shall estimate reasonable expenditure on consultancy by ascertaining

the prevalent market conditions and consulting other organisations engaged in similar activities. The cost estimate shall include the expenditure on staff, physical inputs, logistics and other resources for completion of the consultancy assignment and other miscellaneous cost. If the consultancy assignment comprises of multiple clearly distinguishable stages, it would be appropriate to cost each stage separately for realistic estimation.

- (c) Based on the justification contained in the SoC/ ToR and the detailed cost estimation, AoN and budgetary sanction for initiation of procurement is to be accorded by the CFA. At this stage itself, decision shall be taken whether to issue RFP under the single bid or the two bid system [as per Paragraph 5.6 (Chapter 5)], and the method of bid evaluation [as per Paragraph 5.31.6 (Chapter 5)], depending on the merits, justification and complexity involved.
- (d) **Consultancy Evaluation Committee (CEC).** For processing consultancy proposals, a CEC shall be constituted by the CFA after grant of AoN. The CEC shall normally comprise of three members including IFA rep and a representative of the user. Suitable domain/ technical experts may be included in the committee, where required. No member of CEC should be reporting directly to any other member of the CEC. The CEC shall be responsible for all aspects and stages of the consultant selection, i.e. evaluation of EoI, shortlisting of consultants, deciding Terms of Reference, issuance of RFP, evaluation of technical and financial proposals, negotiations (where required), and making recommendations on selection of the consultant, for consideration of the CFA.

**12.5.3 Identification of Likely Sources.** Paragraph 2.3.7 (Chapter 2) relating to procurement through GeM is applicable for procurement of consultancy services as well. In case of non-availability of the consultancy service through GeM, including through other bidding modules referred in Paragraph 5.2.1 (Chapter 5), procedure as below is to be followed:-

- (a) For consultancy services up to ₹ 25 lakh, a list of potential consultants may be prepared on the basis of formal or informal enquiries from organisations involved in similar activities, association of consultancy firms, etc.
- (b) In case the consultancy services are expected to exceed ₹ 25 lakh, in addition to (a) above, an enquiry for seeking Expression of Interest (EoI) from consultants shall be

published on CPPP/ DePP and on organisations' own website, if available. EoI should include, apart from detailed and comprehensively drafted ToR, the broad scope of work/service, inputs to be provided by the Procuring Entity, pre-qualification and eligibility criteria to be met by the consultant/s, etc. The consultants may also be asked to send their comments on the objectives and scope of the work or service projected in the enquiry. Adequate time shall be allowed for responding to EoI. If the complexity of the project so justifies, a formal EoI may be issued even for procurements below ₹ 25 lakh. The salient features and shortlisting process in EoI for consultancy cases, are elaborated in **Appendix M**.

**12.5.4 Short-Listing of Consultants**. On the basis of responses received from the interested parties to the EoI, consultants are to be shortlisted for further consideration. The number of short-listed consultants shall not be less than three.

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

- (a) Letter of Invitation.
- (b) Information to consultants regarding the proposal.
- (c) Terms of Reference (ToR).
- (d) Eligibility and pre-qualification criteria, in case the same has not been ascertained through EoI.
- (e) List of key positions for which the curricula vitae (CV) and experience of key personnel would be evaluated.
- (f) Bid evaluation criteria and selection procedure.
- (g) Standard formats for technical and financial proposals.
- (h) Proposed contract terms.
- (i) Procedure proposed to be followed for mid-term review of the progress of the work, and review of the final draft report.

**12.5.6 Pre-Bid Conference**. In order to enable all prospective bidders to clearly understand and appreciate the scope, nature of work involved and final deliverables of the consultancy, a pre-bid conference may be organised after issue of RFP and before submission of bids. The date, time and place of pre-bid conference should be indicated in the bidding document. This date shall be sufficiently ahead of bid opening date.

**12.5.7 Evaluation of Technical Bids**.

- (a) Technical bids are to be analysed and evaluated by the CEC following a two stage process. In the first stage, the CEC shall evaluate each proposal on the basis of its responsiveness to the technical conditions, and proposals which fail to comply with important aspects of RFP, such as not providing bid security, submission of unsigned/ incomplete bids, not responding to the ToR fully and those with lesser validity than that prescribed in the RFP etc., will be summarily rejected at this stage, as being nonresponsive.
- (b) In the second stage, evaluation will be undertaken to determine quality of the proposals. Since consultancy services involve intellectual products, where evaluation of the same product by individual members of CEC may differ widely due to subjectivity that is implicit in the professional judgement of any evaluator, it is important that such subjectivity is complemented by transparency, consistency and fairness. This objective could be achieved by adopting a rating/ grading system for evaluation of certain defined criteria and also sub-criteria, if required (to be specified in the RFP), in the technical proposals. The criteria and weightage to each criteria or sub-criteria would depend on the requirements of each case and may be fixed objectively. A model scheme of maximum/ minimum marks in terms of percentage is given below:-

<b>Rated Criteria</b>	<b>Range of Percentage for Score</b>
1. Specific experience of the consultancy firm/ individual consultant	5-10%
2. Methodology	20-50%
3. Qualifications and relevant experience of Key Personnel (only in the case of firms)*	30-60%
4. Transfer of Knowledge*	0-10%
Overall	100 %

**Note:** \* If these criteria are not required, the marks can be adjusted against some other criteria. The weight given to the firm's/ individual's experience can be relatively modest, since this criterion has already been taken into account when short listing the consultant. More weight could be given to methodology in the case of more complex assignments (e.g. multidisciplinary feasibility or management studies).

- (c) Once the rating criteria is final, each CEC member shall carry out the evaluation independently and score each proposal based on the specified rating criteria. After each member has independently rated the criteria, and sub-criteria, if any, of all the proposals, the CEC should conduct a joint review and discuss the merits of individual evaluations and scores. Thereafter, the scores given by individual members may be averaged out. Eventually, for each of the technical proposals, the CEC should calculate the average of the scores allocated to each criterion by all members and establish the technical ranking of the proposals. The evaluation shall also establish whether a proposal passes the minimum qualifying mark (or technical score), which is normally 75%, and has to be specified in the RFP. All the proposals which meet the minimum qualifying mark, will stand technically qualified for consideration of their financial bids.
- (d) At the end of the technical evaluation process, as mentioned above, the CEC shall prepare a technical evaluation report of the "quality" of all the proposals, recording the scores given to each criterion and sub-criterion. The CEC shall also record in detail, the reasons for acceptance or rejection of the technical proposals analysed and evaluated by it.

**12.5.8 Evaluation of Financial Bids.** After evaluation of technical bids during which quality of the proposals has been evaluated and completed, and approval of the CFA has been accorded, the CEC shall proceed to evaluate the financial bids. Financial bids of only those bidders/ consultants shall be opened and evaluated who have been declared technically qualified by the CEC. For selection of the consultant, the financial bids shall be evaluated either through the Least Cost System (LCS) procedure or following the Quality and Cost Based Selection (QCBS) method, as covered below:-

- (a) Under the LCS procedure, the financial proposals will be ranked in terms of their total evaluated cost. The least cost proposal will be ranked as L-1 and the next higher and so on will be ranked as L-2, L-3 etc. The L-1 proposal will be

considered for award of contract. The CEC will put up a report on financial evaluation of the technically qualified consultants, along with recommendations for award of contract to the CFA.

(b) Under QCBS selection, the technical proposals may be allotted a weightage of 70%, with the financial proposals being allotted a weightage of 30%, or any other respective weightages as declared in the RFP (e.g. 60:40, 50:50, but not greater than 80% for technical proposals). The proposed weightages for quality and cost shall be specified in the RFP.

(i) Using the technical scores for each proposal given by the CEC, and the price bids after they are opened, an Evaluated Bid Score of the bid under consideration, will be calculated for each responsive/ qualified bid, covering both the technical scores and financial bids by weighing them with the prespecified weightages, and then adding them up.

