



Defence R&D Organisation (DRDO) Procurement Manual 2020

Government of India
Ministry of Defence
Defence Research & Development Organisation
Directorate of Finance & Material Management
DRDO Bhawan, New Delhi-110 011

राजनाथ सिंह
RAJNATH SINGH



रक्षा मंत्री
भारत
DEFENCE MINISTER
INDIA

FOREWORD

The Defence Research & Development Organisation (DRDO) is mandated to empower India with self-reliance in cutting edge defence technologies. DRDO has realized many cutting edge products and systems for our Armed Forces and has developed the technical maturity to embark upon the development of next generation systems and platforms which would be realized with greater participation of domestic industry.

Expeditious procurements and development contracts are essential for timely project execution. Research & Development activities in Defence are prone to risks which are largely borne by participating industries. DRDO Procurement Manual (PM-2020) accordingly focuses on facilitation to industry and ease of doing business. Many of the internal processes and procedures have also been simplified for faster execution of R&D projects.

I am happy that the PM-2020 has the provisions to incentivise and provide impetus to the growing indigenous defence industry, including startups and MSMEs, to participate in defence R&D activities to achieve 'Atmanirbhar Bharat' mission and self-reliance in equipping the Armed Forces with state-of-the-art equipment, weapon systems and platforms. I am of the firm belief that this Manual will bring greater efficiency in the system and ensure timely supply of indigenous systems and platforms to the armed forces.

(11/11/20)
22.10.20

(Rajnath Singh)

New Delhi
22nd Oct 2020

गार्गी कौल,
सचिव (रक्षा वित्त)
GARGI KAUL, I.A.A.S.
Secretary (Defence Finance)



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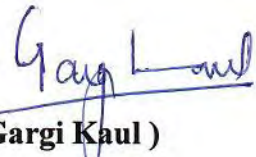
New Delhi, the 22nd October, 2020

Defence Research and Development Organisation (DRDO) procures a wide variety of goods and services for executing R&D projects and programmes to achieve the goal of self reliance in critical defence technologies while equipping the Armed Forces with the state-of-the-art equipment, weapon systems and platforms. Procurement in an R&D environment is a complex decision-making process that needs to balance competing requirement of expeditious procurement to meet the project timelines, development of indigenous suppliers and conformity to the highest standards of transparency, probity and public accountability.

2. A new version of DRDO Procurement Manual has been evolved to encourage more participation of Indian industry including startups and MSMEs in Defence R&D for achieving "Atmanirbhar Bharat" Mission of the Government and to facilitate faster execution of R&D Projects/Programmes.

3. The manual includes a number of enabling provisions which would encourage the participation of industry and simplify procedures leading to faster decision making. The provisions have also been made consistent with the other procurement manuals of the Ministry of Defence, to ensure uniformity.

4. I hope that this Manual would be useful to various entities of DRDO. It will further improve transparency and facilitate faster decision making for execution of R&D activities within projected cost and timelines.


(Gargi Kaul)

डॉ जी. सतीश रेड्डी

FNAE, HFCSI, FRIN (London), FMACANUD (Russia), FAeSI, FRAeS (UK),
HFPMIAI, FSSWR, FIET (UK), FIE, FAPAS, FIETE, AFAIAA (USA)

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सत्यमेव जयते

भारत सरकार
Government of India



सचिव, रक्षा अनुसंधान तथा विकास विभाग
एवं
अध्यक्ष, डीआरडीओ

Secretary, Department of Defence R&D
&
Chairman, DRDO

The country is marching towards Atmanirbharta and DRDO is contributing in a significant way towards self-reliance by providing critical technologies, systems and platforms. Compressing the development timelines leading to faster induction of indigenous systems is a priority for us.

Simplified processes for procurement and execution of development contracts are essential for successful and timely completion of complex technological projects within the planned time schedules.

Continual improvements in the existing processes are carried out based on the feedback of stakeholders and experience gained during execution of various R&D projects. PM-2020 has aligned the processes as per the changes in the government directives and guidelines and simplifying the processes of procurement.

PM-2020 aims to provide a boost to the indigenous defence industry including startups and MSMEs and facilitating them to be an effective partner. New enabling measures and simplified procedures introduced would reduce the procedural delays, make the system transparent and entuse greater participation from the industry.

I wish that implementation of PM-2020 would accelerate the pace of execution of R&D projects enabling DRDO to achieve its commitment of supporting our Armed Forces with state-of-the-art indigenous weapon systems and equipment.

JAI HIND!


(G Satheesh Reddy)

Date: 22 Oct 2020

No. DRDO/DFMM/PM/0000120/M/801/D(R&D)
Government of India
Ministry of Defence
Deptt of Defence Research & Development
New Delhi-110011
23rd Oct 2020

To

The Chairman

Defence Research & Development Organisation
Ministry of Defence
New Delhi-110011

Sub: ISSUE OF PROCUREMENT MANUAL- 2020 (PM-2020)

Sir,

I am directed to convey the approval of the President of India for adoption of "Procurement Manual - 2020 (PM-2020)" as enclosed.

2. The applicability of "Procurement Manual - 2020 (PM-2020)" will be as per Para 1.5 of the Manual. These procedures will be implemented keeping in view the relevant rules & orders in force from time to time. This supersedes the Procurement Manual-2016 (PM-2016) issued vide Govt. of India, Ministry of Defence letter No. DMM/II/PP/0000216/M/2121/D(R&D) dated 4th Nov 2016 and all other instructions issued vide Corrigenda to PM-2016 till date.

3. This Manual will be effective from the date of issue of this Govt. letter. However, all on-going cases of procurement, in which Request for Proposal (RFP)/ Contract/Supply order has already been issued, may continue to be regulated as per the provisions contained in the issued RFP/ Contract/S.O.

4. This issue with the concurrence of Ministry of Defence (Finance/ R&D) vide their Dy. No. 2006/Addl. FA (R&D) & AS dated 22nd Oct 2020.

Yours faithfully

Harsha
23/10/2020

(Harsha Rani)

Under Secretary to Govt. of India

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CHAPTER 1

INTRODUCTION

1.1 ORGANISATIONAL OBJECTIVES AND FUNCTIONS:

The vision of Defence Research & Development Organisation (DRDO) is to empower India with cutting edge defence technologies. Its mission is to facilitate achievement of self-reliance in critical technologies, while equipping the Armed Forces with state-of-the-art equipment, weapon systems and platforms developed in partnership with the industry, academia and other R&D institutions. DRDO was set up in 1958 with only ten laboratories and has grown manifold and emerged today as a core defence research organization with a large network of laboratories and establishments spread across the country. It has completed many major projects relating to development of strategic & tactical military hardware and related technologies successfully, which has led DRDO to win national and global recognition.

1.2 PURPOSE OF MANUAL:

The purpose of this Procurement Manual is to establish the detailed procedure to be followed in DRDO for procurement of goods and services keeping in view of its organisation specific requirements. The manual incorporates several policy and procedural changes that have taken place in the Government since its last issue in 2016, the latest CVC guidelines, and general instructions/notifications containing directions of the Central Govt. relating to specific industry segments. The aim of the manual is to provide a standard reference point for authorities under DRDO for all procurements for ensuring efficient, economic, transparent, fair and equitable procedure promoting competition in accordance with the relevant rules and regulations of the Govt. of India.

1.3 SCOPE OF MANUAL:

- a) The manual will be followed for procurement of all kinds of goods/ stores/ services and development contracts. This procedure will also apply for acquiring all types of services/ outsourcing of services, job contracts, including packing, unpacking, preservation, transportation, insurance, delivery, printing and other services, leasing, technical assessment, consultancy, systems study, software development, etc.
- b) In order to facilitate expeditious installation of equipment/ plant & machinery, civil works limited to installation of equipment like laying of foundation, electrical earthing/ fittings and hook-up can be clubbed along with procurement of

equipment. However, for civil works beyond these, MES/ Directorate of Civil Works & Estates (DCW&E) in DRDO should be consulted.

1.4 EFFECTIVE DATE:

The Procurement Manual - 2020 (PM-2020) will come into force with effect from the date specified in the Govt. letter. However, all on-going cases of procurement in which Request for Proposal (RFP)/ Contract/ Supply Order has already been issued may continue to be regulated as per the provisions contained in the issued RFP/ Contract/ Supply Order.

1.5 APPLICABILITY:

The principles and procedures contained in this Manual are to be followed for the procurement of goods and services by DRDO.

1.6 EXCLUSIONS/ NON APPLICABILITY OF THE MANUAL:

- a) This document will not be applicable for creation of civil infrastructure.
- b) **Govt to Govt Agreement / Inter Government Agreement (G2GA/ IGA):** In case of procurements under long term General/Umbrella contracts/Main Agreements between the Govt. of India and the Government of the country concerned, provisions of such contracts/agreements will prevail over similar provision of the DRDO Procurement Manual in respect of the format of the RFP, quotations, general terms and conditions, time of submission of quotations, LD clause, etc. Such procurement will be treated as similar to PAC procurement.

1.7 STANDARD TEMPLATES:

Labs/Estts shall use the templates of Procurement Forms (Materials Management Forms) as amended, issued separately with the approval of Secretary Defence (R&D) in consultation with Addl FA (R&D).

- 1.7.1 Any additional information on procurement forms considered essential for the local/ specific needs of the Lab/Estt may, however, be incorporated without affecting the basic templates.

1.8 REMOVAL OF DOUBTS AND SUGGESTIONS FOR MODIFICATIONS/ AMENDMENTS:

Where any instance of variance between the provisions of this Manual and other Government Orders comes to notice or a doubt arises as to the interpretation of any provision of this Manual, the matter should be referred through proper channel to

DFMM, DRDO HQ. Suggestions for improvements/amendments, if any, may also be sent to DFMM, DRDO HQ. Doubts/ queries received from the users of the manual will be examined by DFMM and necessary clarifications, if required, will be issued after approval of Secretary Defence (R&D) with concurrence of Addl FA (R&D). However, clarifications having wider impact on policy matters across MoD would require approval of Secretary Defence (R&D) with concurrence of Secretary (Defence Finance) / FA (DS).

1.9 DISAGREEMENT WITH FINANCE:

At any stage of procurement, the CFA can overrule the advice of his/her Financial Adviser (FA) by a written order giving reasons for overruling the FA's advice on file. A copy of the order overruling FA's advice will be provided to FA for information. If such over-ruling of FA is done at AoN stage/ demand approval or at an interim stage of procurement, action in procurement process will be taken as per the decision of CFA and FA will continue to participate in this process as Finance member. At the time of Expenditure Sanction stage, FA can either concur the final proposal or record their dissent to the final proposal. CFA can agree with FA's advice or overrule the advice of the FA by a written order giving reasons for overruling the FA's advice on file at Expenditure Sanction stage. The sanction letter issued in latter cases will not contain UO number of FA but will clearly indicate that the advice of the FA was taken but the same was over-ruled by CFA and copy of relevant notings of FA & CFA will be endorsed along with the CFA sanction to CDA /PCDA for purposes of internal audit and payment. A quarterly report will be submitted by the FAs through CGDA to MoD (Fin) on such overruling cases. There will be no requirement for CFA to report the over-ruling cases to next higher CFA/FA.

1.10 DEVIATIONS FROM PROCEDURE:

1.10.1 There should normally be no occasion to deviate from the procedure as sufficient flexibility has been built into the provisions of this Manual. However, if such a need arises, Lab/Estt will forward the case to DFMM, DRDO HQ with due justification for approval of the Secretary Defence (R&D) with concurrence of Secretary (Defence Finance) / FA (DS). Depending on the merit of the case, the matter may also be submitted for approval of the Hon'ble Raksha Mantri (RM).

1.10.2 Variations from any RFP terms and conditions would not be considered as deviation from procedure, provided such variations are permissible as per the provisions of this Manual. Approval for such variation will be accorded by the respective CFA with concurrence of associated finance, as applicable.

1.11 CONFORMITY OF THE MANUAL WITH OTHER GOVERNMENT ORDERS:

The provisions contained in this Manual are in conformity with General Financial Rules, other orders issued by Ministry of Finance and recommendations of Central Vigilance Commission from time to time. If any instance of variance between the provisions of this Manual and MoF guidelines/ CVC recommendations comes to the notice of anyone, the same may be referred to DFMM, DRDO HQ who shall take necessary action for resolution of the issue and continuation of on-going procurements, if so necessitated, with the approval of Secretary Defence (R&D) and with the concurrence of Secretary (Defence Finance)/ FA (DS).

1.12 BANKING INSTRUMENT AND PRE-CONTRACT INTEGRITY PACT:

- a) Banking Instruments:** Generally, payments to the foreign firms in case of procurement of stores are made through Letter of Credit (LC) or Direct Bank Transfer (DBT). The Uniform Customs and Practices for Documentary Credit (UCPDC) are a set of internationally recognized definition & rules for interpretation of documentary credit issued by the International Chamber of Commerce, Paris. **Annexure 'A'** may be referred with respect to banking instruments available for effecting payment to the foreign firm and the procedure for obtaining, accepting and verification of Bank Guarantees.
- b) Pre-Contract Integrity Pact:** Integrity Pact is a specific tool used to build transparency in public procurement by both public institutions and private agencies. The goal of the Integrity Pact is to eliminate chances of corrupt practices during procurement process through a binding agreement between the Parties for specific contract. The standard text of Pre-Contract Integrity Pact is given in **Annexure 'B'**.

1.13 APPLICABILITY OF INSTRUCTIONS/ ORDERS ISSUED IN FUTURE

The provisions of this Manual would be subject to general or special instructions/ orders/ amendments which the Government may issue from time to time.

1.14 E-PUBLISHING AND E-PROCUREMENT

Procurements will be governed by the provisions of Rule 159 and 160 of GFR-2017 relating to e-Publishing and e-Procurement and instructions issued by Govt. from time to time.

1.15 DEFINITIONS:

Unless the context otherwise requires, definitions/terminology used in this Manual are as under:

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| 1 | Basic Cost | <p>For indigenous contracts: Cost of procurement excluding all applicable taxes & duties on the final product.</p> <p>For import contracts: CIF/CIP (Destination port) cost, as applicable.</p> |
| 2 | Bid | An offer made in pursuance of an invitation by a procuring entity, e.g., proposal or quotation. |
| 3 | Bid Security/ Earnest Money Deposit (EMD) | Security provided to the procuring entity by bidders for securing the fulfillment of any obligation in terms of the provisions of the bidding documents. |
| 4 | Bidder | Any person, including a consortium (that is association of several persons, or firms or companies), participating in the procurement process. |
| 5 | Bidding Document | Document issued by the Buyer, including any amendment thereto, that sets out the terms and conditions of the given procurement and includes the invitation to bid. |
| 6 | Build-Up | Covers procurements to support the R&D activities of the Lab/Estt and maintenance of infrastructure. |
| 7 | Buyer | The President of India acting through the authority issuing the supply orders or signing the Contracts/ Memorandum of Understanding/ Agreements is the Buyer in all cases of procurement on behalf of the Government of India. |
| 8 | Central Purchase Organisation | An organisation which is authorised by the Central Government by an order, made on |

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| | | this behalf, to make procurement for one or more procuring entities or to enter into rate contracts or framework agreements for procurement by other Ministries/ Department of Govt. of India. |
| 9 | Competent Financial Authority (CFA) | An authority duly empowered by the Government of India to sanction and approve expenditure from public accounts up to a specified limit in terms of amount of such expenditure and subject to availability of funds. Where financial powers have been delegated to more than one authority under the same Serial/Head, authority with higher delegated financial powers will constitute the 'higher CFA'. |
| 10 | Contract | An agreement, if made with free consent of parties competent to contract, for a lawful consideration and with a lawful object, is a contract. |
| 11 | e-Procurement | It means the use of information and communication technology (specially the internet) by the Procuring Entity in conducting its procurement processes with bidders for the acquisition of goods (supplies), works and services aimed at an open, non-discriminatory and efficient procurement through transparent procedures. |
| 12 | Electronic Reverse Auction | 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 |

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| | | bids. |
| 13 | Financial Power | Financial power is the power to approve expenditure to be incurred for bonafide purposes in accordance with the laid down procedure and subject to availability of funds. |
| 14 | Free Issue Material (FIM) | Stores supplied by the Buyer without charges to the Seller as per the terms of contract in order that it be incorporated into for the completion of subject activity. |
| 15 | Goods/Stores/Services | The term 'goods/stores/services' used in this Manual includes all item mentioned in para 1.3 of this Manual such as all articles, material, livestock, spares, instruments, plant & machinery, equipment, etc. and all types of services/ outsourcing of services, job contracts including packing, unpacking, preservation, transportation, insurance, delivery, printing and other services, leasing, technical assessment, consultancy, systems study, software development, etc. but excluding books, publications, periodicals etc. for a library. |
| 16 | Indent | An indent is a requisition placed by the User on MMG of the Lab/Estt to procure an item. |
| 17 | Inspecting Agency | The agency authorized by the Inspecting Authority to carry out the inspection. |
| 18 | Invitation to Bid | Means a document and any amendment thereto published by the Buyer inviting bids relating to the subject matter of procurement which includes Notice Inviting Bid (NIB) and Request For |

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| | | Proposal (RFP). |
| 19 | Leasing | A Lease is an agreement whereby the Lessor conveys to the Lessee in written for a payment or series of payments the right to use an asset for an agreed period of time. |
| 20 | Notification | Means a notification published in the Official Gazette. |
| 21 | Original Equipment Manufacturer | The Original Equipment Manufacturer (OEM) is the firm manufacturing the item/ equipment under procurement. |
| 22 | Parties | Buyer and Seller whenever referred collectively are termed as Parties. |
| 23 | Paying Authority | <p>In respect of procurements made under this Manual, Paying Authority means any of the following authorities:</p> <p>(i) Offices of the Principal Controller of Defence Accounts (R&D)/ Controller of Defence Accounts (R&D) under the Controller General of Defence Accounts.</p> <p>(ii) A sub-office of the Principal Controller of Defence Accounts (R&D)/ Controller of Defence Accounts (R&D).</p> <p>(iii) An authority holding cash assignment/ imprest and duly authorized to make payment for procurement.</p> |
| 24 | Pre-Qualification Document | Means the document including any amendment thereto issued by the Buyer, which set out the terms and conditions of the pre-qualification proceedings and |

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| | | includes the invitation to pre-qualify. |
| 25 | Pre-Qualification Procedure | Means the procedure set out to identify potential bidders prior to formal bidding. |
| 26 | Procurement or Public Procurement | Procurement refers to the entire gamut of activities involved in and the procedures to be adopted for acquiring goods and services as defined in para 1.3 of this Manual. |
| 27 | Promise | The proposal or offer when accepted becomes a promise. |
| 28 | Promisee | The party to which a promise is made is called the Promisee. |
| 29 | Promisor | The person (entity) making a promise is called the Promisor. |
| 30 | Seller | Seller is an entity, which enters into a contract with the Buyer to supply goods and services. The term includes agents, assigns, successors, authorized dealers, stockists and distributors of such an entity. Where the context so warrants, other terms, such as contractor, have also been used synonymously in this Manual. |

CHAPTER 2

GENERAL PRINCIPLES OF PROCUREMENT

2.1 GENERAL:

The authorities vested with the processing and approval of purchases shall adhere to the highest standards of financial propriety taking due care and caution as expected from a prudent person. Procurements should be made only in cases of proven necessity and in an efficient and economical manner.

2.2 STANDARDS OF FINANCIAL PROPRIETY:

This Manual, in consonance with Rule 21 of GFR 2017, endorses that every officer incurring or authorizing expenditure from public money 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 as 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 what 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 recognized policy or custom.

2.3 GUIDING PRINCIPLES OF PUBLIC BUYING:

Every authority delegated with the financial powers of procuring goods in public interest shall have the responsibility and accountability to bring efficiency, economy, transparency and for fair and equitable treatment of firms and promotion of competition in public procurement.

2.3.1 The procedure to be followed for public procurement must conform to the following

yardsticks:

- a) Specifications in terms of quality/ type and quantity of goods to be procured should be clearly spelt out keeping in view the specific needs of the Buyer;
- b) The specifications should be worked out to meet the essential requirement and should not include superfluous and non-essential features, which may result in unwarranted expenditure;
- c) Care should also be taken to avoid purchasing quantities in excess of requirement to avoid inventory carrying costs. Stockpiling of critical components is, however, allowed for important projects to ensure their uninterrupted availability with due approval;
- d) Offers should be invited following a fair, transparent and reasonable procedure;
- e) Procuring authority should be satisfied that the selected offer adequately meets the requirement in all respects and that the price of the selected offer is reasonable and consistent with the quality required.

2.3.2 The following further cautions will be observed while purchasing stores:

- a) Supply orders will not be split-up to avoid the necessity for obtaining sanction of the higher authorities.
- b) Competitive bidding should be adopted to ensure fair competition, unless it is considered expedient to follow other approved modes of bidding. Purchases will be made from the best acceptable bidder as per evaluation criteria to realize the value for money.
- c) Adequate care would be exercised to ensure that delivery from the Seller is within the specified time schedule.
- d) All expenditure on purchases would only be need-based and public fund will not be spent on anticipatory requirements not having immediate use.
- e) Where stockpiling of critical component has been approved, care should be taken that it does not result in expiry of shelf life or redundancy due to obsolescence.

2.3.3 Code of Integrity: The code of integrity lays down the obligations on the part of the Buyer and the Bidder in order to maintain the integrity of the procurement transactions. The obligations on both the parties are as follows:

No official of Buyer or a bidder shall act in contravention of the code of integrity which include provisions for

- a) Prohibition of –
- (i) Making offer, solicitation or acceptance of bribe, reward or gift or any material benefit, either directly or indirectly, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process;
 - (ii) Any omission, or misrepresentation that may mislead or attempt to mislead so that financial or other benefit may be obtained or an obligation avoided;
 - (iii) Any collusion, bid rigging or anti-competitive behavior that may impair the transparency, fairness and the progress of the procurement process;
 - (iv) Improper use of information provided by the Buyer to the bidder with an intent to gain unfair advantage in the procurement process or for personal gain;
 - (v) Any financial or business transactions between the bidder and any official of the Buyer;
 - (vi) Any coercion or any threat to impair or harm, directly or indirectly, any party or its property to influence the procurement process;
 - (vii) Obstruction of any investigation or auditing of a procurement process.
- b) Disclosure of conflict of interest.
- c) Disclosure by the bidder of any previous transgressions made in respect of the provisions of para 2.3.3 (a) of this Manual with any entity in any country during the last three years or of being debarred by any other procuring entity.
- d) **Penalties for Violation:** If the Buyer comes to the conclusion that a bidder or prospective bidder, as the case may be, has violated the code of integrity, the Buyer may take appropriate measures including:
- (i) Exclusion of the bidder from the procurement process;
 - (ii) Calling off pre-contract negotiations and forfeiture or encashment of EMD/ Bid Security;

- (iii) Forfeiture or encashment of any other security or bond relating to the procurement;
- (iv) Recovery of payments made by the Buyer along with interest thereon as per the provisions of contract/ supply order;
- (v) Cancellation of the relevant contract and recovery of compensation for loss incurred by the Buyer;
- (vi) Debarment of the bidder from participation in future procurements for a period not exceeding two years or as prescribed.

2.4 OVERARCHING GUIDELINES OF THE GOVERNMENT:

Govt. orders and instructions related to procurements as issued subsequent to promulgation of this Manual would be circulated by DRDO/HQrs for compliance.

2.5 BOOKING OF EXPENDITURE- CAPITAL/ REVENUE:

2.5.1 For MM, TD, UT and IF Projects: Total Project Expenditure related to MM, TD, IF and UT projects including equipment, hardware, consultancy, project related contingency, purchase/hiring of transport, freight, contracts for “Acquisition of Research Services” (CARS) under these projects will be treated as Capital Expenditure.

2.5.2 For Projects other than those listed at 2.5.1 above and Build-up/Maintenance activities:

a) Capital Procurement: In consonance with **Rule 98 of the GFR 2017**, significant expenditure incurred with the object of acquiring tangible assets of a permanent nature or enhancing the utility of the existing assets, shall broadly be defined as Capital expenditure. Further, in consonance with **Rule 99 (a) of the GFR 2017**, all charges for the first construction and equipment of a project as well as charges for intermediate maintenance of the work while not yet opened for service will be treated as Capital expenditure. It shall also bear charges for such further additions and improvements, which enhance the useful life of the asset. Capital procurement would, therefore, refer to procurement of all goods and services that fit the description of Capital expenditure.

b) Revenue Procurement: In consonance with **Rule 99 of GFR 2017**, revenue should bear all subsequent charges for maintenance, repair, upkeep and Working expenses, including all expenditure on working and upkeep of assets and also on such renewals and replacements and such additions, improvements or extensions,

etc., as under rules made by the Government are debitable to revenue account. The revenue procurement, therefore, implies procurement of items and equipment, including replacement equipment (functionally similar) assemblies/ sub-assemblies and components, to maintain and operate already sanctioned assets in the service, the necessity of which has been established and accepted by the Government. Therefore, subsequent charges on maintenance, repair, upkeep and working expenses which are required to maintain the assets in a running order as also all other expenses incurred for the day to day running of the Organisation, including establishment and administrative expenses, shall be classified as Revenue expenditure.

2.6 MANDATORY DOCUMENTS TO BE MAINTAINED:

2.6.1 The Buyer shall maintain record of the procurement proceedings, which shall include the following:

- a) Documents pertaining to determination of need for procurement, e.g. demand initiation form etc.;
- b) Description of the subject matter of the procurement, e.g. statement of case (SOC), scope of work, specification etc.;
- c) Reason for choice of mode of bidding other than Open Bidding Mode (OBM);
- d) Documents relating to pre-qualification and registration of bidders, if applicable;
- e) Particulars of the participating bidder at each stage, e.g., at pre-bid conference stage, bid opening stage, techno-commercial evaluation stage, negotiation 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) Details of any grievance redressal proceeding and the related decisions;
- i) Any document, notification, decision or other information generated in the course of a procurement including communications exchanged between the Parties or forming part of the record of the procurement process, which may be used for subsequent reference;
- j) Any other information or record as may be prescribed.

2.6.2 Subject to the provisions of any other law in force relating to retention of records, the Buyer shall retain the records for following types of procurements as indicated:

- a) **Build-up:** Five years beyond completion of all contractual obligations.
- b) **Project:** Five years beyond closure of the Project or completion of all contractual obligations, whichever is later.

2.7 R&D PROCUREMENT:

2.7.1 Department of Defence R&D acts as designer, developer and integrator of various technologies from engineering and scientific knowledge base to realize products/ systems required by Armed Forces.

2.7.2 Procurement for R&D includes purchase of non-commercial items and goods/ services that do not exist or require new features. To realize such requirements, it is imperative to embed sufficient flexibility in the procurement procedures like:

- a) **Pre-Qualification of Bidders:** To be able to screen the potential sources of supply by employing pre-qualification of bidders for the realization of high end technology equipment/ turnkey contracts requiring multi-disciplinary expertise.
- b) **Cost estimation:** Provision to continue with the procurement process even if the quoted cost is beyond the expected variation with respect to the estimated cost.
- c) **Revision of specification to meet the objective:** To be able to admit minor revision in the technical parameters/ specifications emerging during the technical evaluation of bids or clarification received from the bidders, which does not affect the basic functional requirement of the product.
- d) **Commercial terms:** To be able to admit broader commercial terms like involvement of Indian Agent in the procurement process where inescapable; acceptance of recommendations of Techno-Commercial Evaluation Committee (TCEC) by the Director/nominated officer; Repeat Order for 50% of the original ordered quantity and flexible payment terms etc.
- e) Selection of service provider based on combination of "Price" and "non-Price" attributes under certain conditions.

2.7.3 Leasing of Systems/Equipment etc: The Lab/Estt may resort to temporary acquisition through leasing of equipment/ test facility/ platform when such equipment/ facility/ platform is required only for specific purpose beyond which it may not be useful and any other condition which may be suitable for leasing of the equipment with the approval of CFA.

2.7.4 Since R&D is a continuous process involving iteration, it may not be desirable/ feasible to change design/ development/ production partners till completion of technical/ user

trials for supply of components/ sub-systems. Care should, therefore, be taken to follow a transparent selection mechanism for selection of such partners through wide publicity and after their capability/ capacity assessment. On the merits of the case, individual items/ components specifically developed/ fabricated during the process of R&D may be procured from development partners with the approval of CFA as per para 12.27.

CHAPTER 3

VENDOR MANAGEMENT - REGISTRATION AND EVALUATION

3.1 GENERAL:

- a) The objective behind identification of proper sources of supply, registration of firms and their periodic evaluation is to obviate the necessity of de novo search of a Seller for each demand. An exhaustive directory of reliable firms dealing with different categories of stores is an essential pre-requisite for prompt initiation of purchase action. Such approved firms will be known as registered firms/ vendors.
- b) Selection and registration of firms, their performance appraisal and classification must be clearly spelt out in unambiguous terms. Providing equal opportunity and ensuring fair competition are also important requirements to achieve transparency. For this purpose, the Lab/Estt may invite offers from prospective Sellers for registration by giving wide publicity. Such registration will be done in accordance with the criteria and qualifications prescribed in the registration notification.
- c) Lab/Estt may register a firm on their own initiative without going in for registration process by recording the reasons for the same and with the explicit approval of Director/ Head of the Lab/ Estt.
- d) The electronic directory/ data base of registered firms on DRONA will be continually updated by exploring new firms and by sharing of such information among Labs/Estts with emphasis on reliable sources of supply.

3.2 SOURCE SELECTION:

The selection of firms, with potential to successfully execute supplies against orders placed by the Buyer, will be done on the basis of information obtained through the following sources:

- a) User divisions and written suggestions from scientists.
- b) Referred by consultants/ subject experts.
- c) Central purchase organizations of Government of India,
- d) Industrial directories/ trade journals.
- e) Advertisement through electronic media
- f) Inter-Service organizations/ Government/ Scientific or Research Institutions/ other DRDO Labs/Estts, etc.

- g) Technical literature circulated by firms.
- h) Responses received against 'Open Bidding'.
- i) Response to Expression of Interest (EOI).

3.3 REGISTRATION OF INDIGENOUS FIRMS:

Registration of indigenous firms would be done for specific items/ class of items under following categories:

- 3.3.1 Manufacturers/ Distributors:** The registration will be awarded to the firms who are manufacturers or authorized stockists/ distributors/ dealers of Commercially-Off-The-Shelf (COTS) Items.
- 3.3.2 Service Providers:** Firms which are providing professional services for the outsourced jobs and maintenance services such as AMC of computers, air conditioners and other utility services to the Lab/Estt would be registered as Service Providers.
- 3.3.3 Fabrication/ Production (P) Agency:** The firms having only production facilities for converting designs into hardware or end stores or those capable of specified process such as fabrication, casting, machining etc. will be included in this category. These firms do not have any contribution of intellectual property.
- 3.3.4 Development and Production (DP) Agency:** The firms having capability for development/ up-gradation and manufacturing would be categorized as DP. Such firms do not have infrastructure for design, i.e., conversion of a concept into an engineering design.
- 3.3.5 Design, Development and Production (DDP) Agency:** The firms having design capability and infrastructure for research & development apart from manufacturing capability covering all requirements of a quality system would be categorized as DDP.
- 3.3.6 Others:** Firms not falling in any of above categories may be registered under this heading.

3.4 PROCEDURE FOR REGISTRATION OF INDIGENOUS FIRMS:

- 3.4.1** Registration process may be initiated by responding to firm's advertisements or through trade fairs and exhibitions or through market surveys or by issuing a notification on DRDO website and CPP Portal. Invitation for registration of vendors will be made in a three year cycle.
- 3.4.2 ToT holders of DRDO Technology:** ToT holders of DRDO technology would be

deemed as registered vendors and they would get added to the registered vendor data base of DRDO.