(ii) The Evaluated Bid Score (B) shall be calculated for each responsive/ qualified bid using the following formula, which permits a comprehensive assessment of the bid price and the technical merits of each bid:-

$$B = \frac{C_{\text{lowest}}}{C} \times Y + \frac{T \times Z}{T_{\text{highest}}}$$

where,

C = Bid Price of the Bid under consideration

C<sub>lowest</sub> = Lowest Bid Price among responsive Bids

T = Total Technical Score of the Bid under consideration

T<sub>highest</sub> = Highest Total Technical Score among all responsive/ qualified Bids

Y = Weightage for the Price as specified in the RFP

Z = Weightage for the Technical Score as specified in the RFP

Y + Z = 100

(iii) Once the Evaluated Bid Score (B) encompassing quality and cost aspects of each bid is obtained, the proposals shall be ranked in terms of the value of individual 'B' scores obtained. The proposal obtaining the highest 'B'

score will be ranked as H-1, followed by the proposals securing lower 'B' scores being ranked as H-2, H-3 etc. The proposal securing the highest 'B' score and ranked H-1, shall be recommended for award of contract. In the event two or more bids have the same 'B' score in final ranking, the bid with highest technical score will **be H-1**. **An illustration of the method of using the above formula for arriving at the Evaluated Bid Score (B) is placed at Appendix N**

**12.5.9 Consultancy by Direct Selection/Single Source Selection/ Nomination.** Selection by direct negotiation/ nomination, on the lines of Single Tender mode of procurement of goods, is considered appropriate only under exceptional circumstances, such as:-

- (a) Tasks that represent a natural continuation of previous work carried out by a firm/ consultant.
- (b) In case of an emergency situation, situations arising after natural disasters, situations where timely completion of the assignments is of utmost importance.
- (c) Situations where execution of the assignment may involve use of proprietary techniques or only one consultant has requisite expertise.
- (d) Under some special circumstances, it may become necessary to select a particular consultant where adequate justification is available for such single-source selection in the context of the overall interest of the organisation. Full justification for single-source selection shall be recorded in the file and approval of the CFA obtained with concurrence of the IFA, where required as per delegation of financial powers, before resorting to such single-source selection.
- (e) The procuring entity shall have a procedure in place to ensure that the prices are reasonable and consistent with market rates for tasks of a similar nature. If necessary, negotiations may be held with the consultants to examine reasonableness of quoted price.
- (f) The procuring entity shall ensure fairness and equity, and also that the required consultancy services are not split into smaller sized procurements to avoid competitive processes.
- (g) All consultancy contracts proposed to be awarded on nomination basis, shall be subject to prior approval of the administrative Secretary and the Vice Chief/ equivalent in the case of Service HQs/other Organisations.

## **12.6 Monitoring of the Consultancy Service/ Contract**

**12.6.1** The organisation shall put in place a robust contract monitoring mechanism to ensure that the performance of the consultant/ service is in line with the objectives of the contract. A Contract Monitoring Committee (CMC) shall be formed by the procuring entity to monitor progress of the contract. The CMC shall be responsible for monitoring the progress of the assignment, to oversee that the assignment is carried out as per the contract, to assess the quality of the deliverables, to accept/reject any part of assignment, to levy appropriate liquidated damages or penalty if the assignment is not carried out as per the contract and if the quality of services is found inferior and for any such deficiency related to the completion of the assignment.

**12.6.2** Substitution of Key Personnel During Execution of a Consultancy Contract. Quality in consultancy contracts is largely dependent upon deployment and performance of key personnel, during execution of the contract. The following conditions should be incorporated in tender documents for procurement of consultancy services:-

- (a) Substitution of key personnel may be allowed only in compelling or unavoidable situations, and the substitute shall be of equivalent or higher credentials. Such substitution may ordinarily be limited to not more than 30% of total key personnel, subject to equally or better qualified and experienced personnel being provided, to the satisfaction of the procuring entity.
- (b) Replacement of first 10% of key personnel will be subject to reduction of remuneration. The remuneration is to be reduced, say, by 5% of the remuneration which would have been paid to the original personnel, from the date of the replacement till completion of contract.
- (c) In case of the next 10% replacement, the reduction in remuneration may be equal to (say) 10% (ten percent) and for the third 10% replacement, such reduction may be equal to (say) 15% (fifteen percent). In case such percentages are not relevant, or for some other practical considerations, for a particular contract, the procuring entity may formulate a suitable mechanism following the above logic, which should be specified in the tender documents.

## **12.7 The Law of Agency**

**12.7.1** A Consultant shall be an Agent of the Principal/ Client/ Procuring Entity to carry out the service/ assignment on its behalf. Such

a relationship is covered by The Law of Agency (Section 182 to 238, of the Indian Contract Act, 1872) and, hence, there exists a Principal/ Procuring Entity and Agent relationship between Procuring Entity and such consultant. As per this law, the Procuring Entity is vicariously, legally and financially liable for actions of its Agents, e.g. a violation of certain labour laws in deputing staff for Procuring Entity's contract by the agents may render the Procuring Entity legally and financially answerable for such violations, under certain circumstances.

**12.7.2** Procuring entity shall incorporate suitable provisions in RFP to explicitly bind the consultant for compliance of all such legal requirements. The provision stated above shall also be applicable for non-consultancy services.

## **12.8 Conflict of Interest in Case of Consultants**

**12.8.1** The consultant is required to provide professional, objective and impartial advice, at all times holding the Procuring Entity's interests paramount, strictly avoiding conflicts with other assignments or his/ its own corporate interests, and acting without any consideration for future work.

**12.8.2** The consultant has an obligation to disclose to the Procuring Entity any situation of actual or potential conflict that impacts his/ its capacity to serve the best interests of its client/ Procuring Entity. Failure to disclose such situations may lead to disqualification of the consultant or termination of his/ its contract during execution of the assignment.

## **SECTION II – PROCUREMENT (OUTSOURCING) OF NON-CONSULTANCY SERVICES**

### **12.9 General**

**12.9.1 Non-Consultancy Service**. The term 'Non-Consultancy Service' means any subject matter of procurement, other than goods, consultancy/ other services or works, except those incidental or consequential to the service, and involves physical and measurable deliverables/ outcomes, where performance standards can be clearly identified and consistently applied. Non-consultancy services include transport services, logistics, clearing and forwarding, courier services, upkeep and maintenance of offices/ buildings/ estates (other than civil and electrical works etc.), horticultural services, security, photocopier service, janitor, catering, management of hostel and guest houses, office errand services, drilling, aerial photography, satellite imagery, mapping and similar operations, etc. (in line with Rule 197 of GFR-17). These services typically involve routine, repetitive, physical or procedural non-intellectual outcomes for which quantum and performance standards can be tangibly identified and consistently applied, and are bid and contracted on such basis.

**12.9.2 Outsourcing of Services**. The term 'Outsourcing of Services' means deployment of outside agencies on a sustained long-term basis (for one year or more), for performance of Non-consultancy services referred to in above para, which were traditionally being done in-house by the employees of Ministries/ Defence establishments. Outsourcing of such auxiliary and support services may be resorted in view of various factors like manpower shortfalls, improvement in efficiency, etc. Besides outsourcing, these services also include procurement of short-term standalone services.

### **12.10 Guiding Principles**

**12.10.1** Non-consultancy services may be procured in the interests of economy and efficiency, following the basic principles of Public Procurement as mentioned in this Manual. In addition, following aspects may also be kept in view:-

(a) In Non-consultancy services, the Activity Schedule (a document covering well-defined scope of work/ description of services and the time frame for which services are to be availed of) should be consistent with the overall objectives of the Procuring Entity.

- (b) Transparency and integrity in the selection process (that is, proposed, awarded, administered and executed according to highest ethical standards) should be ensured.
- (c) Engagement should be economical and efficient.
- (d) Equal opportunity to all qualified service providers to compete should be ensured.
- (e) Hiring of manpower through contracts may be avoided to ensure no future legal problems as these employees may demand regularization afterwards. Even if employed, there shall be no direct correspondence with such persons. Even I-cards shall be issued indicating the person as being a representative of the Contractor (name of the Contractor to be mentioned).

### **12.11 Types of Contracts in Non-Consultancy Services**

**12.11.1** Depending on the nature of services, procurement/ outsourcing of Non-consultancy services, can either be lump sum contracts, or timebased contracts or unit (item/ service) rate based contracts (say taxi service on km basis), or it can be a mix of these. For occasionally but continually needed services, delivery contracts based on time or unit (item/ service) rates may be appropriate.