- 3.4.3** No formal application for registration is necessary for the firms already registered with other Inter-Service Organizations/ Government Dept/ reputed Scientific Institutions/ NSIC etc. If a firm produces a certificate of registration from any of the above, the registration committee may consider the registration certificate produced by the firm in accordance with para 3.4.11 of this Manual.
- 3.4.4** Firms seeking registration with the Labs/Estts will have to apply separately for each category in the prescribed application form, available on DRDO website or with Labs/Estts, on payment of a non-refundable nominal fee of Rs.500/- payable in the form of e-MRO/ bank draft drawn in favour of the "PCDA/ CDA (R&D), (place)". The specimen of "Application Form for Registration of Firms" is given at **DRDO.VR.01**.
- 3.4.5 Eligibility for Registration:** Any firm, registered under the appropriate Act in India, who is in the business of manufacturing, stocking or marketing of goods and operating/ operator of services of specified categories, shall be eligible for registration. The firm, against whom punitive action has been taken, shall not be eligible for re-registration for a period of two years or as notified. The registration requests may not be entertained from such firms/ stakeholders who have any interest in de-registered/ banned firms.
- 3.4.6** Criteria for the registration of the firm will be explicit and comprehensive and would be publicized. The credentials of firms seeking registration will be verified to ascertain their credibility with regard to their financial status, the manufacturing and quality control facilities, past performance (for the goods in question), facility for after-sales service, the business ethics and market standing etc. before registering them. Broadly following factors will be borne in mind while registering a firm. The firm shall:
- a) Possess the necessary professional, technical and managerial resources and competence required.
 - b) Have sound financial standing, capacity, reliability, bonafides (Tax returns, Bank Account details, Tax Registration details etc.).
 - c) Not be insolvent, in receivership, bankrupt or being wound up;
 - d) Not have its affairs administered by a court or a judicial officer;
 - e) Not have its business activities suspended; and
 - f) Not be the subject of legal proceedings for any of the foregoing reasons;

- g) The proprietor or directors and officers should not have been convicted of any criminal offence related to their professional misconduct or not otherwise have been disqualified pursuant to debarment proceedings.

3.4.7 The application forms received for registration will be screened by the Vendor Registration Committee (VRC) appointed by the Director. The registration committee will normally be appointed for a year. The constitution of the VRC will be as follows:

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| Sc. 'F' or above | Chairman |
| Sc. 'D'/'E' | Member |
| Head MMG or Rep | Member Secretary |

3.4.8 Specialists from the respective fields may be included in the Vendor Registration Committee (VRC) while examining the applications of firms seeking registration. Director may consider constituting more than one VRC for various types of stores/ different categories of registration. The Chairman may co-opt any other specialist members if considered necessary. The Director may re-nominate one or all members for the next year.

3.4.9 VRC will scrutinize applications received for registration on periodic basis. VRC shall verify the antecedents of the firm and where deemed necessary, the same may be verified through the police department/ bankers of the firm as per the proforma for "Verification of antecedents of the firms" given at **DRDO.VR.02**.

3.4.10 Capacity verification of the firms seeking registration may be carried out, wherever necessary by the registration committee based on the data asked and furnished by them as per **DRDO.VR.01**.

3.4.11 The satisfactory performance report of the firms, claiming to have been registered with other Government organizations, must be obtained from the concerned organization, to assess their suitability before registration.

3.4.12 In case of firms seeking re-registration, VRC will assess the past performance of these firms. In case a firm has not been awarded any order during the currency of last registration, the reasons for recommending renewal of registration would be explicitly recorded.

3.4.13 After examination of the application forms and the reports mentioned above, VRC will recommend the name/ list of firm(s) found acceptable as per **DRDO.VR.03** to the Director for approval. Adequate caution would be exercised before recommending any

firm/vendor that they have not been debarred by MoD/DRDO. Status of barred/banned firm may be obtained from the Dte of Vigilance & Security. If a firm has already been registered in any other Lab/Estt under certain classification of stores, then its duplication shall be avoided.

- 3.4.14** The firms approved for registration will be allotted a unique registration number which shall remain valid for a fixed period not exceeding three years. The intimation informing firm's registration will be sent to them as per **DRDO.VR.04**.
- 3.4.15** The details of registration will include the MSME status (if applicable) and ownership details such as SC/ST as per the guidelines of Ministry of Micro, Small and Medium Enterprises (www.msme.gov.in).
- 3.4.16** In order to facilitate e-payment to the Sellers, information about name of beneficiary, name of beneficiary bank, bank account number and IFS Code of receiving branch of bank will be taken from the firms/ vendor seeking registration.
- 3.4.17** At the end of registration period, the registered vendors willing to continue with registration are required to apply afresh for renewal of registration. New vendors may also be considered for registration at any time, provided they fulfill all the required conditions.
- 3.4.18** A register for allotment of registration numbers will be maintained by Labs/Estts for each category which will include names of all firms registered with them.

3.5 REGISTRATION OF FOREIGN FIRMS

Labs/Estts should maintain a register of foreign firms dealing in various types of stores/ items based on their satisfactory experience/ successful execution of SOs/Contracts. Details such as type of items, address, telephone/ fax number, subsidiary office of the foreign firm in India/ Indian rep (if any), rep for installation & commissioning of equipment may be recorded in the register by Lab/Estt. The VRC will ensure maintenance of the register of foreign firms. Firms included in the Register of Foreign Firms as maintained by procuring entity would be considered as Registered Firms A list of such firms will be updated regularly on centralized data base on DRONA.

3.6 ENLISTMENT OF INDIAN FIRMS/ INDIVIDUALS AS AN AGENT OF A FOREIGN OEM/ FIRMS:

It is not the policy of Government per se to look for, encourage or engage agents. There is no need for engaging any such agent, wherever it is possible to secure

supplies and ensure after-sale-services etc; on reasonable terms without the intercession of agents. However, at times foreign OEM/ firms may employ Indian agents for performing certain services on their behalf. Such cases would be governed as per Rule 152 of GFR-2017 and the Compulsory Enlistment Scheme of the Department of Expenditure, Ministry of Finance. It would be mandatory for the Indian agents to get themselves enlisted with the Lab/Estt or Central Purchase Organisation to quote or provide any service on behalf of their foreign principals. Such enlistment, however, is not equivalent to registration.

3.6.1 Procedure for Enlistment with Lab/Estt: Indian Agents of foreign OEM/ firms may be considered for enlistment after obtaining following details:-

- a) Name of foreign firm/ Original Equipment Manufacturer represented by the Indian representative/ Indian agent;
- b) Agency Agreement with the foreign principal giving details of contractual obligation of OEM and its Indian agent and its validity;
- c) PAN, name and address of bankers in India and abroad in respect of Indian agent;
- d) The nature of services to be rendered by Indian agent/ Indian representative; and
- e) Commission payable to them by the foreign principal and mode of payment.
- f) Conditions for appointment of agents by foreign vendors as mentioned at para 7.2.5 would also be applicable.

3.7 CRITERIA FOR ASSESSMENT OF PERFORMANCE OF REGISTERED VENDORS:

A vendor performance has to be assessed in a systematic manner for meeting various standards set out by the Lab/Estt based on quality, delivery, price and service rating. Several rating systems are available wherein some aspects can be objectively rated whereas some cannot be, but they shall also be considered while evaluating the vendors. Vendor rating provides basis for comparing one vendor against the other for the purpose of eliminating the vendors who repeatedly fail to meet the required standards. The vendors who are on the regular list should be periodically apprised for their performance. VRC will periodically (at least twice a year) review the performance of the firms registered with the Lab/Estt and submit report to the Director for further necessary action. Performance of vendors registered with other Labs/Estts would also be assessed by VRC and performance ratings of vendors will be intimated to the registering Lab/Estt. Characteristics for the vendor rating are as under:

- 3.7.1 Quality Rating:** It pertains to delivery/ rendering of goods/services as per the specifications. Quality of goods/ services can be assessed from the inspection/ performance report and feedback from the actual users. Quality of supplies is of paramount importance and quality rating constitutes main part of the vendor rating. The quality rating will have 60% weightage while assessing the performance of the vendor.
- 3.7.2 Delivery Rating:** It pertains to delivery of goods/ services as per the schedule mentioned in the supply order. It is based on the parameters like goods/service supplied/rendered within stipulated time and actual delivery/ completion time. The stipulated time for delivery rating would be the amended delivery period if extended without imposing liquidated damages. The delivery rating will have 30% weightage while assessing the performance of the vendor.
- 3.7.3 Product Support/ Service Rating:** It is related to quality and promptness of the response of the vendor after getting the supply order/ contract and till the completion of contractual obligations. It includes product support in form of timely support during the warranty period. A part of the service rating can be estimated by assessing the cooperation of the vendor and his response in emergency situations after the completion of contractual obligations. The product support/service rating will have 10% weightage while assessing the performance of the vendor.

JSG:015:03:2007 as amended, provides "Guidelines for Assessment and Registration of Firms for Defence" and relevant BIS guidelines for development of vendor rating system. It may be referred to for detailed information and methodology.

- 3.7.4 Importance of Vendor Rating:** Vendor rating is a beneficial tool not only for DRDO but also for the firms. The firms get information regarding their own performance compared with competitors. It is a fair evaluation since the rating is based on fact and not on opinion. In some cases vendors may be called for a discussion to point out the areas of improvement so that vendor becomes more fruitful to the Lab/Estt. Such constructive approach based on a judicious rating system will definitely help in improving the performance of the vendors. Therefore, performance rating of the vendor should be periodically intimated to the vendor. This action is mandatory before initiating any action against the vendor on the basis of performance evaluation.

3.8 DE-REGISTRATION OF FIRMS:

In case of violation of terms and condition of the registration, the registration of the firm will be cancelled by giving a prior notice of at least 30 days. A registered firm is liable to be removed from the list of registered firms, if it:

- a) Fails to abide by the terms and conditions under which the registration has been

given.

- b) Makes any false declaration to the Buyer.
- c) Fails to abide by undertaking given in the Bid Security Declaration.
- d) Other than in situations of force majeure, withdraws from the procurement process after opening of financial bids.
- e) Supplies sub-standard goods or uninspected goods.
- f) Renders services (including after sales services and maintenance services) of an inferior quality than those contracted.
- g) Fails to execute a contract or fails to execute it satisfactorily.
- h) The required technical/ operational staff or equipment is no longer available with the firm or there is change in its production/ service line affecting its performance adversely.
- i) Is declared bankrupt or insolvent.
- j) Fails to submit the required documents/ information for review of registration, where required.
- k) Adopts unethical business practices not acceptable to the Government.
- l) The performance is rated below par during the evaluation process.
- m) The firm fails or neglects to respond to three consecutive invitations to bid within the range of products for which it is registered.
- n) The registration of a firm is cancelled under a Government notification (from list of firms) by another department/organization of Government.
- o) Any other ground which, in the opinion of the registering authority, is not in public interest.

3.9 PROCEDURE FOR REMOVAL FROM THE REGISTERED LIST:

De-registration of approved firms from the list will be considered on the grounds mentioned above. It would be done by the registering Lab/Estt under intimation to DFMM in DRDO HQ and status of firm on the centralized database would be updated. The authority to de-register a firm would be Director of registering Lab/Estt on the recommendations of the VRC.

3.10 EFFECT OF REMOVAL FROM THE LIST:

Whenever a firm is removed from the list of registered firms, its registration stands cancelled and registration status would be updated on centralized database. The other Labs/Estts which have already initiated the procurement process with such firm would seek information from de-registering Lab and consult DFMM before proceeding further.

3.11 LEVY OF FINANCIAL PENALTIES AND/OR SUSPENSION/ BANNING OF BUSINESS DEALINGS WITH ENTITIES:

When the misconduct of an entity justifies levy of financial penalties and/or suspension/ banning of business dealings, Lab/Estt should forward the case with full facts, detailed justification and supporting documents and circumstances to DV&S, DRDO HQrs for taking appropriate action in accordance with the "Guidelines of the Ministry of Defence for Penalties in Business Dealing with Entities" issued vide MoD ID No. 31013/1/2016-D(Vig) Vol. II dated 21.11.2016 and dated 30.12.2016, as amended. Under no circumstances, any Lab/Estt shall suspend/ ban any vendor from business dealings.

3.12 PRE-QUALIFICATION OF VENDORS:

Pre-qualification is a useful method of gaining knowledge of prospective bidders and reduces cost and risk for both Buyer and Sellers.

3.12.1 Realization of high end technology equipment/ turnkey contracts requiring multi-disciplinary expertise of the bidders at times involves in part or full activities of detailed engineering, procurement, sub-contracting, inspection, transportation, erection and commissioning. In such cases, contractor is expected to coordinate all the activities and supply the item/equipment, complete the erection, commissioning and hand over the facility to the Lab/Estt. Such bidders are required to possess necessary technical and organizational skills, financial capabilities, human resources and past experience to complete the assignment. There may not be many vendors competent to execute complex high value contracts. In such scenario, Lab/Estt may need to interact with potential bidders, identify those who are competent (both technically and financially) to execute such jobs and make them understand the actual requirement. In such circumstances, the normal two-bid system may not yield the desired results and pre-qualification of bidders may be resorted to screen the potential bidders. It is intended to provide the following benefits:

- a) It promotes quality control in procurement.
- b) Lab/Estt is more confident about the performance of the seller.

- c) Evaluation of bids from qualified bidder results in savings of processing time and cost.
- d) Unqualified bidders save the cost of bid preparation which results on lower overhead cost for them.
- e) Scale of interest by potential Sellers can be measured and procurement strategy planned accordingly.
- f) Less resources are required to process the bids.

3.13 TYPES OF STORES AND CRITERIA FOR PRE-QUALIFICATION:

Pre-qualification may be resorted for acquisition/ development of major plants and machinery, complex information technology systems, medical equipment, sophisticated weapon system, telecom equipment, high end software development and other special goods. In these cases, well defined procedures should be followed for the pre-qualification of vendors. While doing so, wide publicity would be given through print and electronic media. Pre-qualification document would outline the requirements and criteria for pre-qualification in unambiguous terms based on the requirement of the items and work to be carried out. It should be broad based, objective and must not be tailor-made for a few specific brands/ companies. Thereafter, the respondents will be pre-qualified as per stated criteria. Subsequently detailed RFP will be issued to all qualified vendors and process of two-bid system will be followed. The pre-qualification criteria should be based upon, but not necessarily restricted to, the technical capability and resourcefulness of the prospective bidders to perform the particular contract satisfactorily, taking into account their:

- (i) Experience and past performance on similar contracts;
- (ii) With reference to personnel, equipment, manufacturing facilities; and
- (iii) Financial standing

3.13.1 Guidelines to Determine Pre-Qualification Criteria: Broadly, following guidelines may be referred to determine pre-qualification criteria:

- a) **Experience and Capacity:** The financial criteria may be stipulated with a view that the contractor needs to allocate his resources to other jobs in hand. The percentage of his capacity to be allocated for this work has to be decided based on the estimated value of the contract. The turn-over criteria can be set considering annual cash outgo. The single order value criteria are used to

ascertain whether contractor has requisite experience in carrying out the nature and value of job presently envisaged. In this regard, it is necessary that bidders should have experience of having supplied and erected similar item/equipment of the value equivalent to some percentage of the estimated cost. Pre-qualification criteria should specify:

- (i) The details and nature of similar works in clear and unambiguous terms.
 - (ii) That single order value would be considered to determine the value of the job completed satisfactorily.
 - (iii) That the executed order value would not take into account the Free Issue Material (FIM) value issued to the contractor.
 - (iv) Any other criteria as deemed fit.
- b) **Technical Requirements:** Availability of infrastructure required to perform intended work.
- (i) Availability of qualified personnel and support staff (minimum qualification may be mentioned).
 - (ii) Experience of key personnel.
 - (iii) Availability of in-house QA practices/ Standards.
 - (iv) Any other criteria as deemed fit.
- c) **Other relevant details, such as:**
- (i) Incorporation details about the company.
 - (ii) Organization expansion plan in the near future.
 - (iii) Details of orders under execution/orders received, work to be started.
 - (iv) Past performance details with DRDO (if any).
 - (v) Details of litigation/arbitration with other clients, if any.
 - (vi) Any other criteria as deemed fit.
- d) Prospective bidders would be asked to submit relevant documents in support of their claims.

- e) For further details, CVC guidelines on Pre-Qualification Criteria issued vide OM No. 12-02-1-CTE-6 dated 17.12.2002 as amended available on CVC website may be referred.

CHAPTER 4

DEMAND INITIATION AND APPROVAL

4.1 DETERMINATION OF NEED:

In every case of procurement, the Buyer shall first determine the need (including anticipated requirement). While assessing the need the Buyer, to the extent possible, shall take into account the estimated cost of the procurement and shall also decide on the following matters, namely:

- a) The scope and quantity of procurement;
- b) Limitation on participation of bidders with justification;
- c) The mode of bidding with justification;
- d) Need for pre-qualification, if any;
- e) Any other matter as may be required.

4.2 CLASSIFICATION OF DEMANDS:

The demands for procurement are generally classified in following categories:

- a) Procurement of goods and services;
- b) Placement of design development and fabrication contracts (covered in Chapter 12 of this Manual);
- c) Procurement of books and periodicals for library (covered in Chapter 13 of this Manual);
- d) Outsourcing of services (covered in Chapter 14 of this Manual).

4.3 FORMULATION OF SPECIFICATIONS:

The most important step in any procurement is drawing up of the specifications that meet the requirement. With the increasing complexity of the projects, the materials and equipment needs have also become exacting, requiring professional skill in drawing up the specifications. Detailed specifications supported by drawings and by specifying standard units of measure in the Request For Proposal (RFP) will eliminate ambiguity. It will also minimize apprehension of bidders on the level of risks they are expected to bear and elucidate precise standards to which the commodity under purchase will be tested/ inspected. This will also reduce chances of bidders inflating their prices to cover perceived risks.

4.3.1 Unambiguous and detailed specifications help in methodical evaluation of bids by assigning percentage marks to each individual attribute and establish a viable techno-commercial link between performance/ quality standards and costs for fair and equitable price assessment/ comparison.

4.3.2 The Buyer will observe adequate caution and set up a mechanism to ensure that detailed specifications of an intended procurement are not tailor made to suit a particular brand of product. Broad coverage of the functional performance and environmental parameters will be spelt out in the specifications to allow competition.

4.3.3 While drawing specifications, we should ensure that it meets essential needs, it is objective, functional and it sets out required technical/ qualitative performance characteristics. It should not indicate a requirement for a particular trademark/ brand. To the extent possible, the specifications should be based on national or international standards.

4.3.4 In case of lack of information while working out specifications, the Buyer may resort to any of the methods given below:

- a) Drawing the broad performance/ environmental parameters from the product catalogues of reputed manufacturers. Detailed technical specifications may be sought from different vendors through enquiries made verbally or official correspondence or press notification by inviting Expression of Interest (EOI)/ Request for Information (RFI).
- b) Seek expert advice from academic institutions and other scientific organizations having specialized knowledge and expertise.
- c) Assignment of contracts to suitable professional agencies/ consultants for drawing up of detailed specifications and evaluation parameters.

- d) Directors may consider hiring the services of experts for preparation of Detailed Project Report (DPR) and other pre-contract activities for procurement of high-tech items mentioned under (b) and (c) above. It is expected that the consultancy charges paid for the same would not exceed 1% of the estimated unit cost.

4.3.5 Expression of Interest (EOI)/ Request for Information (RFI): In those cases where specifications/ cost/ likely sources of supply/ time schedule/ pre-qualification of prospective bidders in respect of the desired goods or services are not clear, a notice calling for EOI/RFI may be issued/ published with “in-principle” approval of CFA or / DG Cluster (whichever is lower). Discussions may be held with the firms which have responded to EOI/RFI to firm up the above before issuing the RFP. This may be resorted to only for high value items (estimated cost \geq Rs. 50 lakhs).

- a) The EOI/RFI may be published in case of non-sensitive items on the website of DRDO and CPP Portal. Enquiry for seeking EOI should include in brief, the broad scope of work or service, inputs required by the Buyer. The prospective Sellers/ service provider may also be asked to forward their comments/ suggestions on the scope of the work or service projected in the enquiry. Normally three to four weeks time should be allowed for getting responses from interested prospective Sellers/ service providers.
- b) **Caution:** No respondent will be eliminated at EOI stage unless it has been done for the sole purpose of pre-qualification of prospective bidders as per the provisions in Chapter 3 of this Manual. In such cases, the outcome of the pre-qualification process will be intimated to all respondents and RFP may be issued, with the approval of CFA, on Limited Bidding Mode (LBM) only to the pre-qualified vendors.

4.4 POINTS TO BE CONSIDERED WHILE INITIATING DEMAND:

Demands for procurement of stores/services will be initiated by an officer as per para 4.6 of this Manual after checking the availability of stores with MMG. Indenter will ensure:

- a) That list of deliverables is clearly identified with specifications (refer para 4.3 of this Manual) and quantity in case of procurement of goods/ stores. The desired and realistic delivery period also needs to be specified.
- b) That scope and period of work is identified in case of procurement of services.
- c) **‘Growth of Work’:** To cater to the situation of Growth of Work where exact requirements cannot be determined and may undergo changes during execution

of certain contracts for repair/ maintenance, the same shall be explicitly brought to the notice of the CFA and approval of the same would be obtained at the time of demand approval and expenditure sanction. The provision for growth of work is also to be reflected in the RFP and relevant pro-rata rates are to be negotiated and reflected in S.O/Contract accordingly.

- d) That the quality related requirements are explicitly mentioned, where required.
- e) That cost of the proposal is estimated with due diligence and care. The basis of estimation will be placed on record. Estimated cost should be worked out in a professional manner as it is a vital element in establishing the reasonableness of prices. It should be worked out in realistic and objective manner on the basis of prevailing market rates, last purchased price, economic indices for raw material/ labour, other inputs costs, and assessment based on intrinsic values etc.
- f) That proposed Mode of Bidding/ Repeat Order / Rate Contract/ Syllabus Work Order Demand (SWOD) is mentioned along with likely sources of supply.
- g) That "Proprietary Article Certificate" (PAC) as per format at **DRDO.DM.02** for proprietary items or justification for procurement on Single Bidding Mode (SBM) as per **DRDO.DM.03** is submitted, if applicable.
- h) That inspection/acceptance test procedure, mode of transportation and requirement of insurance cover along with other special instructions, as applicable are clearly indicated.
- i) That waivers sought from normal procurement process, if any, are explicitly specified. For example, from e-Publishing, submission of Bank Guarantee (BG) etc.
- j) That reference of projected demand in the Forecast Budget Estimate (FBE) is mentioned, else reasons for non-reflection in FBE is recorded.
- k) Eligibility Criteria for bidders as per Public Procurement (Preference to Make in India), Order-2017 as amended issued by DPIIT/Ministry of Commerce and Industry as applicable are considered.
- l) That Vendor Qualification Criteria (VQC), where required, and special terms & conditions for the particular purchase, as applicable, are mentioned.
- m) **Free Issue Material (FIM):** In contracts where Govt. property is entrusted to the Seller, specific provision for safeguarding Govt. property needs to be included in the RFP and contract. FIM would be safeguarded as per provisions of para

6.43.2(c) and (d).

- n) That Statement of Case (SoC)/ Justification is enclosed with demand form. SoC should clearly bring-out the justification/ reason and other relevant details associated with the procurement. It should be kept in mind that expeditious processing of proposals depends on the comprehensiveness and quality of the SoC. The SoC would be initiated by the indenter and is expected to include:
- (i) Justification for the requirement and quantity. Wherever 'Growth of Work' is envisaged in case of repair/maintenance contracts, same shall be explicitly brought to the notice of CFA and explicit approval would be sought for the same.
 - (ii) Justification for the proposed mode of bidding (if not an open bidding) and selection of unregistered bidders, if any, in the list of likely sources.
 - (iii) A self-certification that the drawn specifications are not tailored to suit a particular brand and are generic to attract competitive bidding if proposed mode of bidding is competitive bidding.
 - (iv) Basis of estimated cost.
 - (v) Justification for each waiver sought.

Indenter will clearly highlight if Expenditure Sanction is also required from the CFA along with demand approval.

4.5 COST ESTIMATION:

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

4.5.1 Costing of Procurement Proposals:

- a) **Need for costing:** The first stage at which costing needs to be done is when the proposal is initiated by the indenter. It is necessary to work out the complete cost of a procurement proposal to determine availability of funds to meet the expected cash

outflow and the level at which it would need to be approved. It is, therefore, essential that the cost is assessed realistically and comprehensively. The entire, all inclusive, assessed cost should be the basis for determining the CFA.

- b) **Basis of costing:** The cost of a procurement proposal may be assessed on the basis of the Last Purchase Price (LPP), Cost Estimation Reasonability Committee (CERC) report, Budgetary Quote obtained from one or more prospective Sellers, Market Survey or any other method as may be appropriate in the context of a particular purchase proposal. Any one or more of these methods can be used to arrive at estimated cost. Cost input may also be taken from other DRDO Labs/Estts or other Scientific Organisation of Govt. where Buyer is not confident about the estimated cost.
- c) **Cost to be worked out in INR:** Wherever applicable, the assessed cost should be converted into the common denomination of Indian Rupees (INR) and shown both in terms of the foreign currency and INR. The exchange rate adopted should be clearly indicated.

4.6 DEMAND INITIATION:

4.6.1 Authority for Initiating Demand:

Demands for procurement of stores/ services will be initiated by officers of following level duly countersigned by the Head of division/ group:

| Estimated Cost | Minimum Level of Initiation |
|-----------------------|--|
| Up to Rs. 10 lakh | Sc. 'B'/ TO 'B' or Equivalent Head MMG/ Store Officer (for centrally stocked items) |
| Up to Rs. 50 lakh | Sc. 'C'/ TO 'C' or Equivalent |
| Up to Rs. 100 lakh | Sc. 'D'/ TO 'D' or Equivalent |
| Any Value | Sc. 'E' or Equivalent |

4.6.2 Process of Demand Initiation:

- a) "Demands" will be initiated as per the format at **DRDO.DM.01**.
- b) Items falling under different Major Heads of Budget/ Projects shall not be clubbed in the same indent to facilitate proper accounting.
- c) For procurement against sanctioned project, it needs to be confirmed that the proposed delivery is within the PDC of the project. Procurement should be planned in a manner so as to ensure utilization of ordered stores/ services in the Project for the stated purpose.

- 4.6.3 Initiation of Demand along with Project Sanction:** Lab/Estt may explicitly seek Demand approval/ AON approval for items required for execution of the Project/Prog along with Project/ Prog sanction itself. Demand approval of items may be approved by respective CFAs, during the Project/Programme sanction process, in consultation with respective Financial Advisors where applicable.
- a) Separate approvals will be communicated for Project/Prog sanction and the related demand approvals to obviate amendment to Project/Prog sanction letter in case any change is to be made to the approved demand later on.
 - b) In case demand approval is given with Project/Prog sanction, expenditure sanction would be taken subsequently from respective CFA as per provision of Chapter 9.
- 4.6.4 Initiation of Demand for Projects Submitted for Approval/ PDC extension/ Cost Enhancement:**
- a) The Buyer may raise a demand for procurement and process it for approval under Build-up as per the delegated powers against the requirement in a project which is submitted for approval of CFA. SoC for such cases should clearly record the reasons for doing so. The Buyer will ensure that the commitment will be made only after project approval and the sanctions accorded would be deemed transferred to the project.
 - b) The demands for procurement in sanctioned projects awaiting extension of PDC/enhancement of funds from the CFA may be processed in the project in anticipation of approval. However, the commitment will be made only after receipt of the necessary approval.
- 4.6.5 Determination of CFA:** The level of approval of CFA would depend on the total cost of proposal, inclusive of all taxes, levies and other charges vis-à-vis mode of bidding.
- a) CFA for the procurement of stores against Repeat Order would be decided as per the provision of para 10.11.3 of this Manual.
 - b) For procurement of goods and services already developed and being manufactured by the Ordnance Factories through Syllabus Work Order Demand (SWOD), CFA would be determined as per delegation of financial powers for competitive bidding.
 - c) In case of procurement of stores, directly or through referral order, on Rate Contract concluded by MoD, SHQs and PSOs of SHQ (MGO, COL, AOM, DGIS etc.), CFA would be determined as per delegation of financial powers for

competitive bidding.

4.7 PROCESSING OF DEMAND FOR APPROVAL:

4.7.1 Role and Responsibilities of Indenter: Indenter will initiate the demand as per provisions of para 4.4 of this Manual and submit the same to the Head of Group/ Division. Thereafter, he would continue to extend support during scrutiny of demand, at the time of bid evaluation, order monitoring and acceptance stage.

4.7.2 Role and Responsibilities of Head of the Group/ Division: Group/ Division Head will scrutinize specifications, quantity, estimated cost, special terms and conditions, vendor qualification criteria, bid evaluation criteria, format of the price bid as proposed in the demand and submit the same to MMG with recommendations after examining the following aspects:

- a) Existing holding of indented stores vis-à-vis consumption pattern or proposed utilization.
- b) Confirm that the necessity is absolute and there is no duplication.
- c) Check against splitting of demand to avoid approval of higher CFAs.
- d) Confirmation that the specifications mentioned are generic and do not contain any brand name/ part/ model number except by way of indication of comparable quality.
- e) Recommend mode of bidding with justification/ comment on justification given by indenter for recommending Single/ Limited/ PAC mode of bidding or Repeat Order or RC or SWOD, as applicable. Also comment on justification for choosing un-registered vendor, if any, and need of pre-bid conference, if required.
- f) Confirm that proposed procurement is part of an approved annual build up/ project procurement plan with reference to the relevant entry, else record reasons for its non-reflection.
- g) Ascertain whether proposed procurement requires any other complementary/ supplementary expenditure such as on hardware, software, Civil works. If so, provide details thereof.
- h) Specify a realistic time for MMG to process the approved demand till the supply order which normally should not exceed one year.
- i) Comment on justifications given for dispensation from e-publishing and other waivers, if requested.

- j) Comment on eligibility criteria for bidders as per Public Procurement (Preference to Make in India), Order-2017 as amended.
- k) Comment on proposed VQC and special terms and conditions.
- l) Comment on applicability of 'Growth of Work'.
- m) Comment on the requirement of Expenditure Sanction along with demand approval.

4.7.3 Role and Responsibilities of Lab: On receipt of demand proposal, MMG will either issue the stores, if available in the central stores or from stores declared surplus in any other group/ division of the Lab, else endorse "Not Available (N/A)" and assign control/ reference number on demand and process the same for the approval of the Competent Financial Authority (CFA). Before putting up the proposal to CFA for approval, Lab/Estt would ensure following:

- a) Non-availability endorsement will be made for centrally stocked items. This endorsement is not required in case of service/maintenance contracts.
- b) Ascertain whether the indented stores are covered under the purchase/ price preference and product reservation policy issued by Govt. of India and DRDO HQrs as applicable and recommend suitable action.
- c) That demand has not been split to avoid sanction of higher CFA.
- d) Scrutinize the special terms and conditions in RFP.
- e) The eligibility criteria for bidders as per Public Procurement (Preference to Make in India), Order-2017 as amended has been followed.
- f) Explore the possibility of bulk purchase of common use items, PCs, spares for other standard equipment/ machinery to derive quantity discount.
- g) Endorse details of previous procurements, if any, in last three years including quantity and prices.
- h) Specify the registration status of proposed vendors in case of Single/ Limited/ PAC mode of bidding.
- i) Check the applicability of issue of GST Exemption and/or Custom Duty Exemption for the proposed procurement. Further, if CDEC is proposed to be issued, applicable para and/or sub para number of the relevant notification would be indicated.

- j) In case of PAC mode of bidding, concurrence of finance on PAC certificate would be taken for cases where financial concurrence is otherwise not required for demand approval.
- k) Record consolidated values of expenditure booked, commitments entered and cases in the pipeline for procurement in sanctioned project.
- l) Ensure availability of funds in relevant budget head at the time of expected cash outgo.
- m) Fix an amount for EMD between 2% to 5% of the estimated cost.
- n) Fix a percentage for Performance Security Bond as per para 6.43.2(a), which would be taken from the successful bidder.
- o) Scrutinize the estimated cost of the proposal.
- p) Scrutinize the requirement of 'Growth of Work' if proposed.
- q) Recommend the requirement of Expenditure Sanction on cost not exceeding basis, subject to compliance of terms and conditions of the RFP, along with demand approval
- r) Check whether CNC is required to be convened per para 8.5.1 for COTS items/ certain services etc. If CNC is not envisaged, same should be explicitly brought to the notice of CFA at the time of demand approval.

4.7.4 Head of the Lab/Estt will satisfy himself about the roles and responsibilities of the Lab as given above and sign or countersign the check-list as given in Part-II of **DRDO.DM.01**.

4.7.5 Head of the Lab/Estt may decide suitable procedure to process demand for approval but the adopted procedure must ensure compliance of above stated points.

4.8 PROCESSING FOR DEMAND APPROVAL BY CFA:

Demand for approval of CFA will be processed under following categories:

4.8.1 Programs with Financially Empowered Boards: Specific projects/ programs, where special sanctioning powers have been delegated to various management boards like PJB, PMB and Apex Board, the proposed demands will be put up to the Standing Committees of the respective management boards for approval as per the delegation of financial powers. In such cases, Standing Committee of concerned board will endorse compliance of roles and responsibilities of the Lab/Estt as stated in para 4.7.3 of this Manual. Approvals accorded by Standing Committee will be ratified by the concerned

Board. Cases beyond the delegated financial powers of Apex Board will be submitted to the CFA by the Project/ Program Director for approval along with recommendations of Apex Board and documents listed in para 4.9 of this Manual.

4.8.2 All Other Cases: MMG will submit the demand along with documents as listed in para 4.9 of this Manual for the approval of CFA. Concurrence of finance would be taken as per the delegated financial powers.

4.8.3 Further action on procurement of such items will be taken after approval is accorded by the CFA.

4.9 DOCUMENTS REQUIRED FOR DEMAND APPROVAL:

- a) Copy of demand as per format **DRDO.DM.01** with SoC.
- b) Check-list signed/countersigned by the Director/Program Director as per Part II of **DRDO.DM.01**.
- c) Copy of Draft RFP or all relevant details as per **DRDO.BM.02**.
- d) Copy of PAC as per format **DRDO.DM.02**, if applicable.
- e) Copy of detailed justification for procurement through single bidding mode as per format **DRDO.DM.03**, if applicable.
- f) Duly filled-in questionnaire for acceptance of necessity in case of Capital procurement as per format **DRDO.DM.04**, where applicable.
- g) List of vendors with vendor registration/enlistment No. and basis of selection of vendors (for Limited Bidding Mode (LBM)/ Single Bidding Mode (SBM) only).
- h) EOI/RFI report, if applicable.
- i) Scope of Free Issue Material (FIM).
- j) Justification for waiver of e-publishing, e-procurement and any other terms and conditions, if required.

4.10 APPROVAL OF DEMANDS:

Demand will be approved by the CFA as per the delegation of financial powers. The demand approval by the CFA would freeze the item, quantity, mode of bidding and RFP conditions. Wherever demand approval for procurement of stores has been obtained along with the project sanction, then there is no need to obtain fresh demand approval from CFA provided the project sanction letter explicitly specifies such

approvals/ sanctions.

4.10.1 Expenditure Sanction along with Demand Approval: CFA may consider the proposal to accord expenditure sanction along with demand approval on cost not exceeding basis provided a rigorous costing exercise has been done and the cost ceiling is supported with costing details as per para 8.8 of this Manual. The letter conveying the demand approval will specify the same. Expenditure sanction so accorded will remain valid subject to confirmation by the Head of Lab/Program on compliance of following conditions:

- a) That no amendment to the RFP, except in Part I, has been issued.
- b) That finalized cost of the contract is within the sanctioned cost mentioned in demand approval-cum-expenditure sanction.
- c) That no deviation from the prevailing procurement process has been made.
- d) That no deviation from the terms and conditions as stated in the Request For Proposal (RFP) except the ones that have been recommended in the CNC meeting and recorded in minutes.

4.10.2 All cases where demand has been approved by the CFA with the concurrence of finance as per the delegated financial powers, the PAC signed by the Director would be deemed as concurred by Finance, else concurrence of finance would be taken prior to issue of PAC.

4.11 COMBINING VARIOUS STAGES OF PROCESSING:

A proposal, when initiated, should be complete in all respects so that all aspects relating to cost, demand approval, vetting of Notice Inviting Bid/ RFP, etc., could be examined simultaneously by the Integrated Finance, where required as per the delegation of financial powers. Various stages of processing, to the extent feasible, may be combined on the basis of requirement.

4.12 SUBMISSION OF MULTIPLE DEMANDS IN ONE-GO:

Labs/Estts may submit multiple demands in one go for the approval of CFA. Such demands will be approved by appropriate CFA.

4.13 CONSOLIDATED PROCESSING OF PROCUREMENT INVOLVING SAME ITEMS EMANATING FROM DIFFERENT PROJECTS IN THE SAME LAB:

4.13.1 If the same item is required for different projects/divisions/groups, the Lab/Estt may consolidate multiple demands and submit a single proposal for the approval of CFA,

instead of raising separate case file for every demand of same item. Such demands will be approved by appropriate CFA as per cumulative value and expenditure heads of relevant projects would be indicated in expenditure sanction and accordingly booked to respective project expenditures for accounting purpose.

4.14 VALIDITY OF DEMAND APPROVAL:

The demand approval accorded by CFA will be issued in the form of an order and will remain valid for one year from the date of issuance unless otherwise specified. The Buyer shall ensure placement of Supply Order (SO) or signing of Contract, as per laid-down procedure, within the period of validity; else re-validation of demand would be required.

4.15 AMENDMENT OF DEMAND:

After demand approval and before issue of RFP if there is any change, the approval of the appropriate CFA as per delegated financial powers will be required.

CHAPTER 5

PROCUREMENT OF GOODS/SERVICES: WITHOUT BIDDING

5.1 GENERAL:

Certain goods/ services may be procured without formal bidding process. The different modes of purchase in such cases can be classified as under:

- a) Govt. e-Marketplace (GeM)
- b) Petty Purchase
- c) Minor Purchase through Local Purchase Committee (LPC)
- d) Purchase using Rate Contract
- e) Govt. designated Sources
- f) SWOD

5.2 PETTY PURCHASE PROCEDURE:

5.2.1 Petty purchase will normally be resorted to for procurement up to the amount specified under Rule 154 of GFR-2017 and as amended from time to time or as per the delegated petty purchase powers in respect of cases mentioned below:

- a) For small value items/ services.
- b) For procurement of goods & services of unanticipated/ emergent/ breakdown nature required to be made at a short notice.
- c) To meet requirements of parts/ components & services for trials of major equipment and systems at outstation.

5.2.2 CFA will ensure that splitting of demands is avoided and provisions of purchase preference as per Public Procurement (Preference to Make in India), Order-2017 as amended, issued by DPIIT/ Ministry of Commerce and Industry are followed.

5.2.3 In the following types of cases, even though the value does not exceed petty purchase limit, a regular supply order will be placed:

- a) Foreign purchase,
- b) Where the sale procedure of a particular firm does not provide for cash sale, and
- c) Where the nature of transaction makes it necessary to issue a regular supply order.

5.2.4 Approval and processing of Petty Purchase: The Directors/ Project Directors/ Program Directors can approve demand against petty purchase to meet small value requirements as per delegated powers. All petty purchases made under such delegated powers will be compiled monthly and a report, as given in the format at **DRDO.DM.05** will be submitted to CFA by Head MMG. Heads of Divisions should ensure that all bought out items have been Brought On Charge (BOC). Stores Management Guidelines may be referred for accounting of such purchased items.

5.2.5 A team comprising minimum two officials, including one officer nominated by CFA will be deputed to make petty purchases. The petty purchases will be made on the verbal enquiries by this team on the spot, preferably from authorized dealers/ agencies.

5.2.6 This team will certify in respect of each item that the purchase made by them was the cheapest or alternatively record reasons for the purchase at higher cost. The team will render a certificate as per following format:

“We _____, are jointly and individually satisfied that these goods/services purchased are of requisite quality and specifications and have been purchased from a reliable source/ service provider at a reasonable price.”

5.2.7 Petty purchase by trial team leaders for trials outside Lab/Estt Premises: Trial team leader will be specifically authorized by the CFA for hiring of vehicles and making on-the-spot urgent petty purchases for each individual item up to the delegated petty purchase power. These purchases will be effected through verbal enquiries by a team of two persons, one of whom will be an officer, from the local market. The trial team leader will record a certificate as per para 5.2.6 of this Manual. For this purpose, the trial team leader will be authorized to carry a lump sum amount as required. The settlement of such advances will be completed within 15 days after return from the trials.

Note: The word “trial” is defined as “For this purpose, trial will be that activity wherein an appropriate trial directive has been issued by the Directors of Labs/Estts/ appropriate user authority. Such a directive will include nomination of a trial team indicating members along with the leader, specifying scope of trial to be conducted in the field/ combat environment such as battle terrain, sea-borne or airborne.”

5.2.8 Petty purchase at outstation: When petty purchase at outstation is necessitated to meet emergency/ special requirements or due to non-availability of stores at the local station, approval of the CFA will be necessary to make such purchases.

5.2.9 Drawl and settlement of advances in petty purchase: Project/ Group Heads will

consolidate their requirements against demands for which petty purchase has to be done and forward the same as per proforma at **DRDO.DM.06** to the Accounts Officer in advance. The Accounts Officer will approach CFA for approval of consolidated demands. Thereafter, user will be informed and Accounts Officer will give cash for procurement.

- a) On the intended day of petty purchase, the nominated officer will draw cash advance from the Accounts Officer.
- b) Petty purchases will be completed within two working days from the date of drawal of cash.
- c) A printed Cash Memo will be obtained, clearly indicating description of stores, unit of accounting, prices and taxes charged. In case of Bill/Invoice, payment receipt will also be taken.
- d) The details of petty purchased items will be entered in the register maintained at the gate security office before entering the Lab/Estt. Cash-memo/ Invoice/ bill will be authenticated on the reverse by the security staff on duty.
- e) After completion of the petty purchase, prompt action will be taken for settlement of advance. One copy each of Cash Memo / Bill & Receipt will be handed over to the Accounts Officer/ Advance Paying Officer along with the consolidated statement of advance drawn and the amount actually spent on the petty purchase. The relevant proforma to be used up to the final settlement are given in **DRDO.DM.06** (on reverse). Balance amount will be refunded in full settlement of advance within a day after completion of the purchase.
- f) One copy of the Cash Memo/ Bill & Receipt will be sent to MMG for centralized accounting of petty purchase items.

5.2.10 Special dispensation for remotely located Labs/Estts: Some of DRDO Labs are located in snowbound and other remote areas, which are communication-wise, industrially and commercially under-developed. These Labs, besides their normal activities, are called upon to provide support to the Services and local population in disaster management. The Labs/Estts may approach DFMM, DRDO HQ to seek additional budget allocation and enhancement of their delegated petty purchase powers to meet the emergency.

5.2.11 Purchase of Drugs/ Medicines: The medicines in the Labs/Estts may be procured to meet the immediate requirements of MI rooms/ dispensaries located within the

premises of the Labs/Estts. The normal source of supply for the medicines is Armed Forces Medical Stores Depots (AFMSDs). The Labs/Estts will place their quarterly demands on the nearest AFMSD to ensure regular supply.

- a) In the event of non-materialization of normal supply through the AFMSD, Labs/Estts may resort to petty purchase of the medicines within their delegated petty purchase powers after obtaining Non-Availability Certificate (NAC) from AFMSD. Petty purchase may also be carried out to buy medicines to meet immediate requirements. NAC will not be insisted in such cases. Such purchases should be made from the authorized wholesale distributors of the manufacturers or through super bazaars/ co-operative stores/ stockists, etc.
- b) Medicines with appropriate shelf life will be bought in petty purchase.

5.3 MINOR PURCHASE PROCEDURE:

Purchase of goods/ services costing up to the amount specified under Rule 155 of GFR-2017 and as amended from time to time. (may be made on the recommendations of a duly constituted Local Purchase Committee (LPC) consisting of three members of an appropriate level as decided by the Director of Lab/Estt. The committee will survey the market to ascertain the reasonableness of rate, quality and specifications and identify the appropriate firm. Before recommending placement of the purchase order, the members of the committee will jointly record a certificate as under.

"Certified that we _____, members of the Local Purchase Committee (LPC) are jointly and individually satisfied that the goods/services recommended for purchase are of the requisite specification and quality, priced at the prevailing market rate and the firm recommended is reliable and competent to supply the goods/ services in question and it is not debarred by Department of Commerce or Ministry/Department concerned."

5.3.1 CFA will ensure that splitting of demands is avoided and provisions of purchase preferences as per Public Procurement (Preference to Make in India), Order-2017 as amended, issued by DPIIT/ Ministry of Commerce and Industry are followed.

5.3.2 Obtaining Quotations by LPC: 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 would be up to the LPC to decide whether or not to obtain quotations as part of documentation of market survey. In either case, details of the market survey (firms contacted and the rates quoted by them) would be recorded by the LPC.

- 5.3.3 After approval of LPC recommendations by CFA, supply order would be placed on selected firm.
- 5.3.4 All relevant forms applicable for purchases with bidding process would be used in purchases through LPC.
- 5.3.5 A separate record of such purchases for periodical review is advisable.

5.4 EXPENSES ON TRIALS/ LAUNCH CAMPAIGN/ EXHIBITIONS AT OUTSTATION:

Lab/Program/Project Director will estimate the provisional expenditure that may be incurred on outstation activities such as exhibitions, development trials of missiles, tanks, weapon systems, etc. and initiate the demand proposals for appropriate approvals. The procurement of goods/ services for the purpose would be as per the approval accorded. In such cases the amount required in cash would be drawn in advance. The goods/ services up to the amount specified under Rule 155 of GFR-2017 and as amended from time to time, may be procured without bidding as per para 5.2 (Petty Purchase procedure) or para 5.3 (LPC procedure) of this Manual, as applicable. No capital item would be procured through such approvals. CRV preparation, where required, would be completed for the purchased goods within 15 days after the completion of the event.

5.5 PURCHASE OF GOODS THROUGH GEM:

The Govt. of India has established Government e-Marketplace (GeM) for common use Goods and Services. The procurement of Goods and Services by Lab/Estt will be mandatory for Goods and Services available on GeM. The procurements through GeM portal are to be carried out as per provisions of **Rule 149 of GFR-2017** as amended. Such procurement would be governed by GeM guidelines and to that extent, the provisions of this Manual will not apply.

5.6 PURCHASE OF GOODS UNDER RATE CONTRACT (REFERRAL ORDERS):

Goods, for which MoD, SHQs and PSOs of SHQ (MGO, COL, AOM, DGIS etc.) has rate contracts, can be procured directly from the original Rate Contract holding firm. The original Rate Contract holding firm includes the authorized dealers/ distributors/ agents of the RC holding firm, provided the latter has pre-disclosed the names of these agents/ authorized dealers at various locations or the local stockist/ authorized dealers can substantiate their claim by producing a certificate from the RC holding firm to the effect that they are the firm's authorized stockist/ distributor/ agent/ dealer or can show an agency agreement between them 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 RC and the other salient terms and conditions of the purchase are in line with the terms and conditions as specified in the contract except for payment by paying authority. The Buyer should also make its own arrangement for inspection and testing of such goods, where required. CFA will be determined as per para 4.6.5 (c) of this Manual. Payment in such cases would be made by the concerned CDA (R&D), their subordinate offices or other paying authorities as per the existing arrangement.

5.7 PROCUREMENT FROM GOVT. DESIGNATED AGENCIES:

The following categories of items may be procured directly from Govt. designated agencies as per the procedures mandated by them:

- a) Restricted items of supply.
- b) In cases where Labs/Estts find it convenient to meet their requirement for certain items through inter-service channels.
- c) Where specific Government instructions exist to procure certain items only through inter-service channels, e.g., standard MT vehicles, FOL, medical supplies, other ASC/ Military Farm supplies/ Ordnance Depot items.

5.7.1 Procedure for Procurement: For such items, CFA will be determined as per delegation of financial powers for competitive bidding. The following process shall be adopted for procurement of stores from the Services Depots/ Ordnance Factories, etc:

- a) The requirement will be based on standard scales or on actual requirements, duly approved by CFA.
- b) The demand will be prepared in proper form duly signed by an authorized officer and submitted to Service Depots/ Ordnance Factories.
- c) Controlled/ Census category of stores contained in the master list of controlled/ Census stores for the Army and equivalent publications in the Navy/ Air Force, will not be demanded by the Labs/Estts directly from the Services Depots but got released from the respective service HQ through DRDO HQ by submitting proper statement of case justifying the necessity.

5.7.2 Ordnance Factories: Certain stores peculiar to Ordnance Factories (OFs), either stocked by them or manufactured by them, shall be procured from the factories after approval of CFA in the under-mentioned manner. Such indents would be placed directly on OFs without the need to issue any RFP. The CFA would be determined as per

delegation of financial powers for competitive bidding.

- a) **Factory Stocked Stores (FSS):** Demands for such items shall be raised directly on Factories concerned, with a copy to Ordnance Factories Board (OFB).
- b) **Factory Manufactured Stores (FMS):** Such items shall be procured by raising Syllabus Work Order Demand (SWOD) on OFB with copies to concerned Factory and their respective Accounts Office.
- c) **New Items/ Stores/ Fabrication Work:** Labs/Estts may place supply orders/contracts after negotiating the price and other terms. Issue of formal RFP would not be mandatory.

5.8 ACCOUNTING OF PURCHASES:

Copies of all demands placed on OFB, Govt. designated Agencies, etc., where payment is effected through book adjustment, will be endorsed to the Accounting Cell of the Lab/Estt. Labs/Estts will send a monthly report of new commitments made with payment details, if any, to DFMM, DRDO HQ.

CHAPTER 6

BIDDING PROCESS

6.1 GENERAL:

Goods/ services should be procured by adopting one of the modes of bidding given in this chapter except for the cases which are already covered under Chapter 5 of this Manual.

6.1.1 Restrictions on Global Tender Enquiry (GTE) costing up to Rs 200 crore:

No Global Tender Enquiry (GTE), as defined under Rule 161 (iv) (a) of GFR-2017, shall be invited for tenders upto Rs 200 crores or such limit as may be prescribed by the Department of Expenditure from time to time. For tenders below such limit, in exceptional cases, where the procuring entity feels that there are special reasons for GTE, it may submit its detailed justifications to DRDO Hqrs. Subsequently, DRDO Hqrs would seek prior approval for relaxation to the above rule from the Secretary (coordination), Cabinet Secretariat or from any other Competent Authority specified by the Department of Expenditure.

6.1.2 Participation of bidders whose country shares land border with India:

Participation of any bidder from a country which shares a land border with India will be governed as per Rule 144(xi) of GFR- 2017 and subsequent orders issued by the Department of Expenditure in this regard.

6.2 SINGLE/ TWO BID SYSTEM:

6.2.1 Single Bid System: For Commercial-Off-The-Shelf (COTS) general use items where specifications are well established and technical clarifications are not required, single bid system may be opted. In this system, techno-commercial and price bids are invited in a single envelope. No sample should be called for in single bid system at the RFP stage.

6.2.2 Two Bid System: For high value plant and machinery, technically complex equipment and turnkey projects which need a thorough technical evaluation, two bid system may be followed. In this system, the bids are invited in two envelopes sealed in single cover, as techno-commercial bid and price bid respectively, as follows:

- a) Techno-commercial bid consisting of all technical details along with commercial terms & conditions; and
- b) The price bid indicating prices of items mentioned in techno-commercial bid and

cost break up as indicated in the RFP.

- 6.2.3** In a two bid system, only techno-commercial bid is opened at the time of opening of bids. Price bids are opened only for those bidders who qualify the technical scrutiny as per the RFP.

6.3 MODES OF BIDDING:

Generally the following modes of bidding will be followed for obtaining bids:

- a) Open Bidding Mode (OBM)
- b) Limited Bidding Mode (LBM)
- c) Single Bidding Mode (SBM)
- d) Proprietary Bidding Mode (PBM)

6.4 OPEN BIDDING MODE (OBM):

Open Bidding Mode (OBM) should be the preferred mode for procurement of common use item, with generic/ commercial specifications, which are readily available off-the-shelf in the market from a wide range of sources. All procurements of goods and services where estimated cost is more than Rs. 25 lakh and Rs. 10 lakh respectively should generally be made through this mode subject to exceptions provided in this Chapter. However, OBM may also be resorted to in case of procurements where estimated cost is less than the values specified above if considered advantageous.

- 6.4.1** Open Bidding Mode involves wide publicity through advertising media to ensure extensive competition. RFP will necessarily be hosted on Central Public Procurement (CPP) Portal and DRDO website only.
- 6.4.2** Simultaneously, attention of renowned prospective bidders may also be drawn to the RFP notification to enable them to offer the quotations after obtaining the RFP documents from the Lab/Estt concerned or website.
- 6.4.3** In case a need is felt, Lab/Estt may also approach Foreign Embassies in India and Indian Embassies/ Defence Attaché abroad by sending them a copy of RFP notification with the list of prospective bidders to seek offers/ assistance through their liaison.
- 6.4.4** In case the RFP is downloaded from the website by the bidder, it will not be charged. However, if the bidder wants it from the Lab/Estt, it will be supplied at rates tabulated below which include postal charges. RFP will be supplied free of cost to MSEs registered with National Small-Scale Industries Corporation (NSIC) and other such agencies as decided by the Govt. Lab/Estt will not be responsible for any postal delay.

| SI. No. | Mode of Access to RFP | Price (Rs.) |
|---------|----------------------------|--------------|
| 1 | If downloaded from website | Free of cost |
| 2 | If supplied by Lab/Estt | Rs. 500 |

6.4.5 OBM will also be followed for items where limited bidding, irrespective of its estimated value, has not resulted in creation of expected competition and getting the best offer.

6.5 LIMITED BIDDING MODE (LBM):

This mode of bidding may be chosen where estimated value of goods and services to be procured is up to Rs. 25 lakh and Rs. 10 lakh respectively. RFP will be floated to more than three firms registered for that category of goods/ services with the Lab/Estt. In case the number of firms registered with the Lab/Estt is less than four, the central database of registered vendors on DRONA would be referred for identification of other potential sources. In exceptional cases, CFA may consider issuance of RFP to lesser number of potential bidders after recording the reasons in file. The following aspects will be kept in mind while issuing RFP:

6.5.1 Vendor selection for the purpose of LBM must be done with utmost diligence so as to give fair opportunity to the vendors who are registered with R&D Labs/Estts and the Government designated agencies as specified by Govt. of India/DRDO HQrs from time to time.

6.5.2 Un-registered vendors may also be considered for the purpose of LBM with the explicit approval of CFA. However, their registration would be mandatory before placement of order on them.

6.5.3 RFP documents are not transferable.

6.5.4 Help of Foreign Embassies in India and Indian Embassies/ Defence Attaché abroad may be sought, if required, for the procurement of imported items.

6.5.5 Special circumstances for LBM: Purchase through LBM may also be adopted even where the estimated value of the procurement is more than the specified values with the approval of CFA under the following circumstances:

- a) When the sources of supply are definitely known/ available (established through OBM/ EOI in last one year) and possibility of fresh sources beyond these is remote.
- b) When it is not in the public interest to call for open bidding due to reasons of security or when superior authorities have issued specific instructions in this

regard.

- c) When Government policies designate specific agencies.
- d) When the requirement of stores is urgent and reasons for such urgency are justified by the indenter. Urgency of such cases will be specifically monitored till the placement of order.

6.5.6 Demand approval accorded by CFA would include the names of the vendors to whom the RFP will be sent.

6.5.7 RFP will be issued to all vendors as approved by CFA.

6.5.8 e-Publishing of RFP on LBM on the CPP Portal will be ensured unless approval of the Secretary Defence R&D has been obtained with the concurrence of Addl. FA (R&D) & JS. Unsolicited offers received as a result of e-publishing would not be considered for the instant procurement but the response would be given to the Vendor Registration Committee for consideration for future procurements.

6.6 INADEQUATE RESPONSE IN OBM AND LBM:

Quotations received (in single bid system) or technically qualified (in two bid system) from at least three firms are considered adequate to process the procurement. Receipt of less than three quotations (in single bid system) or technically qualified quotes (in two bid system) will be considered as inadequate response. Such cases would be dealt as per para 6.30 of this Manual.

6.6.1 In cases where RFP on LBM was issued to only two potential bidders with the prior approval of CFA, quotations received (in single bid system) or technically qualified (in two bid system) from only one firm will be considered as inadequate response and would be dealt as per para 6.30 of this Manual.

6.7 SINGLE BIDDING MODE (SBM):

Procurement from a single source may be resorted to with the approval of CFA as per delegation of financial powers. In such cases, detailed justification as per format **DRDO.DM.03** will be submitted for the approval of CFA. Procurement on SBM may be resorted to under the following circumstances:

- a) In case of emergency.
- b) On account of operational/ technical requirement.
- c) Non-proprietary items, when only single response is available, in spite of competitive bidding.

- d) Items to be purchased from a Government specified source.
- e) Where any other mode of bidding is not considered appropriate in the interest of national security.
- f) For technology intensive Projects/Programmes / R&D activities in progress, the materials/ components required are available only with a few qualified manufacturers/ vendors of repute. In such cases, flexibility will be allowed to effect purchases on SBM.

6.8 AWARD OF PROPRIETARY ARTICLE CERTIFICATE (PAC) STATUS:

6.8.1 PAC status can be awarded under the following conditions:

- a) Certain goods/ services are proprietary products of a particular manufacturing firm having the Intellectual Property Rights (IPR) and the detailed specifications are not available with others to manufacture/provide the same. Such goods/ services have necessarily to be obtained from the Original Equipment Manufacturer (OEM) or its sole authorized dealer/ stockist/ distributor on the basis of the information provided by the OEM. A PAC may be issued in favour of such OEM as per format **DRDO.DM.02**, on the advice of the competent technical experts (from within Lab/Estt or outside).
- b) PAC status can be awarded for the developed stores to the firm selected and qualified as development partner in execution of a development contract when associated subsequently for fabrication/ up-gradation/ modification thereof. Orders will be placed on PAC basis till such time an alternative source is developed.
- c) PAC status can also be awarded to source services/ spares/ maintenance of equipment from OEM/ authorized dealer.

6.8.2 Caution to be exercised while granting PAC: PAC bestows monopoly and obviates competition. Hence, PAC status should be granted only after careful consideration of all factors like fitness, availability, standardization and value for money. The spares should be sourced from OEM or OEM approved/ recommended manufacturers/ dealers only in order to make the OEM responsible for the malfunctioning of the main equipment in which the spares have been fitted.

6.8.3 Authority for Award/ Cancellation of PAC Status: At the time of award of PAC status to a firm, the concurrence of the finance shall be taken. The general declaration of PAC status would be approved at the minimum level of Lab Director/ Programme Director with the concurrence of Integrated Finance. The PAC status, once granted, will

remain valid for two years from the date of issue unless cancelled earlier by the Competent Authority. The PAC award can be cancelled by the issuing authority in consultation with their Integrated Finance.

6.9 PROCUREMENT ON PBM BASIS:

6.9.1 Procurements on PBM basis will be made from firms awarded with PAC status or their sole distributor on the following conditions:

- a) Only a particular firm is the manufacturer of the required goods/ services.
- b) In execution of a development contract from the firm selected and qualified as development partner when associated subsequently for fabrication/ up-gradation/ modification thereof till such time an alternative source is developed.
- c) In order to ensure compatibility of spare parts/ components with the existing sets of equipment as per the advice of the competent technical experts.
- d) When there is a need for standardization of machinery and equipment with existing holding.
- e) Repair and servicing of equipment purchased may be got done through the OEM approved service provider.

6.9.2 In cases, where OEM has more than one authorized dealers/ stockists/ distributors/ service providers, orders would be placed on them on competitive basis. The CFA for such purchases would, however, be determined in accordance with PAC mode of bidding.

6.10 EARNEST MONEY DEPOSIT (EMD)/ BID SECURITY:

EMD, also known as Bid Security, is taken to safeguard against withdrawal/ alteration of bid by the bidder during its validity. Requirement of EMD prevents non-serious vendors from making infructuous offers. All un-registered bidders responding to RFP will be required to furnish EMD or a Bid Security Declaration in lieu of EMD for an amount as indicated in the RFP. In the two bid system, EMD would be deposited along with techno-commercial bid.

6.10.1 EMD will be a fixed amount between 2% to 5% of the estimated cost of the proposed procurement, suitably rounded off. The following organizations/ firms are exempted from submission of EMD:

- a) Bidders registered with DRDO, Min of Defence, NSIC.
- b) DPSUs, Other Govt. Organizations.

- c) KVIC, Kendriya Bhandar/ NCCF.
- d) Micro and Small Enterprises (MSEs) as per their registration
- e) Startups as recognized by Dept. of Industrial Policy and Promotion (DIPP).

6.10.2 Requirement of Bid Security is exempted for all procurements costing (estimated value) up to ₹ 10 (ten) lakh. In case of development contracts/ Single Bid/ PAC case/ procurement of spares or repair of stores from OEM, CFA may waive the requirement of EMD at the time of demand approval.

6.10.3 EMD may be accepted in the form of Bank Draft drawn in favour of the Director of the Lab/Estt, Fixed Deposit Receipt, Banker's Cheque or a Bank Guarantee in acceptable form as per **DRDO.BG.01**, from any of the nationalized Banks, private sector bank authorized for Govt. transactions for safeguarding the Buyer's interest in all respects.

6.10.4 EMD may also be accepted in the form of Bid Security Declaration as per para 6.10.8. In case of foreign bidders, EMD / Bid Security in the form of bank guarantee in foreign currency will be accepted.

6.10.5 The EMD should remain valid for a period of 45 days at least beyond the bid validity period.

6.10.6 EMD will be refunded in full without any interest to the unsuccessful bidders after finalization of the TCEC/ supply order. For successful bidder, this amount will be refunded without any interest after receipt of applicable Performance Security Bond.

6.10.7 Forfeiture of EMD: EMD will be forfeited in the following cases:

- a) If the bidder withdraws/ amends/ derogates from the bidding process in any respect within the period of validity of bid.
- b) If the successful bidder fails to furnish required Performance Security Bond.

6.10.8 Bid Security Declaration in lieu of EMD: The procuring entity can accept the bid security declaration in lieu of EMD. Bidders may submit 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 may be suspended for the period up to 2 years from being eligible to submit bids for contracts with any of the procuring entities of DRDO.

6.11 PREPARATION OF NOTICE INVITING BID (NIB):

It should contain salient features of the requirement in brief to give a clear idea to prospective bidders about the requirements. Superfluous or irrelevant details should not be incorporated in the NIB.