### **12.12 Demand Aggregation**

**12.12.1** The best prices to a user can be available if same requirement/ demands of various organisations are aggregated. This acts as an incentive for the supplier/s to quote their best price. For the same products, the demands of various organisations/ formations may be clubbed together to the extent feasible, and tendering may be done on the basis of aggregated demand, which will provide the best prices to the Government.

### **12.13 Procurement of Non-Consultancy Services**

#### **12.13.1 Identification of Services.**

- (a) In the interests of economy and efficiency, and to provide more effective delivery of public services, Non-Consultancy Services may be procured/ outsourced on consideration of additional requirement/ commitment/ usage of:-
  - (i) Staff/ Management/ Organization.
  - (ii) Technological and Material Resources.
  - (iii) Money.
  - (iv) Time/ speed of execution.

(b) Approval of the CFA should be obtained before engaging service providers/ contractors, duly justifying the need for procurement (outsourcing) of such services.

**12.13.2 Non-GeM Procurement.** Paragraph 2.3.7(Chapter 2) relating to procurement through GeM is applicable for procurement of Nonconsultancy services as well. In case of non-availability of the Nonconsultancy service through GeM, including through other bidding modules referred in Paragraph 5.2.1 (Chapter 5), procedure as below is to be followed:-

(a) **Selection of Service Provider/ Contractor in Non-Consultancy Services.** Unlike procurement of Consultancy services, procurement of Non-consultancy services is normally undertaken by a shorter process, which may not involve issue of an EoI and bid quality assessment of the scale required in Consultancy Services. It is normally done through a single stage, two bid RFP process, containing both technical and financial bids. However, in highly technical and complex Non-consultancy services, where quality is important (say in studies like seismic surveys, airborne data acquisition, etc.), use of QCBS system may be appropriate. In such cases, a Pre-Qualification (PQ) process may be undertaken on the lines of consultancy contracts.

(b) **Identification of Likely Service Providers/Contractors.** An organisation should prepare a list of likely and potential service providers/contractors on the basis of formal or informal enquiries from other Organisations/ Departments involved in similar activities, scrutiny of trade journals, various websites, etc.

(c) **Procurements above ₹ 10 Lakh.** The advertisement in such case should be given on CPPP <<https://www.eprocure.gov.in/>> DePP<<https://defproc.gov.in>> and organisations' own website. Such advertisements for invitation of tenders shall give the complete web address from where the bidding documents can be downloaded. Attention of known reputed service providers/contractors may also be separately drawn wherever possible.

(d) **Procurements up to ₹ 10 Lakh or Less.** The organisation should scrutinise the preliminary list of the likely service providers/contractors identified as per Sub-Paragraph 12.13.2 (b) above, shortlist the prima facie eligible and capable contractors and issue RFP to these shortlisted firms on a limited tender enquiry basis, asking for their

offers by a specified date and time, etc. The number of contractors so identified for issuing limited tender enquiry shall be more than three.

(e) **Small Value and Emergency Procurements of Non-Consultancy Services.** In many small value procurements of Non-consultancy services, the service provider/contractor may neither be capable of handling the bidding process, nor would this be a cost effective process for the Procuring Entity. For procurements of Non consultancy services up to ₹ 50,000/-, the 'Direct Procurement without Quotation' mode of procurement as per Paragraph 2.4.2 (Chapter 2) (Rule154 of GFR 2017) may be utilised. Similarly, for procurement of Non-consultancy services upto ₹ 5 lakh, 'Direct Procurement by a Purchase Committee' mode as per Paragraph 2.4.3 (Chapter 2) (Rule 155 of GFR 2017) may be utilised. This mode of procurement may be adopted only for short-term/ urgent requirements. **DPMF 36** and **DPMF 37**, as applicable, may be utilised for certificates to be recorded for such procurements.

(f) **Single-Source Bidding/Nomination.** Should it become necessary, in an exceptional and compelling situation to outsource a job to a specifically chosen service provider/contractor, the CFA's approval with IFA's concurrence may be taken. In such cases, detailed justification, the circumstances leading to the outsourcing by choice and the special interest or purpose it serves, shall form an integral part of the proposal. It shall also be ensured that such contracts are concluded for a period not exceeding three months. Threshold limits for use of Single-Source Bidding method of selection are to be followed as per delegation of financial powers for Single Tendering.

## **12.14 Procurement of Non-Consultancy Services – Process**

**12.14.1 Activity Schedule and Other Requirements.** While procedures mentioned in Chapter 4 shall be followed for AoN stage, a detailed Activity Schedule and Cost Estimate is required to be prepared to process any proposal for AoN approval. The objectives of Activity Schedule are to provide sufficient information on the quantities of services to be performed to enable bids to be prepared efficiently and accurately, and when a contract has been entered into, to provide a priced Activity Schedule for use in the periodic valuation of services executed. Besides detailing the activities, quantum and time frame, Activity Schedule is to contain the following sections:-

- (a) **Description of Services.** A brief description of the service would help the bidders understand the service requirement. It shall cover background of the Procuring Entity's organisation and details of the service required. The Purpose and Service Outcome statement are also to be included in the description of services.
- (b) **Itemised Activity Schedule.** In order to attain objectives of the Activity Schedule, services are to be itemised in the Activity Schedule in sufficient detail to distinguish between the different classes of services, or between services of the same nature carried out in different locations or in other circumstances which may give rise to different considerations of cost. Consistent with these requirements, the layout and content of the Activity Schedule shall be as simple and brief as possible. All information relevant for the bidder to quote a price may be included, e.g. the frequency, quantum and time frame/ duration of activities.
- (c) **Labour/ Personnel Activity Schedule.** If labour/ personnel are used in the activity, these may be quantified, specifying type, number, place, shifts and frequency of utilisation in the Activity Schedule. In case any key professionals or Project Manager is required, their qualifications and experience required may also be mentioned.
- (d) **Materials Schedule.** In case any materials/ consumables/ tools of trade are to be consumed/ deployed, a separate Materials Schedule shall be included, indicating the specification and quantity of such materials/ consumables/ tools to be consumed/ deployed per unit activity/ day/ location/ per manpower deployed. Price of all these materials/ tools/ etc., is to be shown as a separate lump sum cost in the financial bid by the bidder.
- (e) **Essential Equipment Schedule.** Any essential equipment or machinery (trucks, cranes, washing machines, vessels/ craft, plant and machinery, etc.) that the service provider/ contractor must have, and shall deploy as a qualifying requirement, is to be mentioned along with specifications, capacity, age of equipment, etc. It shall be ensured that operators for such equipment are mentioned as key personnel.
- (f) **Performance Specifications, Drawings.** The performance specification or drawings, if necessary, shall be specified for each activity, materials, tools and machines to be used in the activity. Any reporting requirement, periodic meetings or other submissions, shall be part of the Activity Schedule.

(g) **Statutory and Contractual Obligations to be Complied with by the Service Provider/Contractor.** Service provider mostly works within the premises of Procuring Entity, along with staff of Procuring Entity. Many services are subject to various statutory provisions relating to Labour, Taxation, Workmen Safety, Child and Women Labour, Private Security Agencies, Environmental Protection, Mining, Forest clearance, Employment reservations, etc. The bidder shall have valid registration with GST Identification Number (GSTIN), ESI, EPF Registration Certificate, Registration Declaration of ownership under Indian Registration Act 1908 and Labour Licence and PAN (Income Tax). Moreover, the Procuring Entity may have its own regulations about safety, security, confidentiality, etc. All such statutory and contractual obligations are to be listed, so that price implications and compliance is taken care of by the bidder. In case of security services contracts, the bidder shall have the valid licence to run the business of Private Security Agency in the state issued by the appropriate authority for operating Security Services. In case of catering contract, the service provider must have valid FSSAI certificate

(h) **Facilities and Utilities to be provided by the Procuring Entity to Service Provider/Contractor at Site.** If any facility/utility (Operation Manuals, Medical Emergency, Room, Furniture, Electricity connection, Water connection/ etc.), is made available to the successful bidder to carry out the service, the same shall be mentioned. In case it is proposed to charge the electricity/ water supplied to the service provider/contractor, the same may be mentioned, including the rate of charges. This aspect has a great bearing on the cost that will be quoted by the bidders. This may have implications in vitiating the selection process either way – a facility to be provided may not get declared, or a declared facility may not be provided ultimately. Hence, great care is to be accorded, while preparing this statement. As abundant caution, facilities and utilities which will not be provided, or facilities which may be provided on chargeable basis, shall be specifically mentioned. It shall also be clearly mentioned that the service provider/contractor will not be allowed to use any of the Procuring Entity's facility/ area which are not listed out.