6.11.1 The notice should normally contain the following information:

- a) RFP reference number.
- b) Nomenclature of the goods and quantity.
- c) Cost of the RFP document.
- d) Amount and form of bid security/ earnest money deposit.
- e) Address of the website from where the RFP document could be downloaded.
- f) Place(s), cost and timing of sale of RFP documents.
- g) Place and deadline for receipt of bids.
- h) Place, time and date for opening of bids.
- i) Any other important information.

6.11.2 Copy of NIB may also be sent to the known potential bidders to invite their attention.

6.12 PUBLICITY THROUGH THE WEBSITE:

All RFP notifications should invariably be posted on the DRDO website and CPP portal unless exempted.

6.12.1 All RFPs on OBM would be e-published on DRDO website and CPP Portal.

6.12.2 RFPs on LBM/ SBM and PBM would also be e-published on DRDO website and CPP Portal. In case Labs/Estts feel that e-publishing a particular RFP may jeopardize the procurement, they would require explicit approval of Secretary Defence (R&D) with the concurrence of Addl. FA (R&D) & JS. Such exemptions may be considered for procurements that are sensitive in nature. Labs/Estts would submit the proposal to DFMM, DRDO HQ stating reasons for not e-publishing duly approved by their DG Cluster for the waiver.

6.12.3 In case there is no requirement of Non-Disclosure Agreement (NDA), the complete RFP document should be posted on the website to enable the prospective bidders to download document for bid submission. Cases where NDA is required, the complete RFP document would be issued after signing of NDA.

6.12.4 RFP documents must be secured to avoid possibility of modification and restriction of

access to bidders.

6.13 PREPARATION OF THE REQUEST FOR PROPOSAL:

Request For Proposal (RFP) is the most important document in the procurement process. The RFP will be prepared by MMG with due care and should contain complete details of the items or services required, qualification criteria for vendors wherever applicable, standard terms & conditions, special terms & conditions, evaluation criteria, price bid format and clear instructions for submission of bids. MMG may consult Indenter and Quality Assurance Cell (QAC) of the Lab/Estt, wherever required, while finalizing the RFP.

- 6.13.1** All RFPs must invariably carry a clause that the Government reserves the right to cancel the procurement process at any stage and accept or reject any bid, fully or partially, without assigning any reasons.
- 6.13.2** RFP should also specify that Indian bidders should quote only in Indian currency and foreign bidders may quote in a currency, specified in the RFP, with the understating that payment in foreign currency is subject to regulations by the Reserve Bank of India.
- 6.13.3** The RFP should ask the foreign bidder to quote the FOB/ FCA cost. However, for the purposes of comparison of bids, the foreign bidders will also be asked to quote CIF/ CIP cost up to a specified place of delivery. It would also be clarified that if the CIF/ CIP cost is not indicated, their bid will be loaded by 10% of FOB/ FCA cost to arrive at the CIF/ CIP price for purpose of bid evaluation. Quotation from Indian bidder shall be sought on FOR (destination) basis.
- 6.13.4** No preferential terms and conditions will be indicated in the RFP for any category of bidders except as provided by Govt. orders/instructions issued from time to time.
- 6.13.5** The evaluation/ loading criteria with respect to important terms having financial implications like payment terms etc. need to be specified in unambiguous terms so that the evaluation of bids after opening of bids could be made in a transparent manner without any subjectivity.

6.14 FORMAT OF RFP:

The suggested format for the RFP for procurement of goods/ services is as per **DRDO.BM.02**. The specimen format is based on various instructions contained in this Manual. The RFP consists of following seven parts:

- 6.14.1 Part I** contains General Information and Instructions for the Bidders about the RFP such as the time, place of submission and opening of bids, validity period of bids, etc.

- 6.14.2 Part II** contains Standard Terms and Conditions of RFP which have legal implications and will form part of the contract/ supply order with the successful Bidder(s). Therefore, neither deviation from the text given in the clauses nor deletion of any of these clauses should be admitted. In case a deviation from these clauses has to be considered/ allowed, approval of DRDO HQ will be required.
- 6.14.3 Part III** contains Special Terms and Conditions applicable to this RFP and which are supplementary conditions applicable to a specific RFP. A conscious decision needs to be taken to incorporate the relevant clauses from this set. The wordings of these clauses can also be appropriately modified to suit a particular case. These conditions will also form part of the contract with the successful bidder(s).
- 6.14.4 Part IV** contains Vendor Qualification Criteria such as minimum level of experience, past performance, technical capability, manufacturing facilities etc. to be met by the bidders. This part is case specific and should be included only if required. This part is not normally recommended for the procurement of Commercial-Off-The-Shelf (COTS) items. It may be invoked with the approval of CFA for large works, major plants and machinery, complex information technology systems, medical equipment, sophisticated weapon systems, telecom equipment and other special goods. In the absence of this part, no vendor would be disqualified on the basis of capacity/ capability.
- 6.14.5 Part V** contains Details of the store(s)/ service(s) required e.g. Technical Specifications, Delivery Period, Mode of Delivery, Consignee Details etc.
- 6.14.6 Part VI** contains Evaluation Criteria of bids which can be suitably amplified/ modified to suit the specific requirements of each case.
- 6.14.7 Part VII** contains Format of Price Bid which can be set to get the desired cost break-up as per requirements. All bidders will be requested to indicate time-wise and currency-wise amount required as per the price bid in the given below. In case, a bidder does not provide time-wise cash flow details in the price bid, the amount quoted in the price bid will not be discounted for comparison purposes.

| Time | Currency | | | | | Total Cash Flow |
|------|-----------|-------|----------------|--------|-----------------|-----------------|
| | US Dollar | Euros | Pound Sterling | Rupees | Other (Specify) | |
| | | | | | | |

6.15 GENERAL GUIDELINES:

The common factors to be kept in mind while inviting bids are:

- 6.15.1** Indenter may propose the mode of bidding and the system of bid submission to be adopted for each purchase; however CFA is the competent authority to decide on the mode of bidding and system of bid submission for the procurement as per the delegation of financial powers.
- 6.15.2** As far as possible, procurement of items shall be sourced from original manufacturers unless the original manufactures themselves decline to entertain RFPs and redirect the inquiries to their authorized distributors/ dealers. This may happen when the procurement is too small to elicit attention of original manufacturers or due to their contractual obligations. Adequate care must be taken to discourage mere traders, especially in procurement of expensive items, after careful consideration of aspects like after-sale-services/ support/ maintenance and manufacturer's warranty against manufacturing defects.
- 6.15.3** Due date & time of submission and opening of bids will be clearly mentioned in the RFP. Time gap between submission and opening of bids should generally be kept within 24 hours. In two bid system, only techno-commercial bid will be opened on the date of opening.
- 6.15.4** The day selected for opening of bid should be a working day. Monday or day followed by a series of holidays should be avoided, as far as possible.
- 6.15.5** Time likely to be taken to secure and study specifications/ drawings by the firm will be taken into account, wherever applicable to decide the reasonable time for submission of bid. Normally, the reasonable time to be allowed for submission of bids for various modes of bidding process is as under:
- a) Open Bidding mode (OBM)- Minimum 21days (for Indian Bidders)/28 Days (for Global Bidders)
 - b) Limited Bidding Mode (LBM)- Minimum 14 Days
 - c) Single Bidding Mode/ PAC mode (SBM/PBM) – Minimum 5 Days
- 6.15.6** Reduced time frame for submission of bids may be adopted with the approval of CFA in the case of e-tendering as permissible; emergent procurement of stores/ services and emergent repairs by use of FAX/email etc.
- 6.15.7** Realistic validity period of the bids will be specified in the RFP. This period will be fixed keeping in view the nature of stores and other administrative formalities. A bid shall remain valid for 90 days for single-bid system and up to 180 days for two-bid system

from the date of opening of bid, unless otherwise specified.

6.15.8 RFP will be signed for and on behalf of 'President of India'.

6.15.9 Only relevant clauses from different parts of RFP template, as applicable, will be included in the RFP. Non-applicable clauses would be struck off to obviate any confusion in the mind of bidders.

6.15.10 All correspondence with vendors in respect of the RFP and supply order, etc., will preferably be done through MMG only.

6.15.11 The RFP must reflect all special conditions/ clauses required to be incorporated in the contract/ supply order.

6.15.12 Any Purchase preference/ Product Reservation Policy of Govt. applicable to the procurement must be mentioned upfront in the RFP.

6.15.13 In case samples are also required for techno-commercial evaluation, it should be mentioned in the RFP that the bidders found technically compliant would have to provide specified quantity(ies) of the item on 'no-cost-no-commitment' (NCNC) basis for trial evaluation/ testing. The period within which the bidder must submit the equipment/ sample, after being found technically compliant, must be indicated in the RFP. Such provision should be included only after obtaining approval of CFA as per delegation of powers.

6.15.14 In case pre-bid conference is required with the prospective bidders for better understanding of the RFP requirements, the same shall be mentioned in the RFP with the date, time and venue.

6.16 REFERENCE TO BRAND NAMES IN THE RFP:

Standards and specification, provided in bidding documents in generic terms shall promote the broadest possible competition while assuring the critical performance or fulfillment of other requirements for the goods. Reference to brand names, catalogue numbers, etc. in the RFP should be avoided.

6.17 VETTING OF RFP BY INTEGRATED FINANCE:

To the extent possible Labs/Estts are advised to use the standard RFP as per **DRDO.BM.02**. In case of any deviation from the standard text, CFA may get the RFP vetted by Integrated Finance. Waiver of clauses such as Performance Security Bond, Warranty Bond and Liquidated Damages (LD) would be dealt as per para 1.10 of this Manual.

6.17.1 RFP should be vetted by Integrated Finance for the cases beyond delegated power of the Director of the Lab/Estt.

6.18 DISPATCH OF RFP DOCUMENTS:

6.18.1 RFP shall be dispatched as per the mode of bidding approved by the CFA.

6.18.2 In LBM/ SBM/ PBM, the copies of the RFP should be sent directly by speed post/ registered post (with AD)/ courier/ e-mail/ fax to firms which is/ are approved by the CFA for the goods/ services being procured. Copies of the RFP should also be sent by speed post/ registered post (with AD)/ courier to the firms to whom these were initially sent by fax/ e-mail.

6.18.3 In case of dispatch of RFP on LBM by means other than speed post/ registered post with AD, it would be ensured to keep the proof of delivery in the file.

6.18.4 In case of OBM, the RFP may be dispatched by speed post/ registered post/ courier to the firms after receipt of fee as per para 6.4.4 of this Manual.

6.18.5 Simultaneously, e-publication of RFP on CPP portal will be ensured unless waiver from Secretary Defence (R&D) with the concurrence of Addl. FA (R&D) & JS for doing so has been taken.

6.19 PRE-BID CONFERENCE:

Pre-bid conference with the bidders will be held as per the date, time and venue specified in the RFP or as separately notified. After pre-bid conference, necessary clarifications (if any) to the RFP would be notified to all prospective bidders in case of RFPs not hosted on website and in other cases, it would be hosted on website.

6.20 AMENDMENT TO THE RFP AND EXTENSION OF BID OPENING DATE:

6.20.1 Amendment to the RFP: Situations may necessitate modification of the bidding document already issued due to change(s) in the required quantity or specifications/ conditions etc. Further, sometimes a bidder may point out some genuine mistake in the RFP necessitating amendment. In such cases, it may become necessary to amend/ modify the RFP suitably prior to the date of submission of bids. Change in the quantity affecting the CFA status would require approval of the appropriate CFA.

6.20.2 Approval of Amendment: If there is no change in mode of bidding and no significant departure from functional parameters/ specifications, amendment to RFP would require approval of Director/ Program Director or else approval of CFA will be obtained. Concurrence of integrated finance would be taken in all cases except where

amendment is restricted to Part I of the RFP or where demand was approved without concurrence of integrated finance as per the delegated powers.

- a) Integrated Finance would recommend the amendment to the Director/ Program Director after analyzing the financial implications due to proposed amendments and would indicate any changes in the source or in the standard/ special terms and conditions.
- b) Director/ Program Director would take into account the recommendations of Integrated Finance, examine the justification given, essentiality of change and recommend/ approve the amendment.

6.20.3 Methodology of Communicating Amendments in RFP: Copies of such amendment/ modification would be simultaneously sent to all the prospective bidders by registered post/ speed post/ courier/ e-mail in case of LBM/ SBM/ PBM. In case of OBM, copies of such amendments/ modifications would be dispatched simultaneously free of cost by registered/ speed post/ courier/ e-mail to all the parties who may have already purchased the RFPs and copies of such amendments are also required to be prominently attached to the unsold bidding documents (which are available for sale), including the RFPs hosted on the website. Such amendment/ clarification would be hosted on website at least a week before the last date of submission of bids.

6.21 EXTENSION OF BID SUBMISSION/ OPENING DATE:

When the amendment/ modification changes the requirement significantly and/ or when sufficient time is not left for the bidders to submit/ revise their bids, the time and date of submission of bid should be extended suitably. Suitable changes in the corresponding time-frames for receipt of bids, bid validity period etc. and validity period of the corresponding EMD/ Bid security should also be made. Any extension of bid submission/ opening date, for whatever reason, shall be communicated to the prospective bidders as described in para 6.20.3 of this Manual.

6.22 RECEIPT OF BIDS:

6.22.1 A box, locked and sealed, will be placed at the security gate or any other secured convenient place in the Lab/Estt to facilitate uninhibited access to the bidders to drop their bids. This box will be removed from the place or made inaccessible to the vendors at the time of closing, as specified in the RFP. The key of the box will be kept in the personal custody of a responsible officer. Bids received through couriers/by post will be immediately put into the box without opening.

6.22.2 The bids received from Indian bidders by fax/ e-mail, except in cases of PBM/ SBM will

not be accepted. However, for imported items, the bids received from foreign bidders by fax/ e-mail may be considered if the same are received before expiry of the notified date and time. In such cases, bids received in the Director's office may be kept in his personal custody and placed before bid opening committee.

6.22.3 Bid Opening Committee (BOC) will collect all the bids from the box and other places e.g. central dak receipt section, etc. at the appointed time of closing of bids.

6.22.4 Withdrawal of an Offer or Proposal: A bidder may modify or withdraw his bid after submission provided written notice for modification/ withdrawal is received prior to the deadline prescribed for submission of bids. No bid may be withdrawn or modified in the interval between the deadline for submission of bid and expiration of the period of bid validity specified. Withdrawal of bid during this period will result in forfeiture of EMD or action will be taken as per para 6.10.8 as applicable. If bid is withdrawn by the agency exempted from submission of EMD, the registering authority will be intimated.

6.23 LATE BID:

All bids or modifications received thereto, beyond the due date and time of submission of bid, shall be marked as 'Late' and will not be considered. These bids would be returned to the respective bidders unopened.

6.24 SCRAPPING OF BIDDING PROCESS:

Scrapping of bidding process may be resorted to with the approval of the Director under intimation to the CFA in the following circumstances:

- a) Cancellation of the demand by the user.
- b) Change in basic specifications of stores.
- c) Non-receipt of offers as per specifications laid down.
- d) Sudden downward market trend.
- e) Prices quoted being very high/ unreasonable.
- f) Large/ manifold variation in prices quoted by bidders etc.

6.25 OPENING OF BIDS AND EVALUATION:

In case of e-Procurement, Bids (both techno-commercial and Financial Bids) would be opened as per the extant procedures of the e-procurement portal. Offline Bids will be opened by Bid Opening Committee constituted as under:

6.25.1 Bid Opening Committee (BOC): Director of Lab/Estt will nominate officials of BOC as per following constitution for opening of bids on the date and time specified in the RFP:

| | |
|---------------------------------------|------------------|
| Sc. 'C'/ TO 'C' or above | Chairman |
| Vigilance/Security Officer or his rep | Member |
| Duty Officer of the day | Member |
| MMG rep | Member Secretary |

Any two of the committee members besides Chairman may open the bids.

6.25.2 Role of BOC: BOC will identify and categorize the bids received as under:

- a) **Single Bid System:**
 - (i) **For non-CNC cases:** Bids will be opened by BOC and handed over to MMG for preparation of Comparative Statement of Bids (CSB) as per para 6.32 of this Manual.
 - (ii) **For CNC cases:** Bids will not be opened by the BOC. Such bids will be handed over to MMG for safe keeping till they are opened by the CNC and bidders would be informed in advance.
- b) **Two Bid System:** BOC will open techno-commercial bids only and hand it over to MMG for techno-commercial evaluation by the TCEC. Price bids will not be opened by BOC and the same will be handed over to MMG in a separate cover, sealed and signed by BOC for further action.

6.26 BID OPENING PROCEDURE:

- 6.26.1** Prior to the date and time of bid opening, BOC will ensure that all bids received in time are available for its consideration.
- 6.26.2** All relevant bids received on time should be opened by the BOC in the presence of authorized representatives of the bidders at the time, date and place prescribed in the RFP. The authorized representatives, who intend to attend the bid opening event, would be required to bring with them letters of authority from the concerned bidders.
- 6.26.3** BOC should announce the salient features, as applicable, of all opened bids like description and specification of stores, quoted price, terms of delivery, delivery period, discount if any, whether EMD furnished or not and any other special feature of the bids for the information of the representatives attending the bid opening event.
- 6.26.4** After opening of bids, every bid should be numbered serially, initialed with date on the first page by the officials of the BOC. Each page of the price bid or letter attached to it

shall also be initialed by them with date, particularly the prices, delivery period, details of discount offered, and any other financial terms including taxes and duties, which should also be encircled and initialed indicating the date. Blank bids, if any, should be marked accordingly by the BOC.

- 6.26.5** All bids received and opened will be entered in the bid register indicating the names of the firms, RFP reference number, file number and other pertinent details.
- 6.26.6** In case of alterations/ crossings and cuttings in quotations made by the bidders, substituted words should be encircled and initialed with date and time by the officials of BOC to make it perfectly clear that such alterations were present on the bid at the time of opening.
- 6.26.7** All late bids will be declared non-responsive and returned to the bidders unopened.
- 6.26.8** BOC will prepare a list of the representatives attending the bid opening event and obtain their signatures on the list. The list should contain the representatives' name and the corresponding bidders' name and their addresses. The authority letters brought by the representatives should be attached with this list. This list should be signed by officials of BOC with date and time.
- 6.26.9** The list of representatives attending the bid opening event, the bid register along with the bids which are opened or otherwise will be handed over to MMG.
- 6.26.10** In two bid system, only the techno-commercial bids would be opened in the first instance. The BOC would sign on all the envelopes containing price bids and hand over the same to MMG in a sealed and signed cover.
- 6.26.11** In two bid non- CNC cases, price bids of only those firms who have been declared technically compliant by TCEC will be opened by BOC and handed over to MMG for preparation of CSB as per para 6.32 of this Manual. Technically qualified bidders would be called to witness opening of the price bids.

6.27 INADVERTENT OPENING OF PRICE BID BEFORE SCHEDULE:

Due care must be taken to avoid opening of 'price-bid' before schedule or its opening along with "techno-commercial bid" in a two bid system as it is a serious matter. In such case opened price bid would be sealed again in a separate envelope by the committee under the signatures of bid opening officers. The incident would be recorded in the bid opening register. Chairman BOC will report the matter to the Head of the Lab/Estt highlighting the circumstances and reasons. In case Head of the Lab/Estt is satisfied that it is an inadvertent opening of price bid, MMG would inform

the affected bidder about the incident and give him a fixed and reasonable time to represent. In case, objection is raised by the bidder by the specified date, the case will not be processed further without bidding afresh, otherwise, bid processing will continue with the original price bids.

6.28 PRELIMINARY EXAMINATION OF QUOTES:

The purchase cell/ officer should examine the quotations to determine whether they are complete in all respects, and check for any computational errors which will be rectified on the following basis:

- 6.28.1** If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected.
- 6.28.2** If there is a discrepancy between words and figures, the amount specified in words shall prevail.

6.29 HANDLING CARTEL FORMATION/ BID RIGGING/ RING PRICES:

Sometimes a group of bidders quote identical rates against RFP on competitive bidding. Such Pool/ Cartel formation is against the basic principle of competitive bidding and defeats the very purpose of open and competitive bidding. Such practices should be severely discouraged with strong measures and brought to the notice of DFMM. Suitable administrative actions like rejecting the offers, reporting the matter to Registrar of Companies, Competition Commission of India (CCI), and National Small Industries Corporation (NSIC) etc. should be initiated against such firms, on case to case basis, as decided by the competent authority. However, this does not cover DGR empanelled security service providers.

6.30 PROCEDURE IN CASE OF INADEQUATE RESPONSE:

In some cases response may be inadequate (refer para 6.6 of this Manual) consequent to open/ limited bidding. This situation may arise in single bid system as well as in two bid system before or after technical evaluation indicating lack of competition. In such situations, following aspects may be examined before proceeding further:

- a) Is it possible to redefine the specifications and make them broad based/ industry friendly for wider competition? (**Yes/ No**)
- b) Whether time and criticality of requirement permits reformulation of the specifications. (**Yes/ No**)
- c) Whether proper vendor selection has been done in case of LBM or wide publicity

has been given in case of OBM. **(Yes/ No)**

- d) Whether vendor qualification criteria / special terms and conditions of RFP were very restrictive. **(Yes/ No)**
- e) Review if sufficient time was given to the bidders to respond while issuing the RFP. Whether the RFP had been properly dispatched and duly received by the prospective bidders to whom these were sent. **(Yes/ No)**

6.30.1 The above examination would be done, based on the information provided by the user, by TCEC for two bid system and a Committee (comprising of indenter, technical expert from other Group and Rep. MMG) for single bid system. If the examination reveals that answer to (a), (b) and (d) are no, and answers to (c) & (e) are yes, recommendations of committee would be processed as per para (a) and (b) below. Otherwise, case will be re-floated i.e. in case of any doubt about the bidding process or it is considered feasible to reformulate specifications/ terms and conditions of RFP/ vendor qualification criteria without compromising the requirement, the RFP should be retracted and re-issued after rectifying the deficiencies.

- a) **Receipt of two quotations (in single bid system) or technically qualified (in two bid system):** Approval of CFA as per delegation of financial powers for OBM/ LBM procurements would be obtained for processing the procurement case further.
- b) **Receipt of only one quotation (in single bid system) or technically qualified (in two bid system):** Such cases, the mode of bidding should be changed to Single Bid without PAC and appropriate approval of CFA as per delegation of financial powers would be obtained for processing the procurement case further.

6.30.2 However, cases with inadequate response, beyond the delegated powers of Secretary Defence (R&D), would require 'in-principle' approval of Secretary Defence (R&D) with the concurrence of Addl. FA (R&D) & JS for further processing the procurement case. Approval of CFA shall be taken at the time of obtaining Expenditure Sanction.

6.31 RE-FLOATING OF RFP:

Re-floating will be resorted to only in exceptional circumstances as it entails additional costs as well as delays the procurement process. Approval of CFA would be taken as per delegation of financial powers for re-floating of RFP. It should be done with utmost caution generally under the following circumstances:

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

- b) There are major changes in specifications and quantity, which may have considerable impact on the price.
- c) Prices quoted are unreasonably high with reference to estimated cost or there is evidence of a sudden slump in prices after receipt of the bids.
- d) Where there is lack of competition and there are clear and reasonable grounds to believe that the lack of competition was due to restrictive specifications, which could have restricted participation. Such cases should, however, be rare as the specifications must be formulated with due care.
- e) Before re-floating, Lab should consider if there is a possibility of reviewing the specifications/ special terms and conditions/ vendor qualification criteria to meet the objective.
- f) In cases where a decision is taken to go for re-floating of RFP but the requirements are urgent, negotiations may be under taken with L1 bidder(s) for the supply of a bare minimum quantity in accordance with para 3 of CVC instructions dated 3rd March 2006 (for latest guidelines issued by CVC in this regard, CVC website may be referred).
- g) **Withdrawal of offer by L1:** In case the lowest bidder withdraws its offer, procuring entity shall cancel the procurement process and re-floating should be resorted to except for the cases covered under provisions of para 8.5.3. While re-floating, RFP will not be issued to the bidder who had backed out and EMD, if any, of such firm should be forfeited or action will be taken as per para 6.10.8.
- h) If the objectives for re-floating are not met when fresh bids are received, Director for non CNC cases or CNC may take stock of the situation keeping in view changed market conditions, repercussions of further delay, any other factors and recommend accordingly.

6.32 PREPARATION OF COMPARATIVE STATEMENT OF BIDS (CSB) IN NON-CNC CASES:

The CSB will be as per the format given at **DRDO.BM.04**. The Part I of CSB will record details of bids received and indicate their compliance vis-à-vis the terms and conditions of the RFP. Bids without material deviations would be considered in Part II. Part II of CSB will indicate all details of offers, i.e., nomenclature, price, payment terms, statutory levies, duties, insurance, packing & forwarding charges, installation & commissioning charges, training charges etc., as given in the quotations. In case of variation in payment terms quoted by the bidders, the Net Present Value (NPV)

method of evaluation may be followed for purposes of comparison as indicated in RFP. For a fair comparison and to determine the real cost of procurement, details as given in the quotations such as delivery ex-godown or FOR destination, transportation, inspection costs etc. will be reflected in the CSB. In case cash flow involves more than one currency, these should be brought to a common denomination in Rupees by adopting exchange rate as per para 8.3.2 of this Manual. The CSB will be signed by the Head of the User Group and Head MMG. Assessment of L1 will be done on the basis of criteria stated in the RFP and negotiation, if required, will be carried out only with L1. The case will be further processed as per para 6.42 of this Manual onwards. Deviations, if any, from the prevailing procedure and/ or from RFP would be clearly recorded in the CSB.

6.33 EVALUATION OF TECHNO-COMMERCIAL BIDS:

In a two-bid system, a thorough evaluation of the techno-commercial bids will be carried out by a duly appointed Techno-Commercial Evaluation Committee (TCEC). The evaluation of techno-commercial bids must be done within the framework of RFP.

6.33.1 Techno-Commercial Evaluation Committee (TCEC): A TCEC will be appointed by the Director/ Program Director comprising of following officers:

| | |
|--|------------------|
| Sc. 'F' or above (from other than user group) | Chairman |
| Technical Expert (Sc. 'D' or above from other than user group) | Member |
| Rep MMG | Member |
| Rep QAC, if required | Member |
| Rep User Group | Member Secretary |

In addition, the Constituting Authority may include technical experts from sister Lab/Estt and/or outside experts from other Govt. Dept/ Academic Institutions to derive technical advantage based on their expertise.

6.33.2 Finance rep need not be associated with the TCEC. However, in cases where commercial terms are to be normalized before opening of Price Bid, a rep from finance will be co-opted by the Chairman/ Constituting Authority.

6.33.3 Evaluation of Technical Bids: The main objective of the TCEC is to prepare compliance matrix showing how the technical parameters of bids received are compliant with the parameters mentioned in the RFP. TCEC can accept better specification being offered after recording the gist of deliberations and reasons/ justification for the same provided it is acceptable to the user. This kind of changes would not be used to reject any bidder. It is reiterated that TCEC's job is to evaluate the

technical bids from the viewpoint of “compliance to RFP” or “non-compliance to RFP”. It is not open to TCEC to set aside the RFP and start making a de novo exercise of finding, which technical bid is acceptable and which is not.

6.33.4 Normalization of Commercial Terms: TCEC should also evaluate the commercial terms such as payment terms, warranty/ guarantee, taxes & duties, End Use Certificate (EUC), export license, installation & commissioning, and training etc. to ensure compliance of RFP in the bids submitted. Normally commercial normalization after opening of bid should be avoided, however, where it becomes essential to bring uniformity, finance rep will be involved. All technically acceptable bidders may be offered uniform commercial terms. If necessary, they may be given equal opportunity to revise/ amend their price bids as per the normalized commercial terms. TCEC minutes should appropriately record the same. If, in spite of the efforts made by the TCEC, variations persist in commercial terms; this will not form the basis for rejection of technically acceptable offers except in case of EUC. Where EUC has to be submitted, TCEC should scrutinize the format provided by the technically accepted bidders for its acceptability. TCEC can refer the EUC format to the Directorate of International Co-operation (DIC), DRDO HQ in case need is felt for the same. The decision to reject the bid on the basis of EUC can be taken only with the concurrence of DIC.

6.34 IMPORTANT GUIDELINES FOR THE TCEC:

For the purpose of proper assessment/evaluation, the TCEC will prepare a techno-commercial CSB as per format at **DRDO.BM.05** bringing out the comparison between the specifications/ other terms asked for and that offered by vendors. While preparing TCEC minutes, value of technical parameters/ specifications as quoted by bidders along with compliance/ non-compliance status must be clearly indicated against all parameters/ requirements stated in the RFP.

6.34.1 The TCEC is empowered to invite/ interact with bidders, who have responded to the RFP, for technical presentation/ clarification if considered necessary. Confirmation of clarifications received in such meetings/ interactions may be obtained in writing from respective bidders.

6.35 REVISION OF BIDS:

6.35.1 For minor revision in the technical parameters/ specifications emerging during the technical evaluation of bids by TCEC or clarification received from the bidders, which does not affect the basic functional requirement of the product, equal opportunity must be given to all bidders to re-submit their bids to ensure fair play.

6.35.2 The original price bid must remain firm/ fixed and no price revision should be permitted

during TCEC. However, while procuring/ developing complex systems/ products, it may not be feasible to incorporate all possible details in technical specifications. During the techno-commercial evaluation process, in case any changes in original technical specifications are being made, all the participating bidders should be asked to indicate separately the financial impact from the original quote in terms of addition or deduction from the quoted price, either by amount or percentage in a sealed cover, instead of calling for fresh price bids. This is done to retain the sanctity of the original price bid and should be considered only as supplement. It is mandatory to record this in the TCEC minutes. Once the modified price bids are received, both original and modified price bids are to be opened, compiled and evaluated on a common platform.

6.35.3 In case major changes become necessary, the TCEC may recommend re-floating of RFP with revised specifications.

6.36 REJECTION OF TECHNICAL BID:

TCEC must be guided by the sole consideration that only those bidders whose products are technically deficient in terms of the qualifying criterion stated in the RFP are excluded. The reasons for such rejection of any offers should be clearly recorded in the TCEC minutes. While doing so, all efforts should be made to retain as many bidders as possible in the fray without compromising on the technical requirements.

6.36.1 TCEC should identify all line entries whether quoted as essential items or optional items whose prices need to be included for price evaluation of the bids. Selection of these entries should be done only as per the requirement given in the RFP. Exclusion/inclusion of such entries (as the case may be), should be recorded with absolute clarity in TCEC minutes to facilitate preparation of CSB by CNC/MMG.

6.37 ACCEPTANCE OF TCEC RECOMMENDATION:

The TCEC will scrutinize the bids as per the guidelines given above and submit its report for consideration and acceptance by an official authorized (not below level of Sc. 'F') by Director/ Program Director/ Project Director for cases for which they are CFA. For other cases TCEC report would be submitted to the Constituting Authority for consideration and its acceptance.

6.38 COMMERCIAL NEGOTIATION COMMITTEE (CNC):

All purchases where estimated cost is over Rs. 10 lakh, except for Repeat Orders, SWOD, supply orders against rate contracts and the cases covered under para 8.5.1 of this Manual shall be scrutinized by the CNC and would be processed for approval of CFA along with the recommendations of CNC. The basic objectives of CNC are to

study the recommendations of TCEC besides ensuring transparency, fairness and negotiating the price.

6.38.1 The CFA level for demand approval will be the criteria for deciding the level of CNC. After opening of financial bids, CNC will complete the negotiation, even if the quoted costs exceed the level of delegated powers of the CFA who had approved the demand. The CNC will give its recommendations which would be submitted to the CFA, who had approved the demand.