(i) **Institutional Arrangements and Procedure for Reviewing Work of the Service Provider/Contractor after Award of Contract.** Institutional arrangements like the placement in a Department, name of the Project Manager and chain of

command for reporting, may be specified. Process for review of service outcomes and deployment of personnel and resources, shall be clearly brought out. A template for Activity and other Schedules is given at **DPMF 38**.

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

- (a) Remuneration for Personnel deployed: Staff remuneration rates shall include basic salary, social charges, overheads, fees and allowances.
- (b) Reimbursables: Travel, Logistics, Consumables, Material, Tools, Hiring of third party services, etc.
- (c) Administrative and Miscellaneous: Mobilisation, demobilisation, temporary structures, administrative expenses, office and IT equipment, contingencies, financing costs, costs for hiring/ depreciation/ financing of machinery and equipment, etc. Profit element, taxes and duties are to be added to the estimated cost.

**12.14.3 Obtaining Acceptance of Necessity (AoN)**. Based on the detailed Activity Schedule and the Cost Estimate, a comprehensive Statement of Case (SoC) shall be prepared for seeking AoN approval from the CFA. At this stage itself, decision is to be taken regarding mode of bidding and the terms & conditions to be incorporated in RFP.

**12.14.4 Preparation of the Request for Proposal (RFP)**.

- (a) In procurement of Non-consultancy services, the RFP shall be issued with following details, inter alia:
  - (i) The details of the service to be performed by the service provider/contractor along with the detailed Activity Schedule.
  - (ii) The facilities and the inputs which shall be provided to the service provider/contractor by the organisation.
  - (iii) Eligibility and qualification criteria to be met by the service provider/contractor for performing the required service.

- (iv) The statutory and contractual obligations to be complied with by the service provider/contractor.
- (b) Guidelines for preparing RFP for Non-Consultancy outsourcing procurements are placed at **Appendix O**.

#### **12.14.5 Receipt of Bids, Evaluation and Award of Contract.**

- (a) The Procuring Entity shall evaluate, segregate, rank the responsive bids and select the successful bidder for placement of the contract, in a manner similar to Procurement of Goods. Procuring Entity shall award the contract to the bidder whose bid has been determined as the lowest evaluated bid price (L1), provided the offer is determined in accordance with the bid documents to be eligible, substantially responsive and meets the minimum technical/ qualification standards. In case of multiple L1 scenario, Paragraph 5.19.8 (Chapter 5) is relevant.
- (b) In exceptional circumstances, Procuring Entities are allowed to use QCBS system of evaluation as per Sub-Paragraph 5.31.6(b) (Chapter 5), for procurement of Non-consultancy services, in cases where either of the following two conditions are met :-
  - (i) Where the procurement has been declared to be a Quality Oriented Procurement (QOP) by the Competent Authority, viz. for highly technical and complex services, where quality is important (say in studies like seismic surveys, airborne data acquisition, etc.).
  - (ii) Where estimated value of procurement of Non-Consulting Services (including all taxes and option clause) does not exceed ₹10 crore.
- (c) The Competent Authority for allowing QCBS shall be as follows:
  - (i) The competent authority for declaring a procurement as a QOP shall be the Secretary of the Ministry/ Department.
  - (ii) Where estimated value of procurement (including all taxes and option clause) for Non-Consulting Services does not exceed ₹10 crore, an officer or authority two levels above the CFA (minimum at Command HQ level), or the Secretary of the Ministry/ Department, whichever is lower shall be the competent authority.

- (d) In respect of QCBS for such cases a Technical Committee shall be constituted to carry out functions mentioned in Sub-Paragraph 5.31.6(b)(ii) (Chapter 5), in lieu of the Special Technical Committee (STC). The composition of the Technical Committee shall follow the provisions of Sub-Paragraphs 5.31.6(b)(i)(aa) to (ad) (Chapter 5). The provisions of Sub-Paragraph 5.31.6(b)(i)(ae) (Chapter 5) shall, however, not be applicable in such cases. However, the maximum weight of the non-financial parameters shall in no case exceed 30%.
- (e) In cases where the estimated value was less than ₹10 crore, but on tendering, following QCBS process, it is proposed to place contract for more than ₹10 crore, the following procedure shall be adopted:-
  - (i) In case the difference between the estimated value (including taxes etc., as above) and value of the proposed contract (including taxes etc.) is less than 10% of the estimated value, there will be no bar on placement of contract.
  - (ii) In all other cases, the procurement process is to be scrapped and restarted either as QOP or on non-QCBS basis.

**12.14.6 Service Level Agreement (SLA).** SLA is an agreement between the service provider/contractor and the User entity, designed to create a common understanding about services, priorities and responsibilities, improve communications, manage expectations and clarify responsibilities. In non-consultancy services, it is preferable to have an SLA included in the contract document for which it would need to be specified in advance in the bidding document and finalised before the services are started. While drafting the SLAs, care should be taken that the provisions are balanced towards both the contracting parties. The objectives of SLA are:-

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

## **12.15 Monitoring the Contract**

**12.15.1** Before commencement of the services, the service provider/contractor shall submit to the Procuring Entity for approval, a programme showing the general methods, arrangements, order and timing for all activities in accordance with Paragraph 12.14.1. The services shall be carried out in accordance with the approved programme as updated. CFA shall nominate an officer/ committee to be involved throughout in the conduct of the contract, and to continuously monitor the performance of the service provider/contractor.

## **12.16 Aspects not Covered**

**12.16.1** Any aspect not covered in this Chapter, will be as per the relevant provisions in other Chapters of this Manual.

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## **CHAPTER 13**

### **REFITS/ REPAIRS OF SHIPS/ SUBMARINES/ CRAFT/ ASSETS THROUGH INDIAN PSU/ PRIVATE SHIPYARDS/ TRADE**

#### **13.1 General**

**13.1.1** A ship/ submarine is a platform that consists of an assortment of weapons, sensors and support systems, along with propulsion, power generation and auxiliary systems, facilities for crew, and fuel and provisions. All the surveillance and weapon systems are interlinked and integrated through an elaborate data management system. The platform as a whole, or a part thereof, is required to be refitted/ repaired from time to time, including, inter-alia, disassembly, docking, inspection/ survey, repair/ overhaul followed by trials in harbour and at sea. As an integral part of the refit process, approved modifications to structure, equipment, machinery and systems, including installation of new equipment, are also carried out. Overall, the partial/ complete refit of a ship/ submarine/ yard craft is a complex activity, wherein concerted planning is required much before the commencement of the repairs/ refit, and also during the course of the repairs/ refit, to ensure completion in a time bound manner, and make the platform seaworthy and battle worthy. Repair of Marine Assets/ Service Assets also involve the same kind of planning as required for undertaking repairs/ refits of Ships/ Submarines. The entire activity is different from other revenue procurement activity, such as, procurement of goods and stores or even other services, since a number of peculiar technical issues are required to be addressed in such cases. Wherever such activities get covered under the provisions of OCPP (Chapter X of DAP-2020), procedures spelt out there in shall apply. For the purpose of clarity, the following definitions would be used in respect of ships/ submarines/ craft/ assets and their associated repairs/ refits:-

- (a) **Competent Technical Authority (CTA)**. The CTA is the head of the Service Repair Agency under the relevant CFA.
- (b) **Contract Operating Authority (COA)**. Agency assigned by the CFA on behalf of the President of India to operate and execute the Contract, including exercising the financial transactions within the sanctioned costs. The COA is responsible for execution of the repair/ refit programme, ensuring quality control/ safety, providing technical guidance, monitoring progress and addressing all aspects, including critical path aspects of the various activities being undertaken as part of the contract.

- (c) **Growth of Work (GoW).** Additional technical defects/ services/ maintenance non-conformities/ alterations, etc., leading to unforeseen growth in Scope of Work on ships/ submarines/ yard crafts undergoing repairs/ refits, which were not anticipated/ defined at the contract signing stage, and for which separate funding allocation is made within the contract at the AoN stage itself. Such Growth of Work shall be approved by the CoA during refit.
- (d) **Marine Assets.** All assets, including yard crafts, boats, barges (both dumb and self-propelled), Battle Practice Targets (BPTs), Pontoons, Catamarans, Floating Dry Docks, Dock Gates, Caissons, Flap Gates, etc., which come in direct contact with the marine environment.
- (e) **Offloading.** In the parlance of repairs and refits of ships/ submarines/ yard crafts/ etc., offloading refers to the process of offsetting the existing capacity/ resource constraints at Naval Yards by execution of manpower intensive/ specialised jobs outsourced through trade, either on case-to-case basis or by entering into Repair Contracts with PSU/ Private Shipyards.
- (f) **Post Dismantling Demand (PDD) Spares.** Spares required for completion of repairs/ refits, which are evident only upon opening up/ dismantling of the equipment/ system, and can normally not be foreseen at the time of formulation of scope of work.
- (g) **Refit.** Includes all activities towards servicing of equipment/ refurbishment/ renovation/ modification, including, *inter alia*, planned dry docking, to attain designed/ stated performance.
- (h) **Repair.** Includes all activities, except routine repairs, where a defect/ anomaly in performance/ degradation in performance of the equipment, necessitates remedial measures on the stated equipment.
- (i) **Service Assets.** All assets other than Marine Assets, including Jetty Cranes, Mobile Cranes, Listers, Trailers, Mobile Generators, Mobile Chilling Plants, Forklifts, Workshop Machinery, etc., non-availability of which, either directly or indirectly, affects the productivity of a unit.
- (j) **Service Repair Agency.** The agency of the Indian Navy (IN)/ Indian Coast Guard (ICG) whose job is to execute the maintenance and/ or the maintenance policy of the ship/ submarine/ yard craft.

## 13.2 Aim

**13.2.1** The aim of this chapter is to lay down procedure/ guidelines for offloading of partial/ complete repairs/ refits of ships/ submarines/ crafts/assets to Indian PSU/ Private ship repair yards/ trade, owing to the unique nature of repairs/ refits necessitating a distinct procedure.

**13.2.2** Though general procedure/ guidelines mentioned in Chapters 2 – 8 will be applicable for general issues, the unique provisions mentioned in this Chapter shall supplement those guidelines due to peculiarity of these types of procurements.

## 13.3 Offloading of Partial/ Complete Repairs/ Refits of Ships/ Submarines

**13.3.1** Refits of ships/ submarines are scheduled in accordance with the Ops-cum-Refit cycles promulgated for each class of ship. The refit schedules for a two to three year period (as the case may be, for ICG and IN respectively) are decided during the Annual Refit Conference (ARC). The proposals for offloading of refits due to constraint/s of capacity/ expertise are discussed and approved during the ARC.

### 13.3.2 Pre-AoN Stage.

- (a) The Service Repair Agency shall prepare a comprehensive plan for offloading refits, which is to include the following:-
  - (i) Cases approved for offloading during ARC.
  - (ii) Schedule of Refits being offloaded.
  - (iii) Rough Indicative Cost (RIC) of cases approved in the offloading plan.
- (b) **Offloading Plan.** The cases for offloading are to be consolidated into the offloading plan with the under-mentioned parts. The offloading plan (Roll-On Basis) shall serve as an indicator of the estimated spread of expenditure, and the anticipated budget requirement, for the next two to three years. Delegation of financial powers will be in accordance with those specified in DAP-2020/DFPDS-2021, as applicable, and as amended from time to time:-
  - (i) **Part A.** Consolidated cases that would individually be processed under delegated powers below Service HQs/ CGHQ for the ensuing year.
  - (ii) **Part B.** Consolidated cases that would individually be processed under delegated powers below Service HQs/ CGHQ for the next two years.

- (iii) **Part C.** Consolidated cases that would individually be processed under delegated powers of Service HQs/ CGHQ for the next two/ three years.
- (iv) **Part D.** Consolidated cases that would individually be processed under delegated powers of MoD for the next two/ three years in respect of ICG and IN respectively.
- (c) **RIC.** The RIC for approved cases would be roll-on in nature, and under the following heads:-
  - (i) Major Engineering Work Package.
  - (ii) Major Electrical & Weapon Work Package.
  - (iii) Major Hull Work Package.
  - (iv) Major Equipment Replacement/ Upgradation.
  - (v) Services.
  - (vi) Material and Spares.
- (d) **Approval In Principle (AIP).** The AIP for offloading plan shall be accorded at the Service HQ/ CGHQ level during ARC/ Mid-Year Refit Review (MYRR).

**13.3.3 Invitation of Expression of Interest (EoI).** The invitation for EoI is issued after receipt of defect list and endorsement of staff remarks for seeking comments/ queries of the prospective refitting yards/ firms on the refit work package. The EoI document is to be approved by the Competent Technical Authority at the level of respective CFA.

**13.3.4 Mode of Tendering.** All partially/ fully offloaded refits/ repairs may be undertaken on OTE/ LTE basis. To save costs on fuel consumption, administrative expenses, support infrastructure requirements, etc., in offloading the refit/ repair work to shipyards located away from the base port, competitive tendering on LTE basis to the shipyards in the immediate geographical vicinity of the ship's base and those shipyards willing to undertake the refit/repair in such vicinity, may be considered. In case the response from these shipyards is poor, quotes may be invited from other shipyards to undertake the repairs/ refits at the location specified by the Customer. In order to ensure build up and retention of capacity and expertise, long-term contracts of multiple refits of Ships/ Submarines/ Yard craft or a Class of Ships/ Submarines/ Yard craft by means of a single RFP/ tender may also be undertaken. Indian shipyards having capacity/ past experience in constructing particular class of vessels (provided no other Indian shipyard has similar capacities/past experience), may be considered for such long-term refit contracts on nomination/ STE basis.

**13.3.5 AoN Stage.** The AoN for individual cases in the offloading plan shall be accorded by the respective CFAs based on the financial implication of the individual cases. The financial consultation for each part of the offloading plan shall be given by the IFA concerned of the respective CFA. The AoN shall be accorded for the cases to be processed at the indicated cost and valid for the period of consolidation on a roll-on basis. On accord of AoN for the entire offloading plan, the same shall be forwarded to all CFAs concerned and their respective IFAs for record by IN/ ICG. The AoN shall be accorded for the Standard RFP and Standard Contract for Offloading of Ships/Submarines/etc., placed at **DPMF 39** and **DPMF 40** respectively.

**13.3.6** All emergent cases due to service exigencies may be taken up for AoN of CFA separately. In such cases, if the financial implication of the offloading case is beyond the powers of the immediate CFA, then the SOC along with the draft RFP will be sent directly to the next higher CFA, duly recommended, for vetting and approval. Concurrence of the intermediate IFA is not required, as the case would be dealt with exclusively by the IFA to the next higher CFA.

**13.3.7 Issue of RFP.**

- (a) Where the repair/ refit project involves firming up of technical issues prior to issue of RFP, in such cases, responses to EoI may be examined and if required discussions may be held with prospective Bidders, followed by issue of RFP. Such information is generally sought for cases of long-term contracts of multiple refits of Ships/ Submarines/ Yard craft or a Class of Ships/ Submarines/ Yard craft.
- (b) After the accord of AoN, the work package is to be firmed-up, prior to issuance of the RFP, in order to incorporate a realistic estimate of Scope of Work (SoW). With firmed-up work package, the RFP for single refit or longterm contracts of multiple refits are issued by the respective Service Repair Agencies, as and when due. The CFAs at their discretion may form a Procurement Committee (PC) within their domain on a case-by-case basis. The Scope of Work (SoW) would be enclosed with the RFP. The RFP would be issued by the PC, which may be constituted in Naval Dockyards/ NSRY in the case of IN and BMU/ Station HQ/ DHQ/ RHQ in the case of ICG.
- (c) In case of any deviation from the standard RFP (except Standard Conditions at Part III of Format of RFP at **DPMF 11**) or upward revision of the estimated cost, the case along with the revised draft RFP, shall be forwarded for vetting and

approval of CFA in consultation with IFA where required as per delegation of financial powers. With variations from Standard RFP and Standard Contract, individual cases can still be part of the Roll-On Plan, in which case, AoNs are to be accorded separately for those specific cases along with the variations in the RFP and Standard Contract.