6.38.2 Compositions of 'Standing CNCs' have been specified for procurement under delegated powers as per details given below:

a) **Project Cases within Delegated Powers of Financially Empowered Boards (for Appendix 'B' of DFP):**

| | | |
|------|---|-----------------------------|
| (i) | Rep of Chairman of concerned Board | Chairman ¹ |
| (ii) | Financial Concurring Authority/ Rep | Finance Member ² |
| (ii) | Chairman, TCEC (for Two Bid System)/if required | Member |
| (iv) | Head User Group/ Rep | Member |
| (v) | Head (MMG)/ Rep | Member Secretary |

- ¹An officer of the level of Scientist 'G', Lab Director and DG (Cluster) would chair CNC as reps of Chairmen of PJB, PMB and Apex Board respectively. For PJB, nomination of Chairman will be done by Lab Director. If officer of Scientist 'G' level is not available, the senior-most officer next to the Lab Director would preside over the CNC.

- ²Secretary Defence (Fin)/ FA (DS) would be represented by Addl. FA (R&D) & JS, posted in Defence (R&D) for Apex Board sanctioned procurements. Addl. FA (R&D) & JS may nominate IFAs (all SAG level officers) to DG (Clusters) as Finance rep in the CNC. IFA R&D and Dy IFA/ Jt IFA would be associated with procurements sanctioned by PMB/ PJB.

b) **All Other Cases within the Delegated Powers of Secretary D R&D:**

| | | |
|-------|---|-----------------------------|
| (i) | Rep of CFA (Not below the level of Scientist 'G'/ Equivalent) | Chairman ¹ |
| (ii) | Financial Concurring Authority/ Rep | Finance Member ² |
| (iii) | Chairman, TCEC (for Two Bid System), if required | Member |
| (iv) | Head User Group/ Rep | Member |

| | | |
|--------|----------------------------------|---------------------|
| (v) | Director DFMM, DRDO HQ/ Rep | Member ³ |
| (vi) | Director Lab/Estt/Rep | Member ³ |
| (vii) | Director (Admin) of Cluster/ Rep | Member ⁴ |
| (viii) | Head (MMG) of Lab/Estt/ Rep | Member Secretary |

- ¹An officer of the level of Scientist 'G', Lab Director and DG (Cluster)/CC R&D would chair CNC as reps of Lab Director, DG (Cluster)/CC R&D and DG (DRDO)/ Secretary Defence (R&D) respectively. For cases within the delegated powers of Lab/Estt Director, nomination of Chairman will be done by Lab Director. If officer of Scientist 'G' level is not available, the senior-most officer next to the Director would preside over the CNC.
- ²Secretary Defence (Fin)/ FA (DS) would be represented by Addl. FA (R&D) & JS, posted in Defence (R&D). Addl. FA (R&D) & JS may nominate IFAs (all SAG level officers) to DG (Clusters) as Finance rep in the CNC. Where Fin Rep under IFA scheme is not available locally, rep of local CDA (R&D) will be Fin Rep for cases with estimated cost up to Rs. one crore (Till full scale implementation of IFA system).
- ³Directors of Lab and DFMM at DRDO HQ would be a member for cases beyond the delegated power of DG (Cluster).
- ⁴Director (Admin) of Cluster would be member for cases beyond the delegated power of Lab/ Estt Director.

c) **For cases beyond the Delegated Powers of Secretary Defence (R&D) and Financially Empowered Boards (for Appendix 'B' of DFP): .**

| | | |
|-------|---------------------------------|------------------|
| (i) | DG(Cluster) concerned | Chairman |
| (ii) | DG (R&M) | Member |
| (iii) | Addl FA (R&D) & JS | Finance Member |
| (iv) | Director Lab/Estt | Member |
| (v) | Director (Admin) of Cluster | Member |
| (vi) | Chairman TCEC (Two Bid System) | Member |
| (vii) | Head (MMG) of Lab/Estt | Member Secretary |

- For complex/ large value procurements having long term/ strategic implications, a special procurement committee/ CNC may be set up having

cost experts, external experts and members as considered appropriate. Constitution of CNC would be processed by the Lab through concerned DG (Cluster) for the approval of Secretary Defence (R&D).

6.38.3 Nomination of Rep. of Chairman and Head MMG for conduct of CNC for cases covered under 6.38.2(a) and (b): Director Lab/Estt and DG (Cluster) as Chairman CNC, and Head (MMG) as Member Secretary CNC, may depute his/ her rep to conclude CNC meetings as under:

- a) When DG (Cluster) is Chairman, CNC may be conducted by the rep of Chairman not below the rank of Sc. H, from any locally available Lab/ Estt or Office of DG (Cluster).
- b) When Director is Chairman, the next senior most officer available in the office may be deputed to chair the meeting.
- c) To enable conduct of parallel CNC meetings, Head (MMG) may nominate rep not below two levels from his/her rank.

6.38.4 The Chairman CNC may co-opt any other expert member from the Lab/Estt or any other organization.

6.38.5 Care should be taken that CFA for the procurement is not nominated as Chairman of the CNC.

6.39 ACTIONS PRIOR TO CNC MEETING:

6.39.1 Scheduling of CNC meetings: The date and venue of these meetings will be approved by the Chairman, preferably in consultation with the designated members else, the latter should be informed at least 7 days in advance.

6.39.2 Labs/Estts shall ensure the validity of demand approval, quotations and availability of approved TCEC report before scheduling CNC meeting.

6.39.3 Reasonable price/ benchmark price needs to be worked out prior to opening of price bid in all modes of bidding but mandatorily in LBM/SBM/PBM cases to ensure reasonableness of quoted prices (refer chapter 8 of this Manual). Such assessment ought to be done prior to opening of price bid to ensure complete objectivity and transparency of this process. If required, an independent cost estimation committee may be set up by the Director or Chairman of CNC to determine the reasonable price/ benchmark prior to opening of the price bid.

6.40 DOCUMENTS TO BE PROVIDED TO THE MEMBERS OF CNC:

- a) Technical brief
- b) CNC information as per format **DRDO.BM.03**

- c) Demand approval by CFA
- d) Report of TCEC with technical & commercial CSBs
- e) Other briefing papers, if any

6.40.1 The member secretary will issue notice, indicating date/ time and venue for scheduling of the meeting. He will compile and send agenda papers, duly supported by documents to all members so as to reach them at least 3 days in advance.

6.40.2 All qualified bidder(s) will be informed well in advance to enable them to be present on the day of price bid opening/ CNC meeting.

6.41 GUIDELINES FOR CONDUCTING CNC MEETING:

6.41.1 Price Reasonableness: The basic objective of CNC is to establish reasonableness of price being paid by the Buyer. This is a complex task and many factors need to be considered. Detailed guidelines for determining the reasonable cost are given in Chapter 8 of this Manual.

6.41.2 Scrutiny by CNC: In order to derive maximum advantage for successful materialization of the procurement within time schedule at the most favourable rate and payment terms, the CNC will examine the following points before opening the price bids:

- a) Description of the item and basis of estimation.
- b) If requirement is for project, PDC of the project.
- c) Validity of bids.
- d) Registration status of Indian agent where required, commission payable and currency in which payable.
- e) Warranty period
- f) Payment terms.
- g) Delivery period.
- h) Other commercial terms e.g. taxes and duties, packing and forwarding charges, mode of dispatch, transit insurance cover, place of delivery, etc
- i) Any other point(s) highlighted by TCEC for CNC.

6.41.3 Opening of Price Bids: The price bids of the technically accepted bids will be opened in front of rep of bidders present. Such opening of price bids should only be done when the CNC is fully convinced that no issues are left which need to be settled prior to opening of bids. All opened price bids will be signed by the CNC members.

6.41.4 Comparative Statement of Bids (CSB) for CNC Cases: The comparative statement of bids should be prepared with due care showing each element of cost (basic cost, taxes, levies, etc.) separately for each bid. The CSB will be as per the format given at **DRDO.BM.06** The CSB will indicate all details of offers, i.e., nomenclature, price, payment terms, statutory levies, duties, insurance, packing & forwarding charges, installation & commissioning charges, training charges etc., as given in the bids. In case of variation in payment terms quoted by the bidders, the Net Present Value (NPV) method of evaluation may be followed for purposes of comparison as indicated in RFP. For a fair comparison and to determine the real cost of procurement, details as given in the bids such as delivery ex-godown or FOR destination, transportation, inspection costs etc. will be reflected in the CSB. In case cash flow involves more than one currency, these should be brought to a common denomination in Rupees by adopting exchange rate as per para 8.3.2 of this Manual. The CSB should be prepared after opening of the price bids and will be vetted by the finance rep for its correctness. The CSB will be signed by the member secretary and finance member. Assessment of L1 will be done as per the criteria stated in the RFP.

6.42 COMMERCIAL EVALUATION:

Evaluation of price bids is the core activity in any purchase decision. If the correct evaluation of price bids is not carried out as per the criteria incorporated in the RFP, purchase decision may become deficient and faulty. Detailed guidelines on establishing reasonability of prices and ranking of bids are given in Chapter 8 of this Manual. CNC will also take into account the provisions of purchase/ price preference provided in the RFP in terms of policy directives issued by the Govt. from time to time.

6.43 COMMERCIAL NEGOTIATIONS:

It is not necessary to hold commercial negotiations in each case, particularly in open and limited mode of bidding, where the response has been substantial and the L1 price is found to be very close to the reasonable price, provided such assessment had been carried out prior to opening of the price bids. However, commercial negotiation may become necessary to ensure that the interest of the State is fully protected and the price paid is reasonable. Commercial negotiations are invariably conducted in case of single source situations, including PAC cases, or when price is considered high with reference to assessed reasonable price, irrespective of the mode of bidding. Such negotiations should be conducted by CNC or a duly appointed committee, which should invariably include a finance member, unless the negotiation is carried out by the committee CFA itself.

6.43.1 The cost of post-warranty maintenance contracts for high value complex equipment will

be included in the initial price-negotiations by the CNC to seek price concession. However, it will not be included in determination of L1 unless the evaluation criteria in RFP are based on Life Cycle Cost of the product.

6.43.2 When negotiations are considered necessary, only the firm with the lowest acceptable bid as per evaluation criteria will be called for negotiations by CNC. The following points may be borne in mind while negotiating:

- a) **Performance Security Bond:** To ensure due performance of the contract except the ones related to post acceptance, Performance Security Bonds are to be obtained from the successful bidder(s) awarded the contract irrespective of its registration status. Performance Security Bond should be for an amount equal to five to ten percent of the contract value. In case the execution of the contract is delayed beyond the contracted period and the Buyer grants the extension of delivery period, with or without liquidated damages, the Seller must get the Performance Security Bond revalidated, if not already valid. In case of Indian bidder, Performance Security Bond may be accepted in the form of Bank Draft, Fixed Deposit Receipt or a Bank Guarantee. For foreign bidders, they may be accepted in the form of Bank Guarantee or Stand-by Letter of Credit. They should remain valid for a period of sixty days beyond the date of completion of all contractual obligations except the ones related to post acceptance.
- **Amount of Performance Security Bond for Service contract:** For Hygiene, security contracts, fire-fighting, arboriculture and conservancy and other support services involving manpower contracts would be calculated on the payment due to the vendor (inclusive of taxes and duties) on agreed payment cycle in the S.O/Contract.
 - There would be no requirement of performance security bond for procurements up to threshold limit Rs. 10 lakh for COTS / common use items or branded commercial products, which are to be accepted on the manufacturer's guarantee.
- b) **Warranty Bond:** To cover the Buyer's interest during warranty period, warranty Bond for an amount of 10 percent of the contract value would be obtained from the seller prior to return of performance security bond. In case of Indian bidder, Warranty Bonds may be accepted in the form of Bank Draft, Fixed Deposit Receipt or a Bank Guarantee. For foreign bidders, It may be accepted in the form of Bank Guarantee or Stand-by Letter of Credit. It should remain valid for a period of sixty days beyond the date of completion of all warranty obligations. Warranty Bond would be returned to the Seller on successful completion of warranty obligations,

under the contract.

- c) **Free Issue of Material (FIM) as Raw Material:** Lab/Estt will analyze the availability/ source of supply of the FIM and the time frame etc. before accepting any terms related to it. Whenever FIM is to be issued to the supplier as raw material, comprehensive insurance cover (for transportation and storage period) may be taken by the Lab/Estt or Supplier through Nationalized Insurance Agency or their subsidiaries to safe guard the Govt Property (FIM). If insurance is taken by the Supplier the insurance charges will be reimbursed by the Lab/Estt at actuals. For very costly stores, FIM may be issued in batches / lots.
- d) **Stores issued as FIM for repair/ maintenance etc.:** Stores issued for purposes such as equipment or vehicle for painting/ repair/ fixture mounting etc. to the firm would be safeguarded through a comprehensive insurance cover taken by Lab/Estt through a Nationalized Insurance Agency or their subsidiaries. If insurance is taken by the Supplier the insurance charges will be reimbursed by the Lab/Estt at actuals.
- e) **Liquidated Damage (LD):** The Buyer reserves the right to impose LD in case of delay in supply attributable to the Seller at the rate of 0.5% per week or part thereof for stores which the Seller has failed to deliver within the period agreed for delivery in the contract subject to maximum of 10% of the total order/contract value. In certain categories of procurement, LD can also be levied on the Seller on the basic cost of the stores supplied partially within the scope of the order/ contract that could not be put to use due to late delivery of the remaining stores. However, for development contracts the rate of imposition of LD would be @ 0.25% per week or part thereof subject to maximum of 10% of the total order/contract value.
- f) **Bank Guarantees (BGs):**
 - (i) **For Indian Firms:** Applicable BGs may be accepted from a public sector bank or a scheduled private commercial bank in the format prescribed by RBI.
 - (ii) **For Foreign Firms:** Applicable BGs may be accepted in the prescribed format from an Indian Public Sector/ Schedule Private Commercial Bank or a First Class International Bank of repute, acceptable to the Buyer. Guidelines on verification of BGs from Foreign Banks through SBI are given in **Annexure 'A'** of this Manual.
 - (iii) Indemnity bond may be accepted only from Government Departments/ DPSUs/ PSUs in lieu of BG.

- g) Any waivers from requirement of Performance Security/ Warranty Bond, and LD Clause would be considered as deviation from the prescribed procedure and will be dealt as per para 1.10 of this Manual except following categories of procurement cases, where CFA would accord approval with the concurrence of associated Finance:
- (i) Procurement of stores/ services on PAC/ Single Tender basis with approval of CFA concerned.
 - (ii) Orders for procurement of spares/ repair of stores from OEMs.
 - (iii) Procurement of small value procurement (upto Rs.2.5 Lakh).

6.44 PAYMENT TERMS:

The payment terms should normally be in accordance with those indicated in the RFP. Any change of payment terms from those specified in the RFP can alter L1 determination. As such CNC must take into account the time value of money as per Discounted Cash Flow (DCF) Technique given in Chapter 8 of this Manual while agreeing to any change and record the justification for accepting any variation in payment terms from the RFP. The broad payment terms are as under:

6.44.1 Normal Payment Term: The normal terms of payment are 100% within 30 days after receipt & acceptance of stores in good condition or the date of receipt of the bill whichever is later. In cases where installation is required and is covered in the scope of the order, not more than 80% payment will be released on receipt of goods and balance will be paid after installation and commissioning. However based on the merit of the case, payment up to 100% against proforma invoice/ delivery may be agreed for consumable stores such as chemicals, gases, etc., when insisted upon by the bidder.

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

- a) Advance payments are demanded by bidders for maintenance contracts such as servicing of air-conditioners, computers, other costly equipment, etc.
- b) Advance payments demanded by bidders against Project with long execution time, development contract, fabrication contracts, turnkey contracts, etc.
- c) Where envisaged earlier and decided to provide advance payment, the quantum should be incorporated upfront in the RFP.

- d) **Quantum of Advance:** Such advance payments should not exceed the following limits:
- (i) 40% of the contract value for PSUs.
 - (ii) 30% of the contract value for private firms.
 - (iii) Basic amount payable for six months in case of maintenance contracts;
 - (iv) For projects sanctioned by GOI through CCS or EC/PC of NCA route, advance payments would be considered as per the necessity in line with Delegation of Financial Powers in vogue.
 - (v) Wherever justified organizations such as NICS, MTNL, RailTel, BSNL etc. which function under the aegis of government departments and payment to Air Consolidation Agent towards custom duty for clearance of goods from customs authorities will be allowed up to 100% advance payment whenever insisted upon either in one-go or in stages approved by the CFA based on recommendation of CNC.
- e) **Securing the Advance:** While making any advance payment, adequate safeguards in the form of bank guarantee or indemnity bond for PSU/ Govt. Dept. in favour of the Director of Lab/Estt of appropriate value (~110% of advance amount), should be obtained from the Seller. In cases where interim deliveries are being provided during currency of the contract and payment commensurate to such deliveries are being made as agreed to in Contract, the Advance Payment Bank Guarantee (APBG) will be deemed to be proportionately and automatically reduced until full extinction. In such cases the Seller would be provided the option to furnish separate Bank Guarantees for each lot/batch/deliverable(s) (as specified in the S.O/Contract) to simplify the prorated reduction of APBG. Sample format of bank guarantee and indemnity bond are given in forms **DRDO.BG.02** and **DRDO.BG.03** respectively. Requirement of BG or Indemnity Bond may not be insisted upon and should be at the discretion of CFA for Govt. Dept/ reputed academic institutions such as IITs etc. or for low value orders up to Rs. 2 lakh to reputed private firms when no other mode of payment is acceptable to them. However, following points must be ensured:
- (i) Advance paid to the Seller is prone to be used by them for the purpose other than the one for which it is disbursed. Therefore, adequate steps must be taken to ensure that advance is disbursed against anticipated cash out flow and the Seller is not benefited unduly by the way of retention of advance when no cash outflow is anticipated.

(ii) Vendors should be informed that the advance given would become interest bearing in case of termination of order/contract due to their default or if it is used for the purposes other than this contract as per the terms stated in the RFP.

(iii) Delivery Period (DP) extension for the default of the Seller would make advances paid interest bearing.

6.44.3 Stage/ Part Payments: Where progressive payments are anticipated, the same shall be agreed against identified and verifiable milestones. The same should broadly be as per the RFP. All progressive payments, where stores of equivalent amount are not received, should be secured. In cases, where the stage payment is not mentioned in the RFP, the same may be approved by the CFA on the recommendations of CNC.

6.44.4 Pro rata payment: In case the bidder requests for pro rata payment, the same may be approved by the CFA on the recommendations of CNC.

6.44.5 Payment to Foreign Firms: Payment to foreign Sellers may be done through Letter of Credit/ Direct Bank Transfer. Details are given in the **Annexure 'A'** of this Manual.

6.44.6 Deviation from Standard Terms of Payment: CFA can approve any of the payment terms mentioned above. Any waivers from above payment terms would be considered as deviation from the prescribed procedure and will be dealt as per para 1.10 of this Manual except following categories of procurement cases, where CFA would accord approval with the concurrence of associated Finance

(i) Procurement of stores/ services on PAC/ Single Tender basis with approval of CFA concerned.

(ii) Orders for procurement of spares/ repair of stores from OEMs.

(iii) Procurement of small value procurement (upto Rs.2.5 Lakh).

6.45 APPORTIONMENT OF QUANTITY:

6.45.1 Where it is Pre-decided: The total order quantity would be split in the ratio as indicated in the RFP. Ratio of splitting would be preferably in favour of L1. All efforts would be made to negotiate a reasonable price with the L1 bidder and, thereafter, counter offers would be made to L2, L3 etc. sequentially at the rate & terms and conditions accepted, except duties and taxes, by L1. If none of the other bidders agree to match the negotiated rate & terms and conditions of L1, except duties and taxes, then the order may be placed on L1 for the full quantity, else alternative source may be explored through separate bidding process.

6.45.2 Where it is not Pre-decided: If L1 does not have the capacity to supply the entire quantity, the balance order may be placed on L2, L3, etc. sequentially at the rate & terms and conditions, except duties and taxes, negotiated with L1 in a fair, transparent and equitable manner. In case the bidders are not in a position to execute the total order quantity, then alternative source may be explored through separate bidding process for the balanced quantity.

6.46 BUY-BACK OFFER:

6.46.1 When it is decided with the approval of the competent authority to replace an existing old item(s) with a new and better version, the department may trade the existing old item while purchasing the new one. For this purpose, a suitable clause is to be incorporated in the bidding document so that the prospective and interested bidders formulate their bids accordingly. Depending on the value and condition of the old item to be traded, the time as well as the mode of handing over the old item to the successful bidder should be decided and relevant details in this regard suitably incorporated in the bidding document. Further, suitable provision should also be kept in the bidding document to enable the purchaser either to trade or not to trade the item while purchasing the new one. In such cases, the RFP should call for the bidders to quote the price of new equipment and buy-back offer for the existing equipment explicitly in their bid. CFA/ CNC may assess a benchmark price for the item to be traded off in buy-back process. On buy-back cases, L1 would be decided on the basis of net cash outgo as per provisions of para 8.3 of this Manual. Lab/Estt will follow the security guidelines in vogue while trading the old item against buy-back offer.

6.47 CONCLUDING CNC MEETING (FOR CNC CASES):

6.47.1 Detailed minutes of the CNC meeting will be recorded, highlighting the deviations, if any, from prevailing procedures and/ or from the RFP along with recommendations made by the committee as per **DRDO.BM.07**. The gist of CNC recommendations must appear on the page containing signatures of the members.

6.47.2 The minutes of the CNC must be issued duly signed by all the members and cleared by the Chairman.

6.48 DISSENTING OPINION:

Dissenting opinion, wherever expressed, will be recorded in the CNC minutes and the same will be referred to CFA for decision.

6.49 LETTER OF INTENT (LOI):

At times, it may be necessary to follow up the negotiations with the issue of a LOI or

fax acceptance due to imminence of expiry of the bid or for any other reason. LOI amounts to final acceptance of the offer. It is, therefore, imperative that all-important and relevant aspects such as description of stores, quantity, price, delivery period, etc. are properly reflected in the advance communication. It will be ensured that in such cases there is no variation between the LOI and the formal supply order issued subsequently. The advance communication should specifically confirm acceptance of the offer and state that the formal supply order showing full details will follow. The formal supply order will be issued without any avoidable delay.

6.49.1 LOI is a legally binding document and should be issued on the recommendations of CNC if the negotiated amount does not exceed the estimated cost in demand approval and no deviation from the prevailing procurement process has been made so far.

6.50 CHANGE OF NAME OF VENDOR:

6.50.1 At times, the vendor participating in the procurement process, initiates the process for change of name with corporate regulatory authorities, due to change in business strategy, merger/acquisition or any other reason resulting in losing its original legal identity. Whenever the vendor applies to the regulatory authorities for 'change of name', it must inform the procuring entity through a letter about proposed change of name and the reason for the same. When change of name is approved by regulatory authorities, the following documents must be submitted to the procuring entities at the earliest. In case the documents are in languages other than English, then a self certified/ official/legal translation of original documents must be submitted:

- a) Information Proforma for Vendors as per Chapter 3 of PM-2016.
- b) New certificate of incorporation issued by the appropriate Registrar of Companies in case of Indian vendors or an equivalent organisation in the country from where the new entity would be operating in case of foreign vendor.
- c) Copy of RBI Approval in case of merger/acquisition between Indian and foreign vendor(s).
- d) Undertaking/Novation agreement by new vendor (for cases where vendor has submitted the response to RFP).

6.50.2 Approving Authorities for the Change of Name of Vendor while Participating in the Procurement Process: DG (Cluster) concerned and Secretary DD(R&D) may accord approval to accept change of the name of the vendor during pre-contract stage and post contract stage respectively. Legal advice may be sought where ever required. On grant of consent to the case of change of name of vendor, the following documents, as applicable, bearing the new entity name will be submitted by vendor:

- a) EMD/Performance Security
- b) Advance/ Stage Payment Bank Guarantee/Bank Guarantee for Warranty
- c) New Pre-Contract Integrity Pact (PCIP) and Integrity Pact Bank Guarantee (IPBG)
- d) Any other applicable Financial Instrument/Document

CHAPTER 7

TERMS & CONDITIONS OF RFP

7.1 GENERAL:

A contract is a legal document created on the basis of terms & conditions of RFP, submitted bid and the revised offer received after negotiation. RFP is the basic document on which the contract is formulated. Contractual obligations are governed by terms and conditions to protect the interest of both the parties to the contract. It is, therefore, necessary to spell out the terms and conditions in the RFP in clear and unambiguous manner, so that bidders respond and submit their bid with clarity. The RFP format (**DRDO.BM.02**) contains reference to the standard as well as special conditions in Part II & Part III respectively which bidders would be required to abide with. The contract must also include the standard as well as special conditions specific to a particular case, as mentioned in the RFP. The Buyer shall provide the requisite information. Only applicable clauses would be retained in the RFP.

7.2 STANDARD TERMS & CONDITIONS:

Laws of the country are reflected in these terms and conditions, therefore, neither deviation from the standard text given in the clauses nor deletion of any of these clauses should normally be admitted. In case a deviation from these clauses has to be considered/ allowed, approval of DRDO HQ will be required through DFMM. Clause on Pre-Integrity Pact is mandatory for cases where estimated cost is above Rs. 100 crore.

7.2.1 Effective Date of the Contract: Effective date of the contract/ SO is the date from which Contract is deemed to have commenced. Time keeping for both the parties i.e. Buyer and Seller to carry out their respective contractual obligations starts from this date. The standard text of this clause is as under:

“In case of placement of a supply order, the date of acceptance of the Supply Order would be deemed as effective date or as agreed by both the parties. In case a contract is to be signed by both the parties, the Contract shall come into effect on the date of signatures of both the parties on the Contract (Effective Date) or as agreed by both the parties. The deliveries and supplies and performance of the services shall commence from the effective date of the Contract.”

7.2.2 Law: A contract/ SO is a legally enforceable document in a court of Law. Therefore, it is very important to specify the country under whose law the contract/ SO will be governed and interpreted in the RFP itself. The standard text of this clause is as under:

“The Contract shall be considered and made in accordance with the laws of the Republic of India and shall be governed by and interpreted in accordance with the laws of the Republic of India.”

7.2.3 Arbitration: This clause defines the mechanism of dispute resolution and an alternate to litigation. The disputing parties hand over their power to decide the dispute to the arbitrator(s). The standard text of this clause is as under:

“All disputes or differences arising out of or in connection with the Contract shall be settled by bilateral discussions. Any dispute, disagreement or question arising out of or relating to the Contract or relating to product or performance, which cannot be settled amicably, shall be resolved by arbitration in accordance with the following applicable provision:

- a) **For Central and State PSEs:** In the event of any dispute or difference relating to the interpretation and application of the provisions of commercial contract(s), such disputes or difference shall be taken up by either party for resolution through Administrative Mechanism for Resolution of CPSEs Disputes (AMRC) as per provisions of Department of Public Enterprises OM No. 4(1)/2013-DPE (GM)/FTS-1835 dated 22-05-2018 as amended.
- b) **For Defence PSUs:** The case of arbitration shall be referred to the Secretary Defence (R&D) for the appointment of arbitrator(s) and proceedings.
- c) **For other Firms:** Any dispute, disagreement or question arising out of or relating to the Contract or relating to product or performance, which cannot be settled amicably, shall be resolved by arbitration in accordance with either of the following provisions:

“The case of arbitration may be referred to respective CFA or a person appointed by him who will be sole arbitrator and the proceedings shall be conducted in accordance with procedure of Indian Arbitration and Conciliation Act, 1996.”

Or

“The case of arbitration may be referred to International Centre for Alternative Dispute Resolution (ICADR) for the appointment of arbitrator and proceedings shall be conducted in accordance with procedure of Indian Arbitration and Conciliation Act, 1996.”

Or

“The case of arbitration may be conducted in accordance with the rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules in India. However, the arbitration proceedings shall be conducted in India under Indian Arbitration and Conciliation Act, 1996.”

7.2.4 Penalty for Use of Undue influence: This clause informs bidders to undertake that they will not use any kind of undue influence for any purpose. Any breach this undertaking by the Seller or anyone employed by him or acting on his behalf (whether with or without the knowledge of the Seller) entitle the Buyer to cancel the contract and all or any other contracts with the Seller and recover from the Seller the amount of any loss arising from such cancellation. The standard text of this clause is as under:

“The Seller undertakes that he has not given, offered or promised to give, directly or indirectly, any gift, consideration, reward, commission, fees, brokerage or inducement to any person in service of the Buyer or otherwise in procuring the Contract or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the Contract or any other contract with the Government of India for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other contract with the Government of India. Any breach of the aforesaid undertaking by the Seller or anyone employed by him or acting on his behalf (whether with or without the knowledge of the Seller) or the commission of any offence by the Seller or anyone employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act, 1986 or any other Act enacted for the prevention of corruption shall entitle the Buyer to cancel the contract and all or any other contracts with the Seller and recover from the Seller the amount of any loss arising from such cancellation. A decision of the Buyer or his nominee to the effect that a breach of the undertaking had been committed shall be final and binding on the Seller. Giving or offering of any gift, bribe or inducement or any attempt at any such act on behalf of the Seller towards any officer/ employee of the Buyer or to any other person in a position to influence any officer/ employee of the Buyer for showing any favour in relation to this or any other contract, shall render the Seller to such liability/ penalty as the Buyer may deem proper, including but not limited to termination of the contract, imposition of penal damages, forfeiture of the Bank Guarantee and refund of the amounts paid by the Buyer”.

7.2.5 Agents/ Agency Commission: It is not the policy of Government, per se, to look for or encourage or engage agents. There is no need for engaging any such agent, wherever it is possible to secure supplies and ensure after-sale-services etc. on reasonable

terms without the intercession of agents. However, at times, agents may be employed by the OEM for supplies/after sale services. The clause pertains to enlist such agents. The standard text of this clause is as under:

“The Seller confirms and declares to the Buyer that the Seller has not engaged any individual or firm, whether Indian or foreign whatsoever, to intercede, facilitate or in any way to recommend to the Government of India or any of its functionaries, whether officially or unofficially, to the award of the contract to the Seller; nor has any amount been paid, promised or intended to be paid to any such individual or firm in respect of any such intercession, facilitation or recommendation. The Seller agrees that if it is established at any time to the satisfaction of the Buyer that the present declaration is in any way incorrect or if at a later stage it is discovered by the Buyer that the Seller has engaged any such individual/ firm, and paid or intended to pay any amount, gift, reward, fees, commission or consideration to such person, party, firm or institution, whether before or after the signing of this contract, the Seller will be liable to refund that amount to the Buyer. The Seller will also be debarred from entering into any contract with the Government of India for a minimum period of five years. The Buyer will also have a right to consider cancellation of the Contract either wholly or in part, without any entitlement or compensation to the Seller who shall in such an event be liable to refund all payments made by the Buyer in terms of the Contract along with interest at the rate of 2% above (i) MCLR (Marginal Cost of Funds based Lending Rate) declared by RBI pertaining to SBI for Indian bidders, and (ii) London Inter Bank Offered Rate (LIBOR)/ EURIBOR for the foreign bidders. The applicable rates on the date of opening of bid shall be considered for this. The Buyer will also have the right to recover any such amount from any contracts in vogue with the Government of India.”

Or

*The Seller confirms and declares in the Techno-Commercial bid that they have engaged an agent, individual or firm, for performing certain services on their behalf. The Seller is required to disclose full details of any such person, party, firm or institution engaged by them for marketing of their equipment in India, either on a country specific basis or as a part of a global or regional arrangement. These details should include the scope of work and responsibilities that have been entrusted with the said party in India. If there is non-involvement of any such party then the same also be communicated in the offers specifically. The information is to be submitted as per the format at **DRDO.SA.01**. Without prejudice to the obligations of the vendor as contained in various parts of this document, appointment of an Agent by vendors will be subjected to the following conditions:*

- a) *Details of all Agents will be disclosed at the time of submission of offers and within two weeks of engagement of an Agent at any subsequent stage of*

procurement.