(d) While **DPMF 11** is to be used as the base draft RFP, the additional features mentioned in **DPMF 39**, are to be suitably incorporated.

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

**13.4.1 Repairs of Marine/ Service Assets**:- The procedure for complete/ partial repairs of Marine/ Service assets is the same as given in Paragraphs above, except that the offloading plan in the case of Marine/ Service assets would be annual.

#### **13.5 Growth of Work (GoW)**

**13.5.1** The SoW in refits/repairs of ships/ submarines is usually nondeterministic and dynamic in nature with regard to resources required for completion. The GoW, a feature typical of refits/ repairs, is dependent, *inter alia*, on factors such as age of ship/ submarine, condition of onboard equipment/ machinery, condition of hull, role and exploitation pattern, duration between formulation of work package and actual execution of work, which may require increase in SoW and also spares, modifications and Additions & Alterations. Additional financial sanction up to 15% of contract value (including taxes and duties) shall be catered for such GoW at AoN stage, wherever required. In case of ICG, an additional 20% of contract value (including taxes and duties) is allowed towards non-available (NA)/ additional spares required during execution of approved scope of work/ unforeseen work, over and above the 15% catered for GoW. In exceptional circumstances, where GoW exceeds 15% of the contract value (including taxes and duties), the case is to be taken up with appropriate CFA through IFA for revised financial sanction and refixation of Delivery Period.

**13.5.2** The procedure for initiating change request for GoW is placed at **DPMF 41**, which shall also form part of the RFP and the Contract. Appropriate CFA in each case will be determined based on the total contract value (including GoW).

**13.5.3** Payment in all such cases is to be made at actuals, subject to the respective GoW ceiling stipulated for the IN and ICG, as approved by the CFA. A Post Refit/ Repair Report shall be drawn up for distribution to all concerned, including the IFA.

**13.5.4** If GoW has already been sanctioned and included in the Contract by CFA, additional value on account of GoW can be approved by Contract Operating Authority (COA) based on negotiated rates of materials etc., on pro rata basis. Wherever, negotiated rates are not available, the prices shall be negotiated by the COA in consultation with the IFA (of COA). Total additional amount on account of GoW is to be within the ceiling approved for GoW.

## **13.6 Payment Terms**

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

**(a) Repair/ Refit Cost.**

- (i) **Stage I.** 15% advance of basic repair/ refit cost (excluding GoW, NA spares, taxes and duties ) against bank guarantee/ indemnity bond (in case of DPSUs) which would be paid to the shipyard/ firm as follows:-
  - (aa) 10% on placement of order/ signing of contract.
  - (ab) 5% on submission of PERT and documentary proof with respect to placement of work/ supply order/ subcontract on OEMs/ firms within 30 days of conclusion of contract or on commencement of repair/ refit (whichever is earlier).
- (ii) **Stage II.** 10% of the basic contracted repair/ refit cost on docking (excluding GoW).
- (iii) **Stage III.** 15% of the basic contracted repair/ refit cost on final undocking and completion of all underwater works. Payment of completed GoW within the sanctioned amount can be made additionally.
- (iv) **Stage IV.** 20% of the basic contracted repair/ refit cost on satisfactory completion of Basin Trials and harbour trials of major machinery/ equipment (such as Main Propulsion Plant, Shafting and equipment related to Habitability).
- (v) **Stage V.** 25% of the basic contracted repair/ refit cost minus cost of all incomplete work on satisfactory completion of post repair/refit Sea trials and departure of the ship from the shipyard. Cost of incomplete work is to be withheld until completion of work.

- (vi) **Stage VI.** Balance (15%) on submission of final bill within 60 days on satisfactory completion of Repairs/ Refit. Shipyard to provide a bank guarantee equal to 10% of the final cost of refit/ repair (indemnity bond in case of DPSUs), which shall be valid until the completion of the guarantee/ warranty period.
- (vii) Bill payments for all stages are to be vetted and cleared by COA. GoW payments are to be processed on satisfactory completion of work/ trials and on receipt of work done certificate from the ship/ submarine/ asset.
- (b) In case of repair/refit contract wherein delivery period is less than one year, number of stage payments may be between three and six, to be decided in consultation with IFA.
- (c) **Cost of Material and Spares.** Advance on signing of Contract of up to 10% of cost of material and spares not included in the basic repair/ refit cost, against Bank Guarantee may be permitted. The remaining payment for such spares are to be made along with the stage payments during refit/ repair duration, on submission of proof of Procurement order, Material receipt and Inward inspection. Handling charges, if any, are to be restricted to a maximum of 7.5%.

### **13.7 Evaluation Criteria**

#### **13.7.1 Criterion for Determination of L1.** The L1 Shipyard/ Firm shall be determined as follows:-

- (a) **IN.** The cost of Refits/Repairs, Services and Spares listed in the work package are to be taken into account for determination of L1. Payment for such mandatory spares shall not exceed the cost given in the Price bid.
- (b) **ICG.** In case of ICG, since NA spares are not part of Refit/ Repair Package, determination of L1 bidder is to be considered on account of cost of Refit/Repairs inclusive of Services and mandatory components/refurbishment items for propulsion and power generation, which are to be included upfront in the RFP.

#### **13.7.2 Loading in Case of Defect List (DL) Items 'Not Quoted'.** In order to ensure that all offers are compared in an equitable and fair manner, loading shall be resorted to for preparing CST in order to determine the L1 bidder. During this process, the bids of all technically qualified bidders are to be considered by notionally loading the highest price quoted by the technically qualified bidder against the specific unresponsive sections/ subsections/ DLs submitted by such a bidder. These notionally loaded bids shall, however, be deemed to be responsive only if the vendor accepts

such loading in writing. A provision to this effect is to be included in the RFP.

**13.7.3 Negotiations for 'Not Quoted' DLs.** Having loaded the highest cost for the 'Not Quoted' DLs, the PC/ CNC should subsequently engage with the L1 bidder to match the lowest available prices, to ensure that reasonable price is paid for the 'Not Quoted' DLs in the final contract price.

**13.7.4 Quality and Cost Based Selection (QCBS).** Wherever required, QCBS may be used for evaluation. The procedure for QCBS shall be as per Sub Paragraph 5.31.6 (b) (Chapter 5). Following technical parameters may, *inter alia*, form the criteria for evaluation of bidders under QCBS:-

- a. Dry dock scheduling.
- b. Quality of infrastructure.
- c. Refit/Repairs Planning.
- d. QA/ QC.
- e. Overseeing and monitoring.
- f. Material/ equipment handling and operational logistics.
- g. Management practices and governance.
- h. Human resource capabilities and workforce development.
- i. Safety standards and services.
- j. Past experience of refits/Repairs.
- k. Timely completion of past contracts.
- l. Subcontractor/ vendor base.
- m. Proximity to Naval establishment.
- n. Customer reviews.
- o. Administrative arrangements.

**13.7.5** Evaluation criteria shall be stated upfront in the RFP.

## **13.8 Format of Contract**

**13.8.1** While **DPMF 12** is to be used as base draft of Contract for signing with Seller, the unique features mentioned in **DPMF 40** are to be suitably incorporated in Contract for these cases.

**13.9** Refit DCD extension: Refit extension would be approved by CFA with concurrence of IFA on the basis of recommendations by the CoA.

## **13.10 Aspects not Covered**

**13.10.1** Any aspect/s not specifically mentioned in this Chapter, will be as per relevant provisions in other Chapters of this Manual.



## **CHAPTER 14**

### **BANKING INSTRUMENTS**

#### **SECTION I – FOREIGN PAYMENTS**

##### **14.1 General**

**14.1.1** While undertaking imports in accordance with the provisions relating to foreign procurements (Chapter 7), the following guidelines shall be applicable for foreign payments.

**14.1.2** **Import Regulations.** Import is regulated by the Directorate General of Foreign Trade (DGFT) under Department of Commerce, Ministry of Commerce and Industry, Government of India. Authorised 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 the Reserve Bank of India (RBI) under Foreign Exchange Management Act (FEMA), 1999, as amended from time to time.

##### **14.1.3 Banking Instruments in International Trade.**

The Uniform Customs and Practices for Documentary Credit (UCPDC) are a set of internationally recognised definitions and rules for interpretation of documentary credits, issued by the International Chamber of Commerce (ICC), Paris. ICC Publication No. 600 has been in operation from January 2007. The publication covers all aspects of international trade payments against documentary proofs through Letters of Credit (LC) and also Bank Guarantees such as ABG, PBG, etc. The importer shall follow normal banking procedures and adhere to the provisions of UCPDC, while opening LCs for import into India.

**14.1.4** **Banking Instruments for Foreign Payments.** The following two types of banking instruments are used for effecting payments in case of procurements ex-import, as per the payment terms incorporated in the contract:-

- (a) Letter of Credit (LC).
- (b) Direct Bank Transfer (DBT).

**14.1.5** **Financial Sanction.** The financial sanction for the foreign procurement shall invariably incorporate the following details relating to payment:-

- (a) Total amount, with break-up of the payments (if part/ stage payments against staggered delivery have been provided in the contract).
- (b) Mode of payment (through LC or DBT). In case of LC, then indicate type of LC as per **Paragraph 14.3**.
- (c) Foreign Currency involved.

## **14.2 LC and the Reasons for Using Them**

**14.2.1** An LC is a written undertaking given by the buyer's bank (the issuing bank) on behalf of and at the request of its customer (the applicant/ buyer), routed through the agency of a bank in the seller's country (advising bank), to the seller that it (issuing bank) guarantees to pay the seller for the goods within a specified time, provided the conditions laid down in documentary credit are fully satisfied.

**14.2.2** An LC may be established in any Indian Public/ Private Sector Scheduled Commercial Bank, from the list of banks approved by MoD for this purpose, to be decided by the Buyer.

**14.2.3 Reasons for using LC.** In international trade, the buyer and the seller being located in different countries, may not know each other well. Also, the two countries would have different legal systems, currencies and trade and exchange regulations. Due to these reasons, both the buyer and the seller need certain conditions to be fulfilled, to suit their requirements, before releasing the payments and goods respectively.

(a) **A Seller would want:-**

- (i) To be paid as soon as he ships the goods.
- (ii) An assurance that he will be paid by the buyer or his bank as per contractual obligations.
- (iii) Convenience of receiving payments in his own country.

(b) **A Buyer would want:-**

- (i) To pay for the contracted goods only after they are shipped by the seller.
- (ii) The LC improves the credibility of the nation in terms of its financial strength and its commitment towards international obligation.

### 14.3 Forms of LC

**14.3.1 Basic Forms of LC**. Basic forms of LCs as applicable to Defence are as follows:-

- (a) Irrevocable LC.
- (b) Confirmed LC.
- (c) Revolving LC.

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

**14.3.3 Confirmed LC**. A Confirmed LC is one in respect of which another bank in the beneficiary's country, adds its confirmation at the request of the issuing bank. This undertaking of the confirming bank to pay/ negotiate/ accept, is in addition to the undertaking of the issuing bank. This is an added protection to the beneficiary, but it should not to be agreed to, as it undermines the credibility of the Indian Banks and entails additional bank charges. However, if the beneficiary insists on such confirmation, charges thereof shall be borne by the beneficiary/ seller.

**14.3.4 Revolving LC**. In such LCs, the amount is restored, after it has been utilised, to the original amount, or any other pre-determined amount. Such credits are used when the buyer is to receive partial shipment of goods at specific intervals over a long duration. It can be cumulative or noncumulative in nature. It avoids opening a fresh LC for each and every consignment. It also results in savings in respect of individual LC charges levied by the banks. While opening Irrevocable Revolving LCs, the following information shall be provided to the issuing bank for opening of such an LC:-

- (a) Initial value for which the LC is to be established (generally it is equal to the first stage/ lot payment).
- (b) Stages and values of replenishments under the LC.
- (c) Maximum utilisation under the LC.

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

**14.4.1** Following essential elements are to be clearly stipulated while opening an LC:-

- (a) Type of LC.
- (b) Name and address of the applicant (Directorate/ Organisation) and the beneficiary (Seller).
- (c) Amount of credit and currency.
- (d) Validity of LC.
- (e) Latest shipment date (i.e. last delivery date as per the contract. In case of staggered delivery, last delivery date of each lot must be mentioned).
- (f) Basis of delivery (FOB/ FCA/ FAS/ CIP/ CIF/ CFR/ DAP/ etc.)
- (g) Contract No. and date.
- (h) 100% value of the stores/services to be supplied under the LC.
- (i) Shipment of Consignment from Port ..... to Port .....
- (j) Consignee and ultimate Consignee with delivery address.
- (k) Part-shipment allowed/ not allowed.
- (l) Transhipment allowed/ not allowed.
- (m) Documents required to be produced by the beneficiary for release of payment against an LC.
- (n) LD Clause.
- (o) Beneficiary bank details.
- (p) Any other special instructions.

#### **14.5 Procedure for Opening LC and Working of the LC Mechanism**

**14.5.1** **Documents to be Provided by Buyer for Opening of LC.** The following documents shall be required for opening an LC:-

- (a) Forwarding letter (03 copies).
- (b) Notification for readiness (03 copies).
- (c) FFE release certificate (03 copies).
- (d) Sanction letter/ Amendments (03 copies).
- (e) Extract of terms and conditions of contract (03 copies).
- (f) Form A1/ A2 as the case may be (Stores/ Services) (03 copies).

- (g) Form No. 2 Application-cum-Guarantee (SWIFT 700)(03 copies).
- (h) Schedule of Requirements (03 copies).
- (i) FEMA Certificate (03 copies).
- (j) Bank Guarantees (03 copies).
- (k) Certificate of Budgetary support (03 copies).
- (l) Specimen of all the certificates/ formats as referred to in the contract, such as certificate of origin/ quality, certificate of conformity & acceptance test at PDI, FAT/ HAT/ SAT completion certificate, milestone completion certificate, LD deduction format, etc. (03 copies each of every certificate).

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

- (a) **Step 1.** Receipt of PBG in respect of the supplier and confirmation thereof by the contract concluding authority from any of the Indian Public or Private Sector SCBs, checking of contents of the guarantee by the buyer for conformity with model PBG format (latest RBI format), validity date, etc., and intimation received from the supplier regarding readiness of goods for dispatch as per contractual terms. Provisions of Paragraph 14.9.7 are also relevant in case of any deviations with respect to the issue of PBG by foreign banks.
- (b) **Step 2.** The contract concluding authority to seek confirmation of budgetary support for the payment from the appropriate budget authority/ Financial Planning Directorate in Service HQs/other Organisations.
- (c) **Step 3.** Thereafter, the contract concluding authority (Sponsor Directorate) takes the following actions:-
  - (i) Application cum Guarantee Form (as per format at **DPMF 42**) and applicable Form as mentioned below shall be filled up:-
    - (aa) Form A1 in case of import of goods. A sample format of the Form is placed at **DPMF 43**.
    - (ab) Form A2 in case of other than equipment/ goods (viz. service LCs, repairs, periodicals, training pamphlets, etc.). A sample format of the Form is placed at **DPMF 44**.

- (ii) Details as per Annexure D to LC (format of Annexure D at **DPMF 45**) to be filled up.
- (iii) FEMA Undertaking as per RBI, requirements to be prepared by Sponsor Directorate.
- (iv) FFE release certificate.
- (v) After checking all the documents, including PBG, the buyer forwards the case for opening of LC, with the appropriate Form (as per format at **DPMF 42**) duly filled and the accompanying documents indicated above, to the Principal Controller/ Controller of Defence Accounts concerned, who after proper scrutiny of the details for correctness, authorises the bank concerned (issuing bank) as mentioned in Paragraph 14.2.2, above to open the LC.

(d) **Step 4.** The issuing bank establishes the LC with a unique LC number allotted to each case, and intimates the Principal Controller/ Controller of Defence Accounts concerned and the contract concluding authority about opening of LC.