- b) *The Seller is required to disclose termination of the agreement with the Agent, within two weeks of the agreement having been terminated.*
- c) *Buyer /MoD reserves the right to inform the Seller at any stage that the Agent so engaged is not acceptable whereupon it would be incumbent on the Seller either to interact with Buyer / MoD directly or engage another Agent. The decision of Buyer /MoD on rejection of the Agent shall be final and be effective immediately.*
- d) *All payments made to the Agent 12 months prior to tender submission would be disclosed at the time of tender submission and thereafter an annual report of payments would be submitted during the procurement process or upon demand of the Buyer / MoD.*
- e) *The Agent will not be engaged to manipulate or in any way to recommend to any functionaries of the Govt of India, whether officially or unofficially, the award of the contract to the Seller or to indulge in corrupt and unethical practices.*
- f) *The contract with the Agent will not be a conditional contract wherein payment made or penalty levied is based, directly or indirectly, on success or failure of the award of the contract.*
- g) *On demand, the Seller shall provide necessary information/inspection of the relevant financial documents/information, including a copy of the contract(s) and details of payment terms between the Seller and the Agent engaged by him.*
- h) *If the equipment being offered by the Seller has been supplied /contracted with any organisation, public/private in India, the details of the same may be furnished in the technical as well as commercial offers. The Sellers are required to give a written undertaking that they have not supplied/is not supplying the similar systems or subsystems at a price lower than that offered in the present bid to any other Ministry/Department of the Government of India and if the similar system has been supplied at a lower price, then the details regarding the cost, time of supply and quantities be included as part of the commercial offer. In case of non disclosure, if it is found at any stage that the similar system or subsystem was supplied by the Seller to any other Ministry/Department of the Government of India at a lower price, then that very price, will be applicable to the present case and with due allowance for elapsed time, the difference in the cost would be refunded to the Buyer, if the contract has already been concluded.*

Following details are also to be submitted in the Techno-Commercial bid:

- i) *Name of the Agent*
- ii) *Agency Agreement between the Seller and the agent giving details of their contractual obligation*
- iii) *PAN Number, name and address of bankers in India and abroad in respect of Indian agent*
- iv) *The nature and scope of services to be rendered by the agent and*
- v) *Percentage of agency commission payable to the agent*

7.2.6 Access to Books of Accounts: This provision gives right to the Buyer to access Seller's books of accounts for checking if Seller has violated its undertaking given at the time of submission of bid on use of undue influence and/or employment of agent. The standard text of this clause is as under:

"In case it is found to the satisfaction of the Buyer that the Bidder/ Seller has violated the provisions of use of undue influence and/or employment of agent to obtain the Contract, the Bidder/ Seller, on a specific request of the Buyer, shall provide necessary information/ inspection of the relevant financial documents/ information/ Books of Accounts."

7.2.7 Non-disclosure of Contract Documents: This clause restricts parties not to share the information provided by each other without explicit consent. The standard text of this clause is as under:

"Except with the written consent of the Buyer/ Seller, other party shall not disclose the Contract or any provision, specification, plan, design, pattern, sample or information thereof to any third party."

7.2.8 Handling of Classified Information by Indian Licensed Defence Industry: Any classified document/information/ equipment being shared with Indian Licensed Defence Industries will be protected/ handled to prevent unauthorized access as per provisions of Chapter 5 of Security Manual for Indian Licensed Defence Industries issued by MoD (Department of Defence Production).

7.2.9 Withholding of Payment: This clause authorizes the Buyer to withhold payment till end when the Seller fails in its contractual obligation. The standard text of this clause is as under:

"In the event of the Seller's failure to submit the Bonds, Guarantees and Documents, supply the stores/ goods and conduct trials, installation of equipment, training, etc. as

specified in the Contract, the Buyer may, at his discretion, withhold any payment until the completion of the Contract.”

7.2.10 Liquidated Damages (LD): Compensation of loss on account of late delivery, where loss is pre-estimated and mutually agreed to, is termed as 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 cannot exceed the sum stipulated in the contract.
- b) Only reasonable sum can be calculated as damages, which in a given situation may be less than the sum stipulated.
- c) What is a reasonable sum would depend on facts.
- d) Court may proceed on the assumption that the sum stipulated reflects the genuine pre-estimates of the parties as to the probable loss and such clause is intended to dispense with proof thereof.
- e) The distinction between penalty and LD has been abolished by the Indian Contract Act and in every case, the Court is not bound to award more than ‘reasonable compensation’ not exceeding the amount so named.

The standard text of this clause is as under:

“The Buyer may deduct from the Seller, as agreed, liquidated damages at the rate of _____ per week or part thereof, of the basic cost of the delayed stores which the Seller has failed to deliver within the period agreed for delivery in the contract. LD can also be levied on the Seller on the basic cost of the stores supplied partially within the scope of the order/ contract that could not be put to use due to late delivery of the remaining stores. The maximum quantum of LD would be 10% of the total order value.”

7.2.11 Termination of Contract: This clause highlights the conditions under which a Contract/ SO can be legally terminated before the contractual obligation/ duties have been fulfilled. This is governed by the Law of the Contract/ SO. The standard text of this clause is as under:

- a) *“The store/ service is not received/ rendered as per the contracted schedule(s) and the same has not been extended by the Buyer.*

Or

The delivery of the store/service is delayed for causes not attributable to Force Majeure for more than ___ months after the scheduled date of delivery and the

delivery period has not been extended by the Buyer.

- b) *The delivery of store/service is delayed due to causes of Force Majeure by more than ___ months provided Force Majeure clause is included in the contract and the delivery period has not been extended by the Buyer.*
- c) *The Seller is declared bankrupt or becomes insolvent.*
- d) *The Buyer has noticed that the Seller has violated the provisions of use of undue influence and/ or employment of agent to obtain the Contract.*
- e) *As per decision of the Arbitration Tribunal.”*

7.2.12 Notices: This clause specifies the mode of communication between parties. The standard text of this clause is as under:

“Any notice required or permitted by the Contract shall be written in English language and may be delivered personally or may be sent by FAX or registered pre-paid mail/ airmail, addressed to the last known address of the party to whom it is sent”.

7.2.13 Transfer and Sub-letting: By this clause Seller is bound not to transfer/ sublet the contract/ SO or any of its part to a third party without the written consent of the Buyer. The standard text of this clause is as under:

“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 Contract or any part thereof without written consent of the Buyer.”

7.2.14 Use of Patents and other Industrial Property Rights: This clause protects Buyer from a third party claim against infringement of Industrial Property Rights. The standard text of this clause is as under:

“The prices stated in the Contract/ SO shall be deemed to include all amounts payable for the use of patents, copyrights, registered charges, trademarks and payments for any other Industrial Property Rights. The Seller shall indemnify the Buyer against all claims from a third party at any time on account of the infringement of any or all the rights mentioned in the previous paragraphs, whether such claims arise in respect of manufacture or use. The Seller shall be responsible for the completion of the supplies including spares, tools, technical literature and training aggregates irrespective of the fact of infringement of the supplies or any or all the rights mentioned above.”

7.2.15 Amendments: This clause specifies the way by which any amendments to the contract/ SO can be made. The standard text of this clause is as under:

“No provision of the Contract/ SO shall be changed or modified in any way (including this provision) either in whole or in part except when both the parties are in written agreement for amending the Contract/ SO.”

7.2.16 Taxes and Duties: This clause identifies the taxes and duties admissible and to be paid by the respective parties during the course of execution of the Contract/ SO. The standard text of this clause is as under:

Bidders are required to indicate statutory taxes and duties correctly as per the price bid format and no column of taxes and duties has to be left blank. Rate (%) of taxes as applicable are to be filled up with ‘0’ (Zero), ‘positive numerical values’ or ‘Not applicable’ in the price bid as asked for in the RFP. If any column of taxes and duties as reflected in RFP is not applicable and intentionally left blank, the reason for the same has to be clearly indicated in the remarks column.

a) **In respect of Foreign Bidders:** All taxes, duties, levies and charges which are to be paid for the delivery of stores/services, including advance samples, shall be paid by the parties under the Contract in their respective countries. However, the corporate/ individual income tax, if applicable, will continue to be paid by the concerned party/ individual.

“DRDO is a public funded research institution and has been exempted from the payment of Customs Duty, as per the description of stores and conditions thereon, under Customs Notification No. 51/96 as amended and Notification No. 39/96 as amended. However, if required, Basic Custom Duty and applicable cess is to be paid as per prevailing notification. [Applicable where INCOTERM is DDP (destination)].”

b) **In respect of Indigenous Bidders:**

(i) **General**

➔ *Bidders must indicate separately the relevant taxes/ duties as per prevalent rates for the delivery of completed goods specified in RFP. If a Bidder is exempted from payment of any duty/ tax upto any value of supplies from them, he should clearly state that no such duty/ tax will be charged by 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.*

- ➔ *Any changes in statutory levies, taxes and duties levied by Central/ State/ Local governments such as GST/ Octroi/entry tax, etc on final product upward 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, concession etc, if any, obtained by the Seller. Section 64-A of Sales of Goods Act will be relevant in this situation.*
- ➔ *Levies, taxes and duties levied by Central/ State/ Local governments such as GST/ Octroi/ entry tax, etc on final product will be paid by the Buyer on actuals, based on relevant documentary evidence, wherever applicable. Taxes and duties on input items will not be paid by Buyer and they may not be indicated separately in the bids. Bidders are required to include the same in the pricing of their product.*
- ➔ *TDS as per Income Tax Rules will be deducted and a certificate to that effect will be issued by the Buyer.*

(ii) Customs Duty:

- ➔ *DRDO is a public funded research institution and has been exempted from the payment of Customs Duty, as per the description of stores and conditions thereon, under Customs Notification No. 39/96 as amended.*
- ➔ *The successful bidder would be issued a Customs Duty Exemption Certificate (CDEC) under the said notification if applicable, at the time of import clearance for the goods being imported against the Contract. Bidder would be required to submit a copy of their order to principal along with principal's acceptance and proforma invoice at least four weeks in advance from the expected date of arrival of goods to this office for issuance of CDEC.*
- ➔ *Vendors may note that issue of CDEC would be governed as per prevailing orders.*

(iii) GST :

- *DRDO is a public funded research institution and has been given provision of*

concessional GST payment under Notification No. 47/2017-Integrated Tax (Rate) dtd 14 Nov 2017 & Notification No. 45/2017-Central Tax (Rate) dtd 14 Nov 2017 as amended as per the description of stores and conditions thereon.

- The successful bidder would be issued Concessional GST Certificate, if applicable, by the Buyer under the said notification as decided during tender negotiation and to be issued to Firm/Vendor before raising the invoice for procurement of goods against the Contract.
- Bidders may note that Concessional GST Certificate would be issued ONLY in favour of beneficiary of the Contract.
- Unless otherwise specifically agreed to in terms of the Contract, the Buyer shall not be liable for any claim on account of fresh imposition and/or increase of GST on raw materials and/or components used directly in the manufacture of the contracted stores taking place during the pendency of the contract.

(iv) Octroi Duty & Local Taxes:

- ➔ *Normally, materials to be supplied to Government Departments against Government Contracts are exempted from levy of Town Duty, Octroi Duty, Terminal Tax and other levies of local bodies. The local Town/Municipal Body regulations at times, however, provide for such exemption only on production of such exemption certificate from any authorised officer. Seller should ensure that stores ordered against contracts placed by this office are exempted from levy of Town Duty/ Octroi Duty, Terminal Tax or other local taxes and duties. Wherever required, they should obtain the exemption certificate from the Buyer, to avoid payment of such local taxes or duties.*
- ➔ *In case where the Municipality or other local body insists upon payment of these duties or taxes, the same should be paid by the Seller to avoid delay in supplies and possible demurrage charges. After the issue of exemption certificate by the Buyer, the Seller may get the reimbursement from the local authority.*

7.2.17 Denial Clause: Denial clause informs Seller that the Buyer reserves the right to admit additional payment due to upward revision of statutory levies beyond the original delivery schedule in case Seller fails to deliver the goods as per schedule. The standard text of this clause is as under:

“Variations in the rates of statutory levies within the original delivery schedule will be allowed if taxes are explicitly mentioned in the contract/ supply order and delivery has not been made till the revision of the statutory levies. Buyer reserves the right not to reimburse the enhancement of cost due to increase in statutory levies beyond the original delivery period of the supply order/ contract even if such extension is granted without imposition of LD.”

7.2.18 Pre-Contract Integrity Pact Clause: Integrity pact is a specific tool used to build transparency in public procurement by both public institutions and private agencies. The goal of the integrity pact is to eliminate chances of corrupt practices during procurement process through a binding agreement between the parties for specific contract. The standard text of this clause is as under:

*“An “Integrity Pact” would be signed between the Ministry of Defence/ Buyer and the Bidder and the Bidder shall be asked to deposit Rs. ____ crore as Earnest Money Deposit (EMD), in favour of The Director (Lab Name), (Place), in the form of appropriate Bank Guarantee (from a first class bank of international repute confirmed by the State Bank of India in case of foreign Seller). This EMD would be submitted by the Bidder along with Integrity Pact (IP) (as per format at **Annexure ‘B’**) at the time of submission of bid in a separate envelope clearly marked as ‘IP and EMD’ put together in an envelope containing the bid. This is a binding agreement between the Buyer and the Bidders for specific contracts in which the Buyer promises not to accept bribes during the procurement process and Bidders promise that they will not offer bribes. Under this Pact, the Bidders for specific services or contracts agree with the Buyer to carry out the procurement in a specified manner. The essential elements of the Pact are as follows:*

- a) A pact (contract) between the Government of India (Ministry of Defence) (the authority or the “Principal”) and firms submitting a bid for this specific activity (the “Bidder”);
- b) An undertaking by the Principal that its officials will not demand or accept any bribes, gifts etc., with appropriate disciplinary or criminal proceedings in case of violation;
- c) A statement by each Bidder that they have not paid, and will not pay, any bribes;
- d) An undertaking by each Bidder to disclose all payments made in connection with the Contract in question to anybody (including agents and other middlemen as well as family members, etc., of officials); the disclosure would be made either at the time of submission of Bids or upon demand of the Principal, especially when

suspicion of a violation by that Bidder emerges;

- e) The explicit acceptance by each Bidder that the no-bribery commitment and the disclosure obligation as well as the attendant sanctions remain in force for the winning Bidder until the contract has been fully executed.
- f) Undertaking on behalf of a Bidding company will be made “in the name and on behalf of the company’s Chief Executive Officer”.
- g) Any or all of the following set of sanctions could be enforced for any violation by a Bidder of its commitments or undertakings:
 - (i) *Denial or loss of contracts;*
 - (ii) *Forfeiture of the EMD and Performance cum Warranty Bond;*
 - (iii) *Liability for damages to the Principal and the competing Bidders; and*
 - (iv) *Debarment of the violator by the Principal for an appropriate period of time.*
- h) Bidders are also advised to have a company code of conduct clearly rejecting the use of bribes and other unethical behavior and compliance program for the implementation of the code of conduct throughout the company.
- i) The draft Pre-Contract Integrity Pact is attached as **Annexure ‘B’**. The Bidders are required to sign the pact and submit it separately along with the Techno-Commercial and Price bid.”

7.2.19 Undertaking from the Bidders: An undertaking will be obtained from the Bidder/firm/company/vendor that in the past they have never been banned/debarred for doing business dealings with Ministry of Defence/Govt. of India/ any other Govt. organisation and that there is no enquiry going on by CBI/ED/any other Govt. agency against them.

7.3 SPECIAL TERMS & CONDITIONS:

Part III of RFP format contains Special Terms & Conditions pertaining to the procurement in question. Part of the conditions may be relevant depending on the requirement. A conscious decision needs to be taken to incorporate the relevant clauses from this part. The wordings of these clauses can also be appropriately modified to suit a particular case. Only relevant clauses should be retained in the RFP. While opting the payment terms, Buyer shall keep in mind that the Stage-wise/ Part payments and Advance payment should not form a part of payment terms in the RFP for the procurement of ‘Commercially-Off-The-Shelf (COTS)’ store(s).

7.3.1 Apportionment of Quantity: Cases where apportionment of quantity is desired for whatsoever reasons, the ratio of apportionment should be mentioned upfront in the RFP:

“Buyer reserves the right to apportion the quantity among ____ bidders in the ratio of - _____ starting from Lowest Bidder (L1) and proceeding to Next Higher Bidder and so on subject to their consent to meet the L1’s rates as well as terms and conditions, as negotiated. The bidders are requested to submit the price bid catering the need of apportioned quantity as well as total quantity, else the unit cost of the store(s) for total quantity will be considered for the apportioned quantity while evaluating the bid.” (Splitting of the quantity should be in favour of L1).

7.3.2 Performance and Warranty Bond: It is an amount of money paid in advance and held in reserve or a written undertaking given by the Seller through his bank as a guarantee that he would perform the promised/ contractual obligation as per terms and conditions stipulated in the Contract/ SO. The standard text of this clause is as under:

- a) **Performance Security Bond** should be for an amount equal to -----% of the contract value (inclusive of taxes and duties) in favour of the Director (Lab Name), (Place) for safeguarding the Buyer’s interest in all respects during the currency of the contract. In case the execution of the contract is delayed beyond the contracted period and the Buyer grants the extension of delivery period, with or without liquidated damages, the Seller must get the Bond revalidated, if not already valid. The specimen of bond can be provided on request.
- b) To cover the Buyer’s interest during warranty period, **warranty Bond** for an amount of 10% percent of the contract value (inclusive of taxes and duties) would be obtained from the seller prior to return of performance security bond. Warranty bond should remain valid for a period of sixty days beyond the date of completion of all warranty obligations. Warranty bond would be returned to the Seller on successful completion of warranty obligations, under the contract. The specimen of bond can be provided on request.
 - i. **Indigenous Bidder:** They may be accepted in the form of Bank Draft, Fixed Deposit Receipt or a Bank Guarantee.
 - ii. **Foreign Bidder:** They may be accepted in the form of Bank Guarantee or Stand-by Letter of Credit from an internationally recognized first class bank. .

“The Performance Security /Warranty Bond will be forfeited by the Buyer, in case the conditions regarding adherence to delivery schedule and/or other provisions

of the Contract/ SO are not fulfilled by the Seller.”

7.3.3 Tolerance Clause: This clause provides the Buyer an opportunity to address the change in the requirement during the period starting from issue of RFP till placement of SO/ Contract. The standard text of this clause is as under:

“To take care of any change in the requirement during the period starting from issue of RFP till placement of the Contract, Buyer reserves the right to increase or decrease 25% of the quantity of the required goods, proposed in the RFP, without any change in the terms and conditions and rates quoted by the Seller. While awarding the Contract, the quantity ordered can be increased or decreased by the Buyer within this tolerance limit.”

7.3.4 Option Clause: This clause empowers the Buyer to place additional orders, within the currency of the original Contract/SO, for additional quantity up to a maximum of 50% of the originally contracted quantity (rounded up to the next whole number) at the same rate and terms of the original Contract/SO. The standard text of this clause is as under:

“The Contract will have an Option Clause, wherein the Buyer can exercise an option to procure an additional 50% of the original contracted quantity (rounded up to the next whole number) in accordance with the same terms and conditions of the Contract. This will be applicable within the currency of the Contract. It will be entirely the discretion of the Buyer to exercise this option or not”.

7.3.5 Repeat Order Clause: This clause empowers the Buyer to place additional orders up to 50% quantity of the original contracted quantity (rounded up to the next whole number), within twelve months from the date of completion of supply under the original Contract/ SO, at the rates on not exceeding basis while the terms and conditions will remain unchanged. The standard text of this clause is as under:

“The Contract will have a Repeat Order Clause, wherein the Buyer can order up to 50% quantity of the original contracted quantity (rounded up to the next whole number) under the Contract within twelve months from the date of completion of supply under the original Contract/ SO. The Repeat Order will have rates on not exceeding basis while the terms and conditions will remain unchanged. It will be entirely the discretion of the Buyer to exercise the Repeat order or not.”

7.3.6 Purchase Preference Clause: The RFP should inform potential bidders about purchase preference as prescribed by the Govt. of India from time to time through statutory orders or administrative instructions. The standard text of this clause is as under:

“Purchase preference will be granted as per Public Procurement (Preference to Make in India), Order-2017 as amended, issued by DPIIT/Ministry of Commerce and Industry.”

7.3.7 Transfer of Technology (ToT): ToT is the process of transferring skills, knowledge, technologies, methods of manufacturing and facilities by one party to other. This is to ensure that the scientific and technological developments are accessible to Labs/Estts to further develop and exploit the technology for development of new product, processes, applications, materials or services. Following clause may be included in the RFP where ToT is being sought:

“Buyer is desirous of license production of (generic name of store(s)) under ToT. Buyer reserves the right to negotiate ToT terms subsequently but the availability of ToT would be a pre-condition for any further procurements. If negotiations for ToT are not held as a part of the negotiations for store(s), then subsequent and separate ToT negotiations would continue from the stage where the store(s) has been selected.” (In such cases, Labs/Estts. would spell out the requirements and scope of ToT depending upon the depth of the technology which is required).

7.3.8 Permissible Time Frame for Submission of Bills: RFP should explicitly state about the timeline for submission of bills for claiming payment. The standard text of this clause is as under:

“To claim payment (part or full), the Seller shall submit the bill(s) along with the relevant documents within ___ days from the completion of the activity/ supply.” (Lab should mention the no. of days and the activity from which the counting will start)

7.3.9 Payment Terms: Payment terms are of great importance to both Buyer and Seller as the cost of finance plays a very important role in deciding the cost of an item or service being contracted for. RFP should clearly state the terms of payment including stage payment/ advance payment, if any, as well as the mode of payment. The payment terms should normally be in accordance with the options given in RFP as any change of payment terms specified in the RFP can alter L1 determination. In case where the payment terms offered by the bidders differ from the options given in the RFP, DCF technique may be utilized for LI determination. The standard text of this clause is as under:

a) **For Indigenous Seller:** The payment will be made as per the following terms, on production of the requisite documents:

(i) *100% payment within 30 days after receipt, satisfactory installation and acceptance of stores/equipment in good condition or the date of receipt of*

the bill whichever is later.

Or

Stage-wise/Pro rata payments as per the milestone/time described here. (Payment milestone/time shall be identified by the Lab and mentioned here.)

- (ii)** *Pro rata payment for the services rendered will be made as per the frequency described here. (The frequency shall be pre-defined by the Lab*

b) For Foreign Seller:

- (i)** *100% payment within 30 days after receipt, satisfactory installation and acceptance of stores/ equipment in good condition or after receipt of necessary documents warranted by delivery terms.*

Or

Stage-wise/Pro rata payments as per the milestone/time described here. (Payment milestone/time shall be identified by the Lab and mentioned here.)

- (ii)** *Pro rata payment for the services rendered will be made as per the frequency described here. (The frequency shall be pre-defined)*

c) Advance Payments:

No advance payment will be made.

Or

Interest free mobilization advance payment of ___% of the Contract value may be made, preferably in not less than two installments, against submission of Bank Guarantee, in favour of The Director (Lab Name), (Place), of 110% of advance payment (from first class bank of international repute in case of foreign Seller) by the private firm or against submission of Indemnity Bond by the Govt. organizations/ PSUs. In case of termination of the Contract/ extension of delivery period due to default of the Seller or where advance taken has not been/ could not be used for the purpose of order execution, interest free mobilization advance would be deemed as interest bearing advance, compounded quarterly, at the rate of 2% above (i) MCLR (Marginal Cost of Funds based Lending Rate) declared by RBI pertaining to SBI for Indian Seller, and (ii) LIBOR/EURIBOR rate for the foreign Seller. The rates as applicable on the date of receipt of advance will be considered

for this.

d) **Part Supply and Pro rata Payment:**

Part supply will not be acceptable.

Or

Full supply may be accepted in maximum _____ nos. of lots. However, Pro rata payment will not be made for part supplies of the stores(s) made.

Or

Full supply may be accepted in maximum _____ nos. of lots. Pro rata payment will be made as per the applicable payment terms for the part supply of the stores(s).

e) **Mode of Payment:**

(i) **For Indigenous Sellers:** *It will be mandatory for the Bidders to indicate their bank account numbers and other relevant e-payment details to facilitate payments through ECS/EFT mechanism instead of payment through cheque, wherever feasible.*

(ii) **For Foreign Seller:** *The payment will be arranged through Letter of Credit from Reserve Bank of India/ State bank of India/ any other Public Sector Bank, as decided by the Buyer, to the Bank of the Foreign Seller as per mutually agreed terms and conditions. The Letter of Credit will preferably be opened with validity of 90 days from the date of its opening, on extendable basis by mutual consent of both the parties. Letter of Credit opening charges in India will be borne by the Buyer. However, the extension charges, if any, will be borne by the party responsible for the extension.*

For contracts costing up to US \$ 100,000 (or equivalent) or the payment of Training/ Installation & Commissioning/ AMC charges, preferable mode of payment will be by Direct Bank Transfer (DBT). DBT payment will be made within 30 days of receipt of clean Bill of Lading/ AWB/ Proof of shipment and such other documents indicating completion of the contractual obligation on part of the Seller as provided for in the contract, but such payments will be subject to the deductions of such amounts as the Seller may be liable to pay under the agreed terms of the Contract.

7.3.10 Documents to be furnished for Claiming Payment: RFP should clearly spell out the list of documents required from the Seller for claiming payment. The standard text of

this clause is as under:

- a) **Indigenous Sellers:** The payment of bills will be made on submission of the following documents by the Seller to the Buyer
- (i) *Ink-signed copy of Contingent Bill.*
 - (ii) *Ink-signed copy of Commercial Invoice / Seller's Bill.*
 - (iii) *Bank Guarantee for Advance, if applicable.*
 - (iv) *Guarantee/ Warranty Certificate.*
 - (v) *Details for electronic payment viz. Bank name, Branch name and address, Account Number, IFS Code, MICR Number (if these details are not already incorporated in the Contract).*
 - (vi) *Original copy of the Contract and amendments thereon, if any.*
 - (vii) *Self certification from the Seller that the GST/ applicable taxes as received under the contract would be deposited to the concerned taxation authority.*
 - (viii) *Any other document/ certificate that may be provided for in the Contract.*

(Note – Lab may specify any other documents required as per need)

- b) **Foreign Sellers:** In case of payment through Letter of Credit (LC), paid shipping documents are to be provided to the Bank by the Seller as a proof of dispatch of goods as per contractual terms/ LC conditions so that the Seller gets payment from LC. The Bank will forward these documents to the Buyer for getting the goods/ stores released from the Port/ Airport. However, where the mode of payment is DBT, the paid shipping documents are to be provided to the paying authority by the Buyer. Documents will include:

- (i) *Clean on Board Airway Bill/Bill of Lading*
- (ii) *Original Invoice*
- (iii) *Packing List*
- (iv) *Certificate of Origin from Seller's Chamber of Commerce, if any.*
- (v) *Certificate of Quality and year of manufacture from OEM.*
- (vi) *Dangerous Cargo Certificate, if applicable.*
- (vii) *Insurance Policy of 110% value in case of CIF/ CIP contract*

- (viii) *Certificate of Conformity and Acceptance Test at PDI, if any.*
- (ix) *Phyto-sanitary/ Fumigation Certificate, if any.*
- (x) *Any other documents as provided for in the Contract.”*

(Note –Lab may specify any other documents required as per need)

7.3.11 Exchange Rate Variation (ERV) Clause: To cover the exchange rate fluctuation due to volatile market in a long term contract, it may be necessary to make a provision for such variation in exchange rates. The standard text of this clause is as under:

“This clause will be applicable only in case the delivery period exceeds 12 Months from the Effective Date of the Contract which involves import content (foreign exchange).

- a) Detailed time schedule for procurement of imported material and their value at the FE rates adopted for the Contract is to be furnished by the Bidder as per the format given below.

Year Wise and Major Currency Wise Import Content Break up

| Year | Total Cost of Material (Import) | FE Content Outflow (Equivalent in Rs. in crores) | | | |
|------|---------------------------------|---|---|---|--------|
| | | \$ | € | £ | Others |
| | | | | | |
| | | | | | |

- b) ERV will be payable/ refundable depending upon movement of exchange rate with reference to exchange rate adopted for the valuation of the Contract. Base Exchange rate of each major currency used for calculating FE content of the Contract will be the SBI selling rate of the foreign exchange element on the date of the last date of bid submission.
- c) The base date for ERV would be the last date of bid submission and variation on the base date will be given up to the midpoint of manufacture unless the Bidder indicates the time schedule within which material will be imported by them. Based on information given above, the cut-off date/dates within the Delivery schedule for the imported material will be fixed for admissibility of ERV.
- d) ERV clause will not be applicable under following circumstances:
 - (i) *Cases where delivery periods for imported content are subsequently to be*

refixed /extended except for reasons solely attributable to the Buyer or Force Majeure.

(ii) *Cases where movement of exchange rate falls within the limit of ± 2 % of the reference exchange rate adopted for the valuation of the Contract.*

- e) The impact of notified ERV shall be computed on a yearly basis for the outflow as mentioned by the Bidder in their bid and shall be paid / refunded before the end of the financial year based on certification by the Buyer.”

7.3.12 Force Majeure Clause: Force majeure clause allows a party to suspend or terminate the performance of its obligation when certain circumstances beyond their control arise, making performance inadvisable, commercially impracticable, illegal or impossible. The provision may state that the contract is temporarily suspended, or that it is terminated in the event of force majeure continues for a prescribed period of time. The standard text of this clause is as under:

- a) Neither party shall bear responsibility for the complete or partial non-performance of any of its obligations, if the non-performance results from such Force Majeure circumstances as Flood, Fire, Earth Quake and other acts of God as well as War, Military operations, blockade, Acts or Actions of State Authorities or any other circumstances beyond the parties control that have arisen after the conclusion of the present contract.
- b) In such circumstances the time stipulated for the performance of an obligation under the Contract is extended correspondingly for the period of time commensurate with actions or circumstances and their consequences.
- c) The party for which it becomes impossible to meet obligations under the Contract due to Force Majeure conditions, is to notify in written form to the other party of the beginning and cessation of the above circumstances immediately, but in any case not later than 10 (Ten) days from their commencement.
- d) Certificate of a Chamber of Commerce (Commerce and Industry) or other competent authority or organization of the respective country shall be considered as sufficient proof of commencement and cessation of the above circumstances.
- e) If the impossibility of complete or partial performance of an obligation lasts for more than 6 (six) months, either party hereto reserves the right to terminate the Contract totally or partially upon giving prior written notice of 30 (thirty) days to the other party of the intention to terminate without any liability other than reimbursement on the terms provided in the agreement for the goods received.

7.3.13 Buy-Back: In case where Buyer is interested to trade the existing old goods while

purchasing the new ones, the appropriate provision shall be mentioned in the RFP. The standard text of this clause is as under:

“The Buyer is interested to trade the existing old goods while purchasing the new ones. Bidders may formulate and submit their bids accordingly. Interested Bidders can inspect the old goods to be traded through this transaction. The Buyer reserves the right to trade or not to trade the old goods while purchasing the new ones and the Bidders are to frame their bids accordingly covering both the options. Details for buy-back offer are as under:

- a) **Details of Items for Buy-Back Scheme** – Make/ Model, Specs, Year of Production/ Purchase, Period of Warranty/ AMC etc.
- b) **Place for Inspection of Old Items** – Address, Telephone, Fax, e-mail, Contact personnel, etc.
- c) **Timings for Inspection** – All working days between the time of ____ to _____.
- d) **Last Date for Inspection** – 1 day before the last date of submission of bids.
- e) **Period of Handing Over of Old Items to Successful Bidder** – Within ____ days of _____ (No. of days and condition to be specified by the Lab)
- f) Handling charges and transportation expenses to take out the old items will be on account of the successful Bidder.