#### **14.5.3 Payment through LC.** The LC mechanism operates as follows:-

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

## **14.6 Documents to be Provided by the Seller for Release of Payment**

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

- (a) Clean on Board Master Airway Bill/ Bill of Lading/ACT (Acceptance Certificate in case of technical documents).
- (b) Original Invoice.
- (c) Packing List.
- (d) Certificate of country of Origin of goods/ services.
- (e) Certificate of Quality and current manufacture from OEM.
- (f) Dangerous Cargo Certificate, if any.
- (g) Insurance Policy of 110% if CIF/ CIP contract, wherever applicable.
- (h) Certificate of Conformity & Acceptance test at PDI, signed by Buyer's and Seller's QA Department, if provided in contract.
- (i) Phytosanitary/ Fumigation Certificate, if applicable.
- (j) Copy of Performance Bank Guarantee (PBG).
- (k) Warranty Certificate/ Guarantee, as applicable.

## **14.7 Extension/amendment of LC**

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

- (a) Request from seller for extension of delivery date in absolute terms and for corresponding amendment of LC for latest date of shipment, has been received.
- (b) Extension of delivery date given in the contract and corresponding amendment in LC for latest date of shipment, has been accepted by the CFA in consultation with IFA, where required as per delegated financial powers and a re-confirmation regarding continuing availability of funds for releasing payment.

- (c) In case of extension of Delivery Period, the validity period of Bank Guarantees shall also be simultaneously extended.
- (d) The onus of bearing charges for LC extension shall be on the seller or buyer, depending upon the one who seeks/ is responsible for the extension.

**14.7.2 Amendment to LC** Amendment to LC may be necessitated due to amendment in the contract.

The following documents shall be required for amendment to the LC:-

- (a) Amended copy of the contract
- (b) Letter bringing out the specific amendment required

**14.8 Direct Bank Transfer (DBT)**

**14.8.1** DBT is a transferable credit under which the Beneficiary may request the bank authorised to pay, incur a deferred payment undertaking, accept or negotiate or in the case of a freely negotiable credit, the bank specifically authorised in the credit as a transferring bank to make the credit available in whole or in part to one or more than one beneficiary. DBT shows high degree of trust between the parties and such payments are also more cost effective as compared to LCs.

**14.8.2** Buyer ensures that the payment is released only after receipt of the documents listed in Paragraph 14.6.1 and confirmation from the Supplier that one set of the documents has been sent to the port consignee/ Landing Officer immediately after dispatch of the stores.

**14.8.3 Advice to the Principal Controller/ Controller**. After obtaining the above mentioned documents, the details of which shall form part of the contract, the Contract concluding authority advises the Principal Controller/ Controller of Defence Accounts concerned to effect DBT. The Principal Controller/ Controller concerned, in turn, authorises the Buyer's bank to make direct transfer of funds to the Seller's bank account.

**14.8.4 DBT for Contracts below USD 100,000.00**. For contracts below USD 100,000.00, DBT payment terms shall be insisted upon as preferred mode of payment at the time of concluding the contract.

## **SECTION II – BANK GUARANTEES**

### **14.9 Bank Guarantees (BGs)/ Performance Bank Guarantee (PBG)**

**14.9.1** BG is a written undertaking obtained from the Supplier through his bank as a guarantee that he would perform the promise/ terms and conditions of the contract and to ensure the discharge of liability of the Supplier in case of his default. BG may also be in electronic form (e-BG). A sample format of BG is placed at **DPMF 15**.

**14.9.2 Features of BGs.** The salient features of Guarantees are as follows:-

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

**14.9.3 Essential Elements of BG.** The essential elements of BG are as follows:-

- (a) Amount.
- (b) The BG shall be in the same currency as the contract and must conform to the Uniform Rules for Demand Guarantees (URDG 758).
- (c) Address of the Beneficiary, Applicant and the Bank.
- (d) Validity date.
- (e) Contract Number and Date.

**14.9.4 Confirmation of Various Types of Guarantees.** Confirmation of PBG/ Advance BG/ Warranty Bank Guarantee (WBG) for indigenous and foreign vendors should be undertaken as follows:-

- (a) **Indigenous Vendors.** Bank Guarantees issued by any Indian Public or Private Sector Scheduled Commercial Bank (SCB), as notified by RBI, would be accepted.
- (b) **Foreign Vendors.** Bank Guarantees shall be from any Indian Public or Private Sector SCB (as notified by RBI) or First Class

banks of international repute whose details have to be furnished in the commercial bid. In case of international banks, the Buyer reserves the right to consult Parliament Street Branch of State Bank of India, New Delhi and as per their recommendations, seek confirmation of Bank Guarantee(s) by counter guarantee from an Indian Public or Private Sector SCB at Seller's cost. Guidelines on confirmation of BGs of Foreign Banks by Indian Banks are placed at **Appendix K**.

**14.9.5 Steps for Verification and Genuineness of BGs.** Bank guarantees, whether received in physical form or in electronic form, should be verified for their genuineness following prescribed method for the same, and all Organisations should do due diligence on genuineness of the BGs before accepting them. Therefore, immediate steps shall be taken to verify the genuineness/ authenticity of the BGs which are submitted by the contractors/ suppliers, by approaching the issuing bank and receiving a direct confirmation from the bank in this regard. Guidelines for verification of BGs submitted by the bidders/ contractors against EMD/ performance security/ advance payments and for various other purposes, are as follows:-

- (a) BG shall be as per the prescribed formats. The prescribed format in which BGs are to be accepted should be enclosed with the tender document and the language should be verified verbatim by the buyer on receipt with the original BG format.
  - (i) The BG shall contain the name, designation and code number of the Bank officer(s) signing the guarantee(s).
  - (ii) The address and other details (including telephone no.) of the controlling officer of the bank are to be obtained from the branch of the bank issuing the BG (this should be included in all BGs).
- (b) The confirmation from the issuing branch of the bank shall be obtained in writing through registered post/ speed post/ courier. The bank should be advised to confirm the issuance of the BGs, specifically quoting the letter of Procurement Entity on the printed official letterhead of the bank, indicating address and other details (including telephone nos.) of the bank and the name, designation and code number of the officer(s) confirming the issuance of the BG.
- (c) Pending receipt of confirmation as above, confirmation may also be obtained with the help of responsible officer at the field office, which is close to the issuing branch of the bank, who should personally obtain the confirmation from issuing

branch of the bank and forward the confirmation report to the procurement entity concerned.

- (d) While accepting BGs, it should also be checked that the Applicable Law indicated in the Agreement is Indian and the validity date of the BG has been specified.
- (e) As a measure of abundant caution, all BGs should be independently verified by the procuring entity when they are received from the Guarantor Bank. It shall be clearly mentioned in the RFP that BGs issued by foreign banks are to be submitted to an Indian Public or Private Sector SCB through SWIFT message with a copy to the Buyer through e-mail/ Post/ etc. The Indian Public or Private Sector SCB shall then ensure the authenticity of the SWIFT message and forward the same to the Buyer Directorate with a certificate that the message is authentic and the BG has actually been established and can be accepted.
- (f) The validity period of BG should be as under:-
  - (i) ABG- Upto the delivery period/amended (extended) delivery period
  - (ii) PBG/WBG- 60 days beyond completion of all contractual obligations (including warranty period).
  - (iii) In case the contract incorporates the provision for JRI, the JRI period should also be added separately after the delivery period.
- (g) In exceptional cases, when BGs are received through the vendors/ suppliers/ etc., the issuing bank should be requested to immediately send an unstamped duplicate copy of the BG by Regd. Post (A.D.) directly to the buyer, with a covering letter to compare with the original BGs and confirm that it is in order.
- (h) In each office, the officer(s) concerned should be specifically assigned the responsibility to ensure verification, timely renewal and timely encashment of BGs, whenever required.

**14.9.6 Deviations.** In certain cases, deviations from the laid down regulations with regard to BGs may be recommended by the Procurement Committee (PC)/ Contract Negotiation Committee (CNC) wherever there are issues between the banks of the foreign and Indian sides on account of international sanctions, lack of faith due to reputation of Banks, specific requirement of firms, etc., for

which approval of the CFA is to be obtained. In such situations, for waiving off the PBG, a percentage of payments (3% to 10% of the contract value) or an amount equivalent to value of PBG, whichever is higher, may be withheld until expiry of 60 days after warranty period, subject to approval of the CFA. If approved, such payment conditions are to be included in the Contract.

**14.9.7 Invocation of Guarantees.** Guarantees can only be invoked after fulfilling the following conditions:-

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



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