7.3.14 Export License: RFP should specifically seek the details and format for end use certificate required by the Seller for obtaining export clearance. The standard text of this clause is as under:

“The Bidder is required to furnish full details and formats of End Use Certificate required for obtaining export clearance from the country of origin. This information will be submitted along with Techno-Commercial bid. In the absence of such information, it would be deemed that no document is required from the Buyer for export clearance from the country of origin.”

7.3.15 Free Issue of Material (FIM): Wherever FIM is to be issued by the Buyer, the same should be clearly stated in the RFP along with the method of safeguarding the govt. property. Free Issue Material (FIM) to be safeguarded as per the provisions of para 6.43.2 (c) and (d) of this Manual. The standard text of this clause is as under:

The list of FIM are given below: (Lab has to provide the list as per the format given below)

| Sl. No. | Description of Store(s) | Qty. | Unit Cost | Total Cost |
|----------------|--------------------------------|-------------|------------------|-------------------|
| | | | | |

Free Issue of Material (FIM) as raw material: FIM is a *government property and will be secured through*, a comprehensive insurance cover (for transportation and storage period) taken by the Lab/Estt or Supplier through Nationalized Insurance Agency or their subsidiaries. If insurance is taken by the Supplier, the insurance charges will be reimbursed by the Lab/Estt at actuals.

7.3.16 Terms of Delivery: Terms of delivery plays direct role in determining cost of the contract/ SO. The standard text of this clause is as under:

- a) **For Foreign Bidder:** Foreign bidders are required to quote both on CIF/CIP (destination) and FCA/FOB (Gateway) basis.
- b) **For Indigenous Bidder:** The delivery of goods shall be on FOR (destination) basis.

7.3.17 Packing and Marking Instructions: Following clause shall be retained in the RFP:

- a) The Seller shall provide packing and preservation of the equipment and spares/goods contracted so as to ensure their safety against damage in the conditions of land, sea and air transportation, transshipment, storage and weather hazards during transportation, subject to proper cargo handling. The Seller shall ensure that the stores are packed in containers, which are made sufficiently strong. The packing cases should have provisions for lifting by crane/ fork lift truck. Tags with proper marking shall be fastened to the special equipment, which cannot be packed.
- b) The packing of the equipment and spares/goods shall conform to the requirements of specifications and standards in force in the territory of the Seller's country.
- c) A label in English shall be pasted on the carton indicating the under mentioned details of the item contained in the carton. The cartons shall then be packed in packing cases as required.
 - (i) *Part number :*
 - (ii) *Nomenclature :*
 - (iii) *Contract annex number :*
 - (iv) *Annex serial number :*

- (v) *Quantity contracted :*
- d) One copy of the packing list in English shall be inserted in each cargo package, and the full set of the packing lists shall be placed in case No.1 painted in a yellow colour.
- e) The Seller shall mark each package with indelible paint in English language as follows:-
- (i) *Contract No.* _____
- (ii) *Consignee* _____
- (iii) *Port / airport of destination* _____
- (iv) *Ultimate consignee* _____
- (v) *Package No.* _____
- (vi) *Gross/net weight* _____
- (vii) *Overall dimensions/volume* _____
- (viii) *The Seller's marking* _____
- f) If necessary, each package shall be marked with warning inscriptions: <Top>, <Do not turn over>, category of cargo etc.
- g) Should any special equipment be returned to the Seller by the Buyer, the latter shall provide normal packing, which protects the equipment and spares/goods from damage or deterioration during transportation by land, air or sea. In such case the Buyer shall finalize the marking with the Seller.

7.3.18 Inspection Instructions: Detailed procedure for following inspection (applicable) to be spelt upfront in the RFP:

- a) Raw material inspection
- b) Part inspection
- c) Stage/Subsystem inspection
- d) Pre-Delivery Inspection
- e) Factory Acceptance Test
- f) Post Delivery inspection on receipt of store
- g) **Inspection Authority:** The Inspection will be carried out by a representative of the Lab/Estt duly nominated by the Director.

(The Lab shall choose clauses as applicable and provide detailed procedure for

inspection for each of the clauses. Any other inspection instruction, if required, may be added.)

7.3.19 Franking Clause: The fact that the stores have been inspected after the delivery period and accepted by the inspectorate does not bind the Buyer, unless at his discretion he agrees, to accept delivery thereof. A suitable provision shall be made in the RFP to address such type of concern. The standard text of this clause is as under:

- a) **In Case of Acceptance of Store(s):** “The fact that the goods have been inspected after the delivery period and passed by the Inspecting Officer will not have the effect of keeping the contract alive. The goods are being passed without prejudice to the rights of the Buyer under the terms and conditions of the Contract”.
- b) **In Case of Rejection of Store(s):** “The fact that the goods have been inspected after the delivery period and rejected by the Inspecting Officer will not bind the Buyer in any manner. The goods are being rejected without prejudice to the rights of the Buyer under the terms and conditions of the contract.”

7.3.20 Claims: For settlement of claim in respect of deficiency in quality/ quantity of supplies made under the contract, following clause may be provided in the RFP:

- a) The quantity claims for deficiency of quantity and/ or the quality claims for defects or deficiencies in quality noticed during the inspection shall be presented within 45 days of completion of inspection.
- b) The Seller shall collect the defective or rejected goods from the location indicated by the Buyer and deliver the repaired or replaced goods at the same location, within mutually agreed period, under Seller’s arrangement without any financial implication on the Buyer.

7.3.21 Warranty: Following clause should be provided in the RFP where warranty of goods being procured is required:

- a) “The Seller will declare that the goods, stores articles sold/ supplied shall be of the best quality and workmanship and new in all respects and shall be strictly in accordance with the specifications and particulars contained/ mentioned in the contract. The Seller will guarantee that the said goods/ stores/ articles would continue to conform to the description and quality for a period of, ___ months from the date of acceptance/ installation of the said goods stores/ articles. If during the aforesaid period of ___ months, the said goods/ stores are discovered not to conform to the description and quality aforesaid, not giving satisfactory performance or have deteriorated, the Buyer shall be entitled to call upon the Seller

to rectify the goods/ stores/ articles or such portion thereof as is found to be defective by the Buyer within a reasonable period without any financial implication to the Buyer.”

- b) “In cases of procurement of software, Seller shall issue/provide upgrades of the software free of cost during the warranty period.”

7.3.22 Product Support: Following clause should be provided in the RFP where product support beyond warranty period is required:

- a) The Seller agrees to provide product support for the stores, assemblies/ sub-assemblies, fitment items, spares and consumables, Special Maintenance Tools (SMT)/ Special Test Equipments (STE) for a minimum period of ____years including ____ years of warranty period after the delivery.
- b) The Seller agrees to undertake a maintenance contract for a minimum period of ____years/ months. The Seller is required to quote the price for both comprehensive and non-comprehensive maintenance of the equipment after the expiry of warranty period in the price bid.

7.3.23 Annual Maintenance Contract (AMC) Clause: In case of AMC or where AMC is also required along with the procurement of goods, a clause to cover such maintenance contract may be incorporated in the RFP. The standard text of this clause is as under:

- a) The Seller would provide a Non- Comprehensive AMC for a period of ____ years.

Or

The Seller would provide a Comprehensive AMC for a period of ____ years. The AMC services should cover the repair and maintenance of all the equipment and systems purchased under the Contract and specify following:

- (i) *Maximum repair turnaround time for equipment/system would be ____ days.*
- (ii) *Required spares that may be stored at site by the Seller at their own cost to avoid complete breakdown of the equipment/system and to ensure serviceability.*

- b) The AMC services would be provided in two distinct ways:

- (i) **Preventive Maintenance Service:** *The Seller will provide a minimum of ____ Preventive Maintenance Service visits during a year to the operating base to carry out functional checkups and minor adjustments/ tuning as may be required.*

- (ii) **Breakdown Maintenance Service:** *In case of any breakdown of the equipment/system, on receiving a call from the Buyer, the Seller is to provide prompt maintenance service to make the equipment/system serviceable.*
- c) **Response Time:** The response time of the Seller should not exceed _____hours / days from the time breakdown intimation is provided by the Buyer.
- d) Serviceability of ___% per year is to be ensured. This amounts to total maximum downtime of ___days per year. Also un-serviceability should not exceed ___days at any given time. Total down time would be calculated at the end of the year. If downtime exceeds permitted limit, LD/ Extension/ Termination may be considered as per merit of the case as decided by the Buyer.
- e) **Technical Documentation:** All necessary changes in the documentation (Technical and Operators Manual) for changes carried out on hardware and software of the equipment will be provided.
- f) During the AMC period, the Seller shall carry out all necessary servicing/repairs to the equipment/system under AMC at the current location of the equipment/system. Prior permission of the Buyer would be required in case certain components/sub systems are to be shifted out of location. On such occasions, before taking out the goods or components, the Seller will give suitable bank guarantee to the Buyer to cover the estimated current value of items being taken out of location.
- g) Period of AMC may be extended as per mutual agreement subject to satisfactory performance.
- h) The Buyer reserves the right to terminate the maintenance contract at any time without assigning any reason whatsoever, after giving a notice of ___ months. The Seller will not be entitled to claim any compensation against such termination. However, while terminating the Contract, if any payment is due to the Seller for maintenance services already performed in terms of the Contract, the same would be paid as per the Contract terms.

7.3.24 Price Variation (PV) Clause: Generally, the contract should be entered with a fixed and firm price. However, in cases, where it is required to enter into a contract with price variation clause, following clause may be incorporated in the RFP:

- a) “(Applicable only if DP is more than 18 Months) –A sample clause is indicated below for inclusion in RFP.

The formula for Price Variation should ordinarily include a fixed element, a

material element and a labour element. The figures representing the material element and the labour element should reflect the corresponding proportion of input costs, while the fixed element may range from 10 to 25%. That portion of the price represented by the fixed element will not be subject to variation. The portions of the price represented by the material element and labour element will attract Price Variation. The formula for Price Variation will thus be:

$$P_1 = P_0 \left\{ F + a \left(\frac{M_1}{M_0} \right) + b \left(\frac{L_1}{L_0} \right) + \dots \dots \dots \right\} - P_0$$

Where

- P_1 : Adjustment amount payable to the Seller (a minus figure will indicate a reduction in the Contract Price)
- P_0 : Contract Price at the base level
- F : Fixed element not subject to Price Variation
- a : Assigned percentage to the material element in the Contract Price
- b : Assigned percentage to the labour element in the Contract Price
- L_0 : Wage indices at the base month and year
- L_1 : Wage indices at the month and year of calculation
- M_0 : Material indices at the base month and year
- M_1 : Material indices at the month and year of calculation

If more than one major item of material is involved, the material element can be broken up into two or three components such as M_x , M_y , M_z . Where price variation clause has to be provided for services (with insignificant inputs of materials) as for example, in getting technical assistance normally paid in the form of per diem rate, the price variation formula should have only two elements, viz. a high fixed element and a labour element. The fixed element can in such cases be 50% or more, depending on the mark-up by the seller of the per diem rate vis-à-vis the wage rates.

- b) Following conditions would be applicable to price adjustment:
 - (i) Base date shall be last date of bids submission.
 - (ii) Date of adjustment shall be midpoint of manufacture.
 - (iii) No price increase is allowed beyond original Delivery Period unless the delay is attributable to the Buyer or Force Majeure.
 - (iv) Total adjustment will be subject to maximum ceiling of ____%.

- (v) *No price adjustment shall be payable on the portion of the payment made as an advance payment made in the Contract to the Seller.*

7.3.25 Intellectual Property Rights (IPR): In case of Development Contract, RFP should clearly spell out the holder of IPR developed under the contract. The standard text of this clause is as under:

“The rights of Intellectual Property, developed under the Contract, will be either the property of Govt. of India or jointly owned by the Govt. of India and the Development Partner. The holding of rights of intellectual property will be decided by the Buyer based on the merits of the case. Even where IPR is jointly held, Govt. of India will have the marching rights on IPR, i.e., the Development Partner will have to give technical know-how/design data for production of the item to the designated Production Agency nominated by Govt. of India. The Development Partner will, however, be entitled to license fee / royalty from designated agency as per agreed terms and conditions. The Development Partner will also be entitled to use these intellectual properties for their own purposes, which specifically excludes sale or licensing to any third party.”

CHAPTER 8

EVALUATION OF QUOTATIONS AND PRICE REASONABILITY

8.1 INTRODUCTION:

GFR 2017 prescribes that every authority delegated with the financial powers of 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 firms and promotion of competition in public procurement.

8.2 COMMERCIAL EVALUATION OF QUOTE:

RFP is issued on the basis of the assessed cost as approved by the CFA. The next important stage is the commercial evaluation of the bids received in response to the RFP that are found technically compliant. These have to be evaluated to work out the financial implication of each offer. In order to ensure that all offers are compared in a fair & equitable manner and that the bidders are provided a level playing field, all elements of cost, including taxes and duties and terms and conditions with financial implications are to be taken into account. The evaluation criteria adopted for this purpose should be indicated in the RFP and the quotations should be ranked as per criteria indicated therein. In cases where RFP specifies Life Cycle Cost (LCC) as the criteria for the determination of successful bidder, AMC/ product support costs for the specified period beyond the original warranty period, will be loaded in CSB and taken into consideration for determining L1.

8.3 BASIS OF COMPARISON OF COST:

The comparison of the Bids would be done on the principle of the total cash outgo from Procuring Entity's pocket. The financial bids of the qualified bidders would be compared on the basis of total cost (FOR destination basis - consignment to Buyer's premises) of the deliverables and services including statutory levies, taxes and duties on final product which are to be paid extra as per actuals.

8.3.1 Total Cost for Indian bidders: All the cost of the deliverables (FOR destination basis – consignment to Buyer's premises) and services including statutory levies, taxes and duties on final product which are to be paid extra as per actuals. Custom Duty on input materials will not be loaded in their total cost, if such duties are exempted under existing Notifications.

8.3.2 Total Cost for Foreign Bidders: All foreign bidders would be asked to quote on

FOB/FCA cost basis. In addition, they would also indicate CIF/CIP cost. Wherever, CIP/CIF Cost is not indicated by a foreign bidder, the FOB/ FCA Cost would be loaded by 10% to arrive at CIP/CIF Cost. After arriving at CIP/CIF cost, the bids would be further loaded with Custom Duty (CD) & GST (as applicable) which are to be paid extra as per actuals and a charge @ 1% of CIP/CIF cost to bring the consignment to the Buyer's Premises for the purposes of comparison of bids. All the foreign bids would be brought to a common denomination in Indian Rupees by adopting Base Exchange Rate as BC selling rate of the State Bank of India on the day of last date of submission of bids.

8.4 COMPARATIVE STATEMENT OF BIDS (CSB):

MMG will collate prices of all qualified bids in the form of a CSB. If the prices quoted are in foreign/ multiple currencies, the same will be brought to rupee denomination by adopting the exchange rate (BC selling rate of SBI) prevailing on the date of the opening of price bids. The CSB should be exhaustive and it must include all details given in the quotations. Deviations from the RFP and the price bid format should be highlighted in the CSB. MMG rep. would sign the CSB and it should be vetted and countersigned by rep. of Integrated Finance where either financial powers are to be exercised with their concurrence or CNC cases.

8.4.1 Determination of lowest acceptable offer: MMG will determine the lowest acceptable offer, L1, based on the overall evaluation criteria indicated in the RFP for all non CNC cases. Wherever CNC is formed, only CNC will determine the lowest acceptable offer (L1 bidder) based on the evaluation criteria indicated in the RFP for award of the contract/ supply order.

8.5 NEGOTIATIONS

8.5.1 No requirement of convening CNC: To conclude Contract/S.O through open bidding mode for stores that are commercially off the Shelf (COTS) with generic/ commercial specifications; and support services such as Hygiene & Maintenance, Arboriculture, Firefighting, Conservancy, Security Services including DGR cases, wet canteen services and support services to DSC platoons, there would be no requirement of convening CNC.

8.5.2 Negotiation with L1 Bidder: In multi-bidder cases, once L1 bidder is identified, the contract should be concluded with L1 and there would be no need for any further price negotiations. Negotiations can be held in exceptional circumstances where valid reasons exist and such negotiations should be held only with L1. Exceptional situations include procurement of proprietary items, items with limited sources of supply and items

where there is suspicion of cartel formation. The justification and details of such negotiations should, however, be recorded and documented giving reasons for holding negotiations. Negotiations through a CNC should invariably be conducted in case of single source situations including PAC cases. Negotiations may also have to be conducted in multi-bidder cases where the offered price is considered high with reference to the assessed reasonable price. CNC would record its recommendations regarding reasonableness of the price offered by the L1 bidder and the need for negotiation or otherwise with justification. In cases where a decision is taken to go for re-floating of RFP but the requirements are urgent, negotiations may be under taken with L1 bidder(s) for the supply of a bare minimum quantity in accordance with para 3 of CVC instructions dated 3rd March 2006 (for latest guidelines issued by CVC in this regard, CVC website may be referred).

8.5.3 Negotiation with L2 Bidder: If the bidder, whose bid has been found to be the lowest evaluated bid withdraws or whose bid has been accepted, 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. Provided that 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 compliance of following requirements :

- a) Reasonability of the price bid being established by the CNC
- b) The justification that there is no cartelization and the integrity of the procurement process has been maintained will be issued by the Director/Head of the Lab/Estt/ Procuring Entity
- c) Prior approval of DG Cluster (PMB for Appendix B of DFP)/ CFA (whichever is higher) is obtained before negotiating with L2.

8.6 PRICE BENCH MARKING:

Before scheduled negotiation, (wherever considered necessary), it would be advisable to work out the estimated reasonable rate or the benchmark, to judge acceptability of the L1 bidder based on available information. Benchmarking of price should be done before opening of the price bids to ensure complete objectivity and fairness and the fact that decision to negotiate or not itself depends upon such an assessment. Data

may be collected from trade journals/internet/ technical literature/industry sources/international or domestic market survey or Cost Estimation & Reasonability Committee (CERC) may be constituted to arrive at an assessed reasonable price through cost break-up analysis or by surveying the products performing similar functions or using similar components/ materials/ technology etc.

8.7 EVALUATION AGAINST BENCH-MARK:

The Benchmark price is an estimated price and will not be taken as a rigid cut-off price in deciding the reasonableness of the quoted price. It will be used as a basis/ yardstick for comparison with the quoted price. The decision regarding reasonableness of the quoted price would have to be taken by the CNC on the merit of the case.

8.8 BENCHMARKING/ REASONABLENESS OF PRICES:

There can be multiple methods of arriving at a benchmark for assessing reasonability of prices quoted. It may be acknowledged that a budgetary quote can at best be an indicative price but not an assessment of reasonability of cost. Therefore following approaches either singly or in combination may be adopted:

- a) Ascertain element wise breakup of cost. For e.g. the quote/selling price would generally constitute elements such as material cost, labour cost, overhead cost along with applicable warranty and profit.
- b) Ascertain the Last Procurement Price (LPP) of similar item, supplied by the vendor recently to same service or other sister services/ organizations. If LPP is of an earlier period then Price Level (PL) is required to be fixed as per last delivery of item and applicable escalation to be given on that PL till year of delivery.
- c) **Escalation** will have 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 on year average), wholesale price indices, consumer price indices, global metal indices such as London metal indices, US indices, UK MM19 etc. may be used to assess the escalation rate.
- d) **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 yearly then seven months or more may be considered for one additional year's escalation. For e.g. if item has to be delivered in the year 2014-2018 and LPP is for 2010, then the prices have to be escalated from the year 2010 till 2016.

- e) Budgetary Quote (**BQ**) obtained from one or more prospective Sellers may also form the basis of benchmarking cost. If there is huge variation in BQ, the aberrations have to be marginalized.
- f) Prevailing market rates obtained through Market Survey (**MS**) or prices available from open sources like internet etc. may be taken for benchmarking. However, these should be referenced in the CNC regarding source & authenticity.
- g) Labour cost has to be broken down into labour hours used and the Man-hour Rate (**MHR**). In case of procurement of major item, 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. For e.g. for manufacturing an aircraft by HAL, many Divisions would be involved over a period of 4-5 years. The total labour hours of each HAL Division as per Detailed Project Report (DPR) after factoring reduction in hours on account of learning curve is to be worked out. Further the man hours have to be apportioned year-wise for each Division and multiplied by MHR of respective years to arrive at the total labour cost.
- h) Professional Officers' Valuation (**POV**) may be considered in case no other prices are available of that particular item.
- i) 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 Foreign terms or indigenous items with substantial import content, LPP plus Exchange Rate Variation (**ERV**) since last purchase, if any, have to be factored-in benchmarking.
- j) Factors such as **obsolescence/ Redundancy, Freight & Insurance, Profit & Warranty**, etc. may be factored in while arriving at benchmark price.
- k) **Taxes and duties** may not be factored while benchmarking.
- l) 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.

8.9 ADOPTION OF DISCOUNTED CASH FLOW (DCF) TECHNIQUE:

The DCF is a method of evaluation by which cash flow of the future are discounted to current levels by the application of a discount rate with a view to reducing all cash flows to a common denomination and make comparison.

8.9.1 The DCF procedure is to reduce both cash in-flows and out-flows into Net Present

Values (NPV) through a more scientific and reliable method. The use of NPV analysis is based on the concept of time value of money. Money has a time value because of the opportunity to earn interest or the cost of paying interest on borrowed capital. This means that a sum to be paid today is worth more than a sum to be paid in a future time. The cash out-flows/in-flows and the average cost of capital i.e., cost of borrowing becomes an important constituent in evaluation process. The following formula is to be used for calculating NPV of a bid:

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

Where

- NPV = Net Present Value
 A_n = Expected cost flow for the period mentioned by the subscript
i = Rate of Interest or discount factor
t = Period after which payment is to be made
n = Payment schedule as per the payment terms and conditions

When comparing the various bids based on NPV analysis, the bid with the lowest NPV should be declared as L1.

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

- a) Step 1: Selection of the discount rate
- b) Step 2: Identifying the cash outflows
- c) Step 3: Establishing the timing of the cash outflow
- d) Step 4: Calculating the NPV of each alternative
- e) Step 5: Selecting the offer with the least NPV

8.9.3 Example: In response to a RFP, two bidders have quoted different prices and payment terms as per the details given underneath:

| | Quoted Price | Payment Plan | | | | |
|-------------------|--------------|--------------|-----------|-----------|-----------|------------|
| | | $T_0 + 1$ | $T_0 + 6$ | $T_0 + 7$ | $T_0 + 9$ | $T_0 + 12$ |
| Bidder (1) | 102 | 10% | 20% | - | 30% | 40% |
| Bidder (2) | 100 | 30% | - | 40% | - | 30% |

Here T_0 is Contract Effective Date (CED); Let the rate of interest be 12%.

Then as per the formula given above, NPV of Bidder (1) is:

$$NPV = \frac{(102 \times 10/100)}{(1 + 12/100)^{1/12}} + \frac{(102 \times 20/100)}{(1 + 12/100)^{6/12}} + \frac{(102 \times 30/100)}{(1 + 12/100)^{9/12}} + \frac{(102 \times 40/100)}{(1 + 12/100)^{12/12}} = 93.92$$

and NPV of Bidder (2) is:

$$NPV = \frac{(100 \times 30/100)}{(1 + 12/100)^{1/12}} + \frac{(100 \times 40/100)}{(1 + 12/100)^{7/12}} + \frac{(100 \times 30/100)}{(1 + 12/100)^{12/12}} = 93.94$$

So Bidder (1) is L1.

8.9.4 Discounting Rate: Discounting rate to be used under the DCF technique is MCLR (Marginal Cost of Funds based Lending Rate) declared by RBI pertaining to SBI for the latest month of the year.

8.9.5 Method for structuring cash flows: A suitable model for structuring cash flows for bids is as under:

- a) The first step would be to exclude the unknown variables like escalation factors etc while determining the cash flows.
- b) Thereafter the cash out flow as per the price bids of different bidders should be taken into consideration and where the cash out flows are not available in the bids, the same should be obtained from the respective bidders. Where bids are received in different currencies/ combination of currencies, the cash outflow will be brought to a common denomination in rupees by adopting exchange rate (BC selling rate of SBI) as on the date of opening of price bids.
- c) Once the outflows of different bids become available, NPV of different bids to be calculated using the formula given above and the one with the lowest NPV is to be selected.

8.9.6 When the DCF is to be used: The alternative with the smallest payment of NPV in the procurement is the obvious choice. The DCF may be made use of to facilitate determination of L1 in following procurement situations:

- a) To compare different payment terms of the bidders to a common denomination for determining L1 status.
- b) To deal with the cases where entering into AMC over a period of more than one year is part of the contract for evaluating L1 status. Determination of L1 by merely adding the arithmetic values spread over a long period of time would be an incorrect procedure for determining L1 and the correct procedure would be to reduce cash out flows into present values through the DCF technique, for which the discount rate to be adopted should form part of the RFP.

8.10 ANALYSIS OF OFFERS FROM FOREIGN BIDDERS:

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

- a) The price fixation procedure/ methodology prevailing in the country of the bidder.
- b) The prices of similar products, systems and subsystems wherever available should be referred. The database maintained in the respective division connected with the procurement of such type of stores should be accessed.

8.10.1 The foreign bidder may be asked to provide the details of past supplies and contract rates, if any, of similar kind of product to other Buyers.

8.11 TRANSPARENCY IN ASSESSMENT PROCESS:

Assessment of reasonableness of price is an arduous task, especially where price data is not available or in case of overseas purchases. In such cases, it is important to place on record efforts made for arriving at the acceptable price and taking the procurement decision.

CHAPTER 9

EXPENDITURE SANCTION AND ISSUE OF SUPPLY ORDER/ CONTRACT

9.1 EXPENDITURE SANCTION:

As per Rule 22 of GFR-2017, no authority may incur any expenditure or enter into any liability involving expenditure or transfer of moneys for investment or deposit from Govt. account unless the same has been sanctioned by a competent authority. Expenditure Sanction is a written authority from the CFA authorizing expenditure to be incurred on procurement. It invariably indicates a reference to the authority/ delegation under which expenditure is being sanctioned, the financial implications, the purpose of expenditure, relevant budget heads and code heads for booking of expenditure. The CFA for the expenditure is determined on the basis of the total expenditure inclusive of all taxes & duties and all incidental charges i.e. cost to the Buyer. However taxes and duties will be paid to the Seller at actuals on production of relevant documentary evidence. It will be clearly mentioned in the S.O/ Contract that the applicable taxes and duties will be paid separately at actuals. Amendment to expenditure sanction of contracts on account of changes in statutory levies would be approved by the competent authority as per para 10.5.2(c).

9.1.1 The essential elements that need to be shown in a letter conveying expenditure sanction are as under:

- a) Reference of Government Authority/ Letter and Schedule/ Sub-Schedule of delegation of financial powers under which the sanction/ approval is being accorded.
- b) Description of store(s)/ service(s) and quantity
- c) Sanction will indicate basic cost and applicable taxes and duties separately. Applicable taxes and duties would be paid at actuals against documentary evidence.
- d) Name of the Seller
- e) Category of procurement - whether for Project/ Build-up/ Maintenance
- f) Source of funding
- g) Nature of procurement - whether Revenue/ Capital along with details of Major Head, Minor Head, Sub Head, Code No. and Unit Code (as mentioned in the Defence Services Classification Hand Book, as amended)

- h) Details of approval of CFA to be provided (Approval of CFA obtained vide Note Number_____ dated_____ in file number_____) in case sanction is communicated on behalf of CFA by an authorised officer
- i) UO Number allotted by Integrated Finance (when the CFA's delegated powers are being exercised with financial concurrence) or in case of disagreement with finance (refer para 1.9 of this Manual), a copy of relevant noting of Financial Advisors & CFAs to be endorsed
- j) Unique Sanction Code (USC) as per the guidelines issued by DFMM, DRDO HQ

9.1.2 Cases where separate expenditure sanction is not required: In cases where Expenditure Sanction by the CFA has been accorded on not exceeding basis along with the project sanction or at the time of demand approval in accordance with para 4.10 of this Manual, fresh expenditure sanction will not be required subject to compliance of conditions mentioned therein.

9.1.3 Availability of Funds: A procurement proposal can normally be processed for demand approval and expenditure sanction up to the stage of placement of supply order/contract subject to availability of funds by the budget holder. Prior to placement of supply order/ contract, confirmation of availability of funds in the current financial year as per scheduled cash out-go would be ensured by the Lab/Estt. In case of cash out-go in the subsequent financial year(s), availability of funds in the respective financial year(s) would be ensured.

9.1.4 Procedure for obtaining expenditure sanction: Prior approval of the competent authority would be required to admit deviations, if any, from the purchase procedure in vogue before seeking expenditure sanction of the CFA. Expenditure sanction from CFA, on file, would be obtained as per following procedure:

- a) **Cases falling within delegated financial powers of Project Director/ Program Director/ Director/ DG (Cluster):** The procurement file containing all the relevant papers like demand approval, RFP, TCEC report, CSB (non-CNC cases) & CNC minutes (CNC cases) and waivers sought, if any, will be put up to the CFA for sanction as per delegated financial powers.
- b) **Cases falling beyond delegated financial powers of DG (Cluster):** The proposal will be submitted to DFMM/ DRDO HQ for obtaining expenditure sanction of the CFA. A copy of demand approval, RFP, TCEC report, CNC minutes and waivers sought, if any, will be enclosed along with the proposal.
- c) **Cases with Financially Empowered Boards:** The procurement file containing all

the relevant papers like demand approval, RFP, TCEC report, CNC minutes and waivers sought, if any, will be put up to the appropriate board for expenditure sanction as per the delegation of financial powers. Cases beyond financial powers of Apex Board will be referred along with recommendations of Apex Board for approval of the CFA.

- 9.1.5** All sanctions accorded on file will be followed by issue of an order conveying expenditure sanction giving details as per para 9.1.1 of this Manual and copy shall be endorsed to the paying authority and concerned office of DGADS.
- 9.1.6** All CFAs shall maintain sequential details of all expenditure sanctions issued by them. A monthly statement of all expenditure sanctions accorded under Stores (Capital) and Stores (Revenue) Budget Head would be submitted by Lab/Estt. along with anticipated cash outgo to DFMM, DRDO HQ.
- 9.1.7 Ex-post-Facto Financial Concurrence:** There is no provision under the delegated financial powers to obtain ex-post-facto concurrence of Integrated Finance. Cases where concurrence of Integrated Finance is not obtained, prior to issue of expenditure sanction, though required as per the delegation of financial powers, would be treated as cases of breach of rules and regulations and referred to the next higher CFA for regularization. Such regularization will be subject to concurrence of IFA to the next higher CFA.
- 9.1.8 Ex-post Facto Approval/ Sanction 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 (as per delegation of financial powers) with or without the concurrence of the Integrated Finance, as the case may be, as per delegation of financial powers.

9.2 PREPARATION OF SUPPLY ORDER:

- 9.2.1** The following details will be incorporated in the supply order:
- a) Supply order number and date.
 - b) Reference(s) & date(s) of bidder's quotation and revised offer submitted at the time of CNC meeting, as applicable.
 - c) Description of items/stores with detailed specifications including model no., part no., make, brand etc.
 - d) Quantity required and the accounting unit.

- e) Currencies and rates both in figures and words.
- f) Total number of items and their aggregate value shown below the list of items.
- g) Delivery date to be specified clearly with reference to the date of supply order.
- h) Payment terms.
- i) Payment of taxes and duties: It will be clearly mentioned in the supply order that taxes and duties will be paid at actuals on production of relevant documentary proof if already deposited or a self certification from the Seller that taxes received under the contract would be deposited to the concerned taxation authorities. .
- j) Standard terms and conditions of the RFP.
- k) Details of FIM to be issued along with their time schedule.
- l) Special terms and conditions as mutually agreed.
- m) Orders will be signed for and on behalf of 'President of India' by an officer specifically authorised.

9.2.2 MMG will prepare Supply Order and acknowledgement as per **DRDO.SO.01** and **DRDO.SO.02** respectively. Form given at **DRDO.SO.03** will be used to prepare Contracts.. Information regarding Seller's bank account details along with IFS Code of receiving branch of bank will be reflected in the SO/ Contract to facilitate e-payment.

9.2.3 Scrutiny of Supply Order: Supply order/ Contract may be referred to the user group/ Finance for scrutiny.

9.2.4 Distribution of Supply Order/ Contract: In case of SO, a minimum of four ink signed copies and in case of Contract a minimum of three ink signed copies will be prepared. Distribution of SO/ Contract will be as follows:

- a) Seller –
 - (i) **In case of supply order:** 2 copies with markings as “Original to be Acknowledged & Return” and “Original to be Retained” (**both ink-signed copies**) with a request to return the one marked as “Original to be Acknowledged and Return” for settlement of bills
 - (ii) **In case of contract:** 1 copy (**ink-signed**)
- b) Paying Authority (Local CDA (R&D)) – 1 copy (**ink-signed**)
- c) Demanding officer – 1 copy
- d) Stores Movement Control Div. (Receipt & Dispatch Section) – 1 copy

- e) Bill Payment Section – 1 copy
- f) Case file – 1 copy (**ink-signed**)

9.2.5 Dispatch of Supply Order/Contract: The SO/ Contract will be signed only after obtaining expenditure sanction by the CFA and dispatched to the Seller along with required number of blank bill forms. Lab/Estt will ensure receipt of BGs of appropriate value and validity. Copy of the SO/ Contract will invariably be hosted on the website of DRDO and CPP portal for procurements on OBM basis or where RFP was hosted on the website/ CPP Portal.

9.3 ORDER ACCEPTANCE:

9.3.1 Acceptance of SO: A supply order is not signed by both parties, namely the Buyer and the Seller. It becomes a deemed contract and comes into force with acceptance of the bid as per mutually agreed terms & conditions contained in the RFP and the firm's offer. The firm should check the supply order and convey acceptance of the same within seven days of its receipt. If such an acceptance or communication conveying firm's 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.

9.3.2 Acceptance of Contract: In case of contract, both parties sign the document thus conveying their acceptance. In such cases, there is no requirement of acknowledgement receipt.

9.4 POST CONTRACTUAL OBLIGATIONS:

MMG/ User Group will monitor the progress of supply order/ contract specifically related to the validity of BGs given by the firm, the stage payments, delivery period, issue of duty exemption certificates, stages of inspection and design reviews as envisaged.

CHAPTER 10

POST CONTRACT MANAGEMENT

10.1 GENERAL:

Lab/Estt will maintain a 'Progress Register' or 'Electronic Database' wherein the details of all supply orders/ contracts will be sequentially entered. Such registers/ records will be updated with stages of progress of supply orders/ contracts relating to amendments, if any, stage/ part payments, delivery details, payment details etc.

10.2 SUPPLY ORDER/ CONTRACT MONITORING:

The supply order/ contract monitoring will be carried out by user group/ Contract Monitoring Committee (CMC)/ Progress Review Committee (PRC), if constituted specifically, and MMG.

a) **Aspects to be monitored by the user group:**

- (i) Drawings submission/approval
- (ii) Design reviews
- (iii) FIM
- (iv) Testing of components/ Pre-Delivery Inspection (PDI)
- (v) Site preparation for installation & commissioning etc.

b) **Aspects to be monitored by MMG:**

- (i) Continued validity of all BGs/ indemnity bonds
- (ii) Submission of details of design reviews
- (iii) Insurance for FIM and its continued validity
- (iv) Issue of CDEC/ GST Exemption Certificate
- (v) Delivery schedule
- (vi) Timely information for inspection
- (vii) Requirement related to freight forwarder
- (viii) Feedback etc.

10.3 ROLE OF CMC/ PRC:

A CMC/ PRC may be constituted by the Director of the Lab/Estt, with members from MMG and user group. CMC/ PRC will monitor the overall progress of the supply order/ contract and submit its recommendations for the remedial measures to be taken, where required.

10.4 RESPONSIBILITY OF USER GROUP:

In cases where obligation of supply order/ contract requires design reviews (PDR/ CDR), site preparation for installation/ commissioning, readiness of FIM for issue, timely inspection for quality clearances etc. are involved, the user group will ensure completion of such activities as per the schedule provided in the contract/ supply order.

10.5 AMENDMENT TO SUPPLY ORDER/ CONTRACT:

Amendments to supply order/ contract will be issued in writing in under-mentioned circumstances with the approval of appropriate authority.

10.5.1 Rectification of typographical errors: The approval of Project Director/ Program Director/ Director (Lab/Estt.) would be obtained on file for rectifying the typographical errors made in the SO/ Contract at the time of issuing SO/ Contract.

10.5.2 Arising without any change in scope of work: There would not be any requirement of holding CNC to review the proposed amendments such as revision of DP; limiting/ waiving of LD; admissibility of change in statutory levies/ taxes & duties; revision in minimum wages, FE rate variation, change in item description/part number, part shipment/transshipment/lot size without affecting DP and terms of payment, delivery terms/consignee etc.

- a) **For DP extension (including ex-post-facto) with imposition of LD:** The competent authority for according such approval for procurement cases covered under Appendix A and Appendix B of DFP is given below. These DP extensions would not require concurrence of Finance. Where DP extension is for a procurement relating to a Project/Programme, extended DP would have to be limited to sanctioned Project/Programme completion date.

- (i) Project Director would accord DP extension up to 12 months for all cases where CFA is up to the level of MoD and full powers for cases within their delegated financial powers.
 - (ii) Programme Director/ Director Lab/Estt would accord DP extension up to 24 months for all cases where CFA is up to the level of MoD and full powers for cases within their delegated financial powers.
 - (iii) DG (Cluster) concerned would accord DP extension for all cases where CFA is up to the level of MoD irrespective of time lines.
- b) **DP extension (including ex-post-facto) with waiver of full/ partial LD :** . The competent authority for according such approval for procurement cases covered under Appendix A and Appendix B of DFP is given below. Concurrence of Finance would be obtained wherever the procurement case was originally sanctioned with concurrence of Finance. Where DP extension is for a procurement relating to a Project/Programme, extended DP would have to be limited to sanctioned Project/Programme completion date.
 - (i) Project Director and Prog. Director would accord DP extension for all cases within their delegated financial powers irrespective of timelines.
 - (ii) PJB/Director Lab/Estt would accord DP extension up to 12 months for all cases where CFA is up to the level of MoD and full powers for cases within their delegated financial powers irrespective of timelines.
 - (iii) PMB/ DG (Cluster) concerned would accord DP extension up to 24 months for all cases where CFA is up to the level of MoD and full powers for cases within their delegated financial powers irrespective of timelines .
 - (iv) Apex Board/ Secretary DD (R&D) to be empowered with full powers to accord DP extension irrespective of timelines.
- c) **Revision of Supply Order / Expenditure Sanction on account of Statutory changes such as taxation structure / rates, minimum wages and FE rate variation:** Project Director/ Programme Director/ Director (Lab/Estt) would accord the approval and issue amendment to the Expenditure Sanction and Supply Order/Contract (irrespective of cost of the contract) on account of any statutory changes such as taxes/ levies or revision in minimum wages as per labor laws or additional cash out go on account of FE rate variation. Such approval would require the concurrence of associated finance, if applicable. The responsibility of working out the revised amount and correctness thereof will rest with Head MMG

- d) **Change in item description/part number, part shipment/transshipment/lot size without affecting DP and terms of payment, delivery terms/consignee:**

The Competent Authority to accord such approvals would be as under:

(i) **In respect of Contracts for which CFA is up to level of DG Cluster:** CFA's concerned with the concurrence of their associated Finance will accord the approvals.

(ii) **In respect of Contracts for which CFA is MoD:** Director General concerned with the concurrence of their associated Financial Adviser will accord the approvals.

10.5.3 Revision of Supply Order / Expenditure Sanction on account of 'Growth of Work' for Repair/Maintenance Contracts: Revision in cost on account of Growth of Work would be on pro-rata basis. Competent authority to accord the approval and issue amendment to the Expenditure Sanction and Supply Order/Contract (irrespective of cost of the contract) on account of growth of work would be as under, provided approval of 'Growth of Work' was obtained from CFA at time of demand approval/expenditure sanction:

- a) **Up to 15% of original contract value** –Project Dir/Programme Dir/Dir Lab/Estt. Financial concurrence would not be required in such cases.
- b) **Beyond 15% of original contract value** – CFA on cumulative basis as per delegation of financial powers. Concurrence of associated finance would be obtained.

10.5.4 Arising due to change in scope of work: The proposal with due justification for amending the SO/ Contract will be submitted on file to the CFA for approval. CFA may consider constituting a committee to consider changes in Scope of Work and resultant time & cost implications. Concurrence of financial advisor of CFA will be obtained as per the delegation of financial powers. For procurements where CFA is higher than the Secretary DD (R&D), Hon'ble RM will approve the constitution of the said committee.

10.5.5 Acceptance of Excess or Short Deliveries: There may be occasions when excess or short supplies are made by the Sellers due to various reasons like, exact multiples of the standard units of measure, or where it is difficult to mention exact quantity (e.g. weight in the case of steel plates, raw materials, consumables etc.). Wherever such variation is anticipated, a provision should be made in the RFP for acceptance of the excess/ shortfall in supplies and a clause on it shall form a part of SO/ Contract. However, in the absence of such clauses in the SO/ Contract, the variations in supplies may be accepted with the approval of CFA subject to the value of such excess/short

supplies up to 10% (ten percent) of the original value of the contract. CFA will be determined with reference to the value of the original order plus excess supply. There would not be any requirement of holding CNC to review such acceptance of excess/ short supply.

10.6 DENIAL CLAUSE:

Variations in the rates of statutory levies within the original delivery schedule will be allowed if taxes are explicitly mentioned in the contract/ supply order and delivery has not been made till the revision of the statutory levies. Buyer reserves the right not to reimburse the enhancement of cost due to increase in statutory levies beyond the original delivery period of the supply order/ contract even if such extension is granted without imposition of LD.

10.7 DELIVERY PERIOD (DP):

Timely delivery as per the DP stipulated in the supply order/ contract is one of the most important procurement objectives. The stores/services are considered to have been delivered/ completed only when the contractual obligations of Seller as stated in the supply order/ contract, except the ones related to post acceptance, have been fully met.

10.7.1 Failure to deliver within the DP: When the supplies/ services do not materialize within the stipulated contract delivery date, the Buyer has the following options:

- a) **Extension of DP:** Extend DP, if need persists, with/without imposition of LD and denial clause in accordance with para 10.8 and 10.6 of this Manual respectively.
- b) **Re-fixing of DP:** DP may be re-fixed, in the under-mentioned circumstances, with the approval of CFA and the concurrence of financial advisor. Such re-fixation of DP will always be without imposition of LD.
 - (i) Cases where delay is attributable to the Lab/Estt for whatever reasons.
 - (ii) Where product realization is dependent on approval of advance samples and delay occurs in approving the samples even though submitted in time.
 - (iii) Cases where the entire production is controlled by the Government.
- c) Canceling the contract in accordance with para 10.15 of this Manual. Lab/Estt. may consider purchasing the non-supplied quantity afresh if need persists.

10.7.2 Guidelines for the Extension of DP: Amendments affecting delivery period will not be made as a matter of routine. In exceptional cases, where Seller has asked for revision

of delivery period justifying with sufficient reasons, approval of appropriate authority for revision of DP will be obtained before communicating such extension to the Seller. Normally, all DP extensions will be accorded with imposition of LD and denial of any enhancement in statutory levies that takes place beyond the original DP. However, the case may be examined on merit for limiting/ waiving off the LD in terms of para 10.8.2 of this Manual when due justification exists. While extending the DP, ruling on imposition of LD, interest on advances paid and admissibility or otherwise of enhancement of statutory levies during the extended period, will invariably be mentioned in the DP extension letter. Normally, the Seller shall formally apply for extension of delivery date prior to expiry of date stipulated in the supply order/ contract justifying the reasons for not adhering to the specified date of delivery. Action for extension of delivery date at the request of the Seller will be considered taking the following factors into account:

- a) Urgency of the requirement and whether delay involved has or will cause any loss or inconvenience to the Lab/Estt.
- b) It is to be ensured that all applicable BGs are revalidated to cover the proposed extension.
- c) Whether difficulties informed by the Seller are justifiable and the Seller has made all efforts to carry out their contractual obligation in time.
- d) In case of project requirements, the revised DP falls well within the PDC of the project.
- e) No delivery period extension is required to complete inspection if stores are delivered within stipulated DP and accepted without any quantity or quality claim.
- f) All DP extension should normally be approved before the expiry of stipulated delivery schedule, to obviate the need for ex-post-facto sanction.
- g) In case of DP extension due to default of the Seller, the interest-free advance paid would become interest-bearing as per para 6.44.2 (e) (iii) and 7.3.9 (c) of this Manual.
- h) Price increase due to revision of statutory levies, exchange rate variation, upward revision of price of Government controlled stores etc. will not be admissible during the extended delivery period except when delays are attributable to Labs/Estts to fulfill their contractual obligations or in case of force majeure or in cases where delay is beyond control of the Seller which

is verifiable.

- i) DP extension will be approved without prejudice to the right of the Lab/Estt to impose LD (para 10.8.2 of this Manual) depending upon the merit of the case.

10.7.3 The letter of DP extension must cover the salient points as per the provisions of para 10.7.2 of this Manual.

10.8 LIQUIDATED DAMAGES (LD):

10.8.1 Quantum of LD: Depending on the merit of the case, quantum of LD to be charged shall be 0.5% per week or part thereof, of the basic cost (excluding taxes & duties on final product) of the delayed stores which the Seller has failed to deliver within the period agreed for delivery in the contract subject to maximum of 10% of the total order value. In cases where partial delivery does not help in achieving the objective of the contract, LD shall also be levied on the total cost (excluding taxes & duties on final product) of the ordered quantity delivered by the vendor. This will also include the stores supplied within the delivery period. However, for development contracts the rate of imposition of LD would be @ 0.25% per week or part thereof subject to maximum of 10% of the total order value.

10.8.2 Guide lines for imposing/ waiving off LD: Constructive assessment of reasons contributing to delayed delivery and assessment of maximum LD will be done in terms of preceding para. The following guidelines would be kept in mind while taking decision for imposition/ waiving off LD:

| No. | Circumstances | Quantum of LD |
|------------|--|--|
| 1 | When the delay in supplies is totally attributable to the Seller | Full LD may be imposed in accordance with para 10.8.1 of this Manual |
| 2 | When the delay in supplies is partly attributable to the Seller | LD for the period for which the Seller was responsible for the delay in accordance with para 10.8.1 of this Manual |
| 3 | The entire delay was attributed to the Lab/Estt or the delay was due to circumstances beyond the control of the Seller which is verifiable | LD may be waived in full |

10.9 OPTION CLAUSE:

The purchaser retains the right to place orders for additional quantity up to a **maximum of 50%** of the originally contracted quantity at the same rate and terms of the contract. Such an option is available during the original period of contract provided this clause has been incorporated in the original contract with the supplier. Option quantity during extended DP is limited to 50% of balance quantity after original Delivery Period.

10.9.1 Conditions Governing Option Clause: The conditions governed by Option clause are as under:

- a) Option clause can be exercised with the approval of CFA under whose powers total value of supplies of original contract plus 50% option clause falls. This option is normally exercised only when there is no downward trend in prices as ascertained through market intelligence. CVC have also reiterated the need to look at the downward trend before exercising option clause.
- b) In case of single vendor OEM, option clause should be normally operated up to 50% subject to there being no downward trend. However, in multi vendor contracts, great care should be exercised before operating option clause up to 50%.
- c) In case provision of option clause has been opted up to a **maximum of 50%** of the originally contracted quantity, repeat order option will not be applicable.
- d) Option clause would not be invoked for the quantity where the total value of supplies of original ordered quantity plus option clause quantity requires convening of CNC in non-CNC cases.

10.9.2 CFA for Option Clause: CFA for the sanction of placement of order under option clause would be decided by taking the values of original order & all subsequent orders under option clause into consideration. Concurrence of Financial Advisor would be obtained as per the delegation of financial powers.

10.10 TRANSIT INSURANCE COVERAGE:

10.10.1 Indigenous Procurement: Normally, all procurements from the indigenous sources are made on FOR (destination) basis and, therefore, do not require transit insurance. Procurements costing above Rs. 2.5 crore, with delivery term other than FOR (destination) will be insured. For procurements costing up to Rs. 2.5 crore, with delivery term other than FOR (destination), Director will use their discretion to decide whether the stores need to be insured or not. It is advised to invariably take insurance for the sensitive/ delicate/ fragile/ equipment/ machinery and scientific instruments where

probability of loss or damage is considered high. Whenever it is decided to insure the stores, such insurance would be taken through a nationalized insurance agency or their subsidiaries against loss or damage in transit. Insurance cover will invariably be obtained from the insurance agency before dispatch of the consignment by the Seller.

10.10.2 Import: In case of procurement from foreign sources all consignments, on Ex-Works/ FAS/ FCA/ FOB/ CPT/ CFR basis, shall invariably be insured.

10.11 REPEAT ORDER (RO) CLAUSE:

10.11.1 Provision for repeat order clause should not be made as a matter of course in the RFPs as these clauses have an impact on price. RO clause may be provided in the RFP only in exceptional circumstances, where the consumption pattern is not predictable. Under this clause, the Buyer retains the right to place orders for additional quantity up to a maximum of 50%, including order placed under Option Clause, of the originally contracted quantity at the same rate and terms of the supply order/ contract.

10.11.2 Conditions Governing RO: If a demand is received for an item or items previously ordered by Labs/Estts or other DRDO Labs/Estts or other Government scientific research institutions, repeat order may be placed without fresh tendering/negotiations, even if R.O clause is not mentioned in the Original S.O provided that :

- a) Items ordered have been delivered successfully.
- b) The original order was placed on the basis of lowest price negotiated by TPC/NC wherever applicable and technically acceptable offer and was not on delivery preferences.
- c) The repeat order is placed within twelve months from the date of supply and only once by the Lab/Estt, the total quantity to be ordered /purchased on repeat order does not exceed 50% of original order. However if the original order was for single quantity, repeat order can be made for the same.
- d) The requirement is for stores of identical description/specifications.
- e) The supplier's willingness to accept the repeat order on the same terms and conditions as per the original order is obtained, where ever R.O clause is not mentioned in the Original S.O.
- f) The CFA is satisfied that there is no downward trend in the market price of the item and a clear certificate is appended to that effect if the enquiry is floated afresh, the expenditure is not likely to be less.

- g) The basic cost (excluding taxes & duties) of repeat order does not exceed the basic cost (excluding taxes & duties) of the original supply order.
- h) Quantity discount is sought from the vendor, if applicable.
- i) The taxes and duties as applicable on the date of placement of repeat order will be considered.
- j) RO clause would not be invoked for the quantity where the total value of supplies of original ordered quantity plus RO clause quantity requires convening of CNC in non- CNC cases.

10.11.3 CFA for the RO:

- a) **If proposal for RO emanates from the Lab/Estt which has placed the original order:** CFA to be decided on cumulative basis (i.e. original cost, plus cost of ROs placed, if any, plus cost of the proposal).
- b) **If proposal for RO emanates from the Lab/Estt. which has not placed the original order but both the Labs/Estts. are in same cluster:** CFA to be decided on cumulative basis or DG (Cluster), whichever authority is higher.
- c) **If proposal for RO emanates from the Lab/Estt. which has not placed the original order and the Labs/Estts are placed in different cluster:** Wherever the cumulative value falls within the financial power delegated to DGs, DG (R&M) would accord approval. For other cases, CFA would be decided on cumulative basis or Secretary Defence (R&D) whichever authority is higher. Such cases will be forwarded to DFMM, DRDO HQrs for necessary action.

10.12 SERVICE CONTRACTS:

Service contracts would be entered to hire external professionals/ service providers for specific jobs which are well defined in terms of content (scope) and time frame for its completion. These contracts would be regulated as per the procedures applicable for the procurement of stores in this Manual. Signing of contract should be ensured while hiring of services. The contract should have provision of performance evaluation at defined periodic interval with the condition that the contract would be terminated without cost in case of non-satisfactory performance.

10.12.1 Extension of Service Contracts:

Service contracts may be extended with the approval of appropriate CFA at same terms & conditions/ price (taxes/ statutory levies will be applicable as per the rate prevailing during the extended period), provided:

- a) The performance of the service provider is found satisfactory; and
- b) There is no downward trend in the prices; and
- c) It is administratively convenient to do so.
- d) In non-CNC original order cases, the cumulative value of original contract and all subsequent extensions including the proposed one does not require convening of CNC.

10.12.2 Period of Service Contracts: There will be no limitation on duration (number of years) for concluding/ extending AMC/ Service Contracts cases and CFA can approve such cases for any period provided the total value of cases for proposed period falls within their delegated powers. However, the time frame of the service contract would be decided on the merit of the case to attract competent service providers.

10.12.3 CFA for the Extension of Service Contract: The CFA for the sanction of the extension of the service contract would be decided by taking cumulative value of original contract and all subsequent extensions including the proposed one, i.e., original cost + cost of extended contract(s), if any, plus cost of the proposal.

10.13 FORCE MAJEURE:

Neither party shall bear responsibility for the complete or partial non-performance of any of its obligations (except for failure to pay any sum which has become due on account of receipt of goods under the provisions of the supply order/ contract), if the non-performance results from such Force Majeure circumstances as Flood, Fire, Earthquake and other acts of God, as well as War, Military operations, blockade, Acts or Actions of State Authorities or any other circumstances beyond the control of the parties that might arise after the conclusion of the supply order/ contract.

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

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

10.13.3 Extension of Time: In such circumstances, the time stipulated for the performance of an obligation under the contract is extended correspondingly for the period of time of

action of these circumstances and their consequences.

10.13.4 Right to Terminate Supply Order/ Contract: If the impossibility to complete or partial performance of an obligation lasts for more than six months, either party to the supply order/ contract reserves the right to terminate the supply order/ contract totally or partially upon giving prior written notice of thirty days to the other party of the intention to terminate without any liability, other than reimbursement on the terms provided in the supply order/ contract for the goods received.

10.14 DISPUTES/ ARBITRATION:

All the clauses, terms and conditions of the contract/ supply order will be explicit and unambiguous to avoid disputes. In case of dispute, the action will be taken in accordance with the dispute resolution or arbitration clause as incorporated in the supply order/ contract.

10.15 TERMINATION OF SUPPLY ORDER/ CONTRACT FOR DEFAULT:

10.15.1 The Buyer may, without prejudice to any other remedy for breach of supply order/ contract, by written notice of default sent to the Seller, terminate the supply order/ contract in whole or in part if:

- a) The Seller fails to deliver any or all of the stores or perform any other obligation within the time period(s) specified in the supply order/ contract, or any extension thereof granted by the Lab/Estt.
- b) When the Seller is found to have made any false or fraudulent declaration or statement to get the supply order/ contract or he is found to be indulging in unethical or unfair trade practices.
- c) 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.
- d) When both parties mutually agree to terminate the supply order/ contract.
- e) Any special circumstances, which must be recorded to justify the termination of a supply order/ contract.
- f) In pursuance of an award given by a Court of Law.

10.15.2 If the supply order/ contract is terminated in whole or in part; the Lab/Estt may take any one or more of the following actions:

- a) Performance Security /Warranty Bond will be forfeited and the amount will be remitted to Govt. by way of MRO through Public Fund Account in favour of concerned CDA (R&D);
- b) Invoke the risk and expense clause if mentioned in the supply order/ contract.
- c) The Seller shall continue to perform the supply order/ contract to the extent not terminated.
- d) Any other action as deemed appropriate.

10.15.3 These provisions at preceding para may be included in all supply order/ contracts. Any decision on termination/ short closure of the contract/supply order would be taken by the CFA with concurrence of associated finance, if applicable.

10.16 RISK AND EXPENSE PURCHASE:

10.16.1 Risk and expense purchase clause could be included in the RFP and the supply order/ contract, if considered necessary. Risk and expense purchase is undertaken by the Buyer in the event of the Seller failing to honour the contractual obligations within the stipulated DP and where extension of DP is not approved. While initiating risk purchase at the cost and expense of the Seller, the Buyer must satisfy himself that the Seller has failed to deliver and has been given adequate and proper notice to discharge his obligations. Whenever risk 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 supply order/ contract, i.e. the defaulting Seller has to bear the excess cost incurred as compared with the amount contracted with him. Factors like method of recovering such amount should also be considered while taking a decision to invoke the provision of risk purchase. It may be noted that procurement under Risk & Expense Clause must be completed within one year from the date of serving notice to the defaulting Seller.

10.16.2 Alternative remedies to Risk & Expense Purchase Clause: The other remedies available to the Buyer in the absence of the risk and expense clause are as follows:

- a) Deduct the quantitative cost of discrepancy from any of the outstanding payments of the Seller.
- b) Avoid issue of further RFP's to the firm till resolution of the discrepancy.
- c) Bring up the issue of discrepancy in all meetings with the representative of Seller.
- d) Provision for adequate BG to cover such risks.

- e) In case of foreign supply order/contract, approach the Government of the Seller's country through the Ministry of Defence, if needed.

CHAPTER 11

SPECIAL FEATURES IN PROCUREMENT FROM ABROAD

11.1 GENERAL:

Although, proposals for procurement of goods/ services with likely participation of foreign bidders will continue to be processed as per the procedure laid down in the preceding chapters, Labs/Estts are advised to address some special features as explained in this chapter for such procurements.

11.2 DEMAND PROCESSING, BIDDING, PLACEMENT OF ORDER & MONITORING:

The procedure for demand initiation & approval, RFP & Bid processing, placement of SO/ Contract and monitoring will be as per the guidelines given in preceding chapters of this Manual. However, following additional aspects need to be considered where participation of foreign bidders is anticipated.

11.2.1 Foreign bidders will be asked to quote CIF/CIP cost up to a specified place of delivery in addition to the FOB/ FCA (gateway) cost. It would also be clarified that

- a) CIF/CIP cost is for the purpose of bid evaluation and the Buyer reserves the right to place order on either FOB/FCA (gateway) or CIF/CIP (destination) basis; and
- b) If the CIF/CIP cost is not indicated, their bid will be loaded by 10% of FOB/FCA cost to arrive at the price for the purpose of bid evaluation.

11.2.2 In case the legislation of a country does not permit the OEMs and/or other vendors/ bidders to respond directly, RFP may be issued to the designated agency in that country.

11.2.3 Copy of the RFP under open bidding mode may be forwarded to prospective Embassies/ High Commissions in India and Indian Embassies/ High Commissions abroad for wider publicity. The cost of RFP documents will not be insisted upon and left to the discretion of the respective Embassies/ High Commissions abroad.

11.2.4 Lab/Estt may seek clarifications, if any, on the bids through correspondence/ fax/ e-mail.

11.2.5 Generally, foreign bidders do not extend the validity of offer, the bid evaluation, etc. should be done promptly to avoid expiry of quotations and revision of prices.

11.2.6 Handling of Reps of Foreign Firm: In certain cases, bids are received directly from OEM and they authorize an individual or firm in India to represent them in TCEC or CNC. In

such cases, authorization letter from OEM should be recorded in the minutes of TCEC or CNC meeting and participant should be referred to/ recorded only as rep authorised to attend the meeting on behalf of said OEM and not as Indian Agent. Care should be taken in all such cases that the person authorised to attend the meeting on behalf of OEM is expected to submit clarifications/ revised bid etc., as the case may be, only in the original letter head of the OEM. It is re-emphasized that only Indian Agent enlisted as per para 3.6 of this Manual or 100% subsidiary of OEM in India may submit offer on behalf of OEM if they have been authorised for the same by the OEM.

- 11.2.7** In respect of bids received from abroad, it may not be always possible for the foreign bidders to come for CNC meeting except for high value items. In such cases, CNC may invite revised best offer with all terms clarified from the lowest bidder through fax/e-mail before finalizing the price.
- 11.2.8** The term of delivery should preferably be decided on FCA/FOB (gateway) basis. However, the Buyer may finalize any other term of delivery on the merit of case as per the INCOTERMS 2020 issued by International Chamber of Commerce (ICC).
- 11.2.9** Confirmed LC as a condition of payment should be avoided as it undermines the credibility of our nationalized banks.
- 11.2.10** The nature of services to be rendered by Indian agent of OEM/ foreign Sellers, if any, and the commission payable to Indian agent shall be explicitly reflected in the supply order/contract. The commission shall be paid in accordance with para 11.3 of this Manual.
- 11.2.11** CFA will be determined on the basis of 110% of the negotiated cost to cater for basic customs duty, currency fluctuation, freight and bank charges as applicable. However, should the expenditure exceed this limit, approval of appropriate CFA will be taken at actual.
- 11.2.12** The letter conveying the expenditure sanction for the foreign procurement should invariably incorporate the total amount to be paid in foreign currency including insurance and freight charges as well as mode of payment (through LC or DBT).
- 11.2.13** Payments towards training, installation & commissioning and AMC of capital equipment should be explicitly mentioned in the contract/ SO.
- 11.2.14** Supply orders shall include special instructions, if any, governing packing/ forwarding, insurance, airfreight, transportation, etc.

11.2.15 Where Indian/ regional offices of foreign firms are to provide after sales services, such as installation & commissioning, execution of warranty operations and post-warranty maintenance etc., such stipulation will be explicitly mentioned in the terms and conditions of the supply order/ contract.

11.3 HANDLING OF INDIAN AGENTS:

Where Indian agents quote on behalf of their foreign bidder/ OEM as per their authorization, they would be required to enlist themselves as per para 3.6.1 of this Manual. In such cases conditions for appointment of agents by foreign vendors as mentioned at para 7.2.5 would also be applicable.

11.3.1 The amount of commission payable would be brought on record and made explicit so as to ensure compliance of tax laws and prevent leakage of foreign exchange.

11.3.2 Commission payable will preferably be paid in Indian rupees in compliance with the Foreign Exchange Management (Current Account Transactions) Rules, 2000 issued vide Notification No G.S.R. 381(E) dated 03 May 2000 and the directions issued by Reserve Bank of India under Foreign Exchange Management Act from time to time. Where the agency commission is payable directly by the foreign principals/ OEM, an undertaking would be obtained from the Indian agent to the effect that agency commission shall be received through inward FFE remittance through banking channels and will be accepted in Indian rupees only.

11.3.3 The negotiation on amount of commission shall be avoided as it leads to under reporting of the commission.

11.3.4 TDS, as per prevailing rules, will be deducted from the agency commission payable to the Indian Agent.

11.3.5 All particulars relating to agency commission will be reported by Lab/Estt to the Enforcement Directorate (www.enforcementdirectorate.gov.in).

11.4 INDIAN/ REGIONAL OFFICE OF FOREIGN OEM:

Where regional offices of foreign firms have been authorised and set up within the country, they will not be treated as agents of the foreign firms and financial dealings with such regional offices will be restricted to the norms stipulated by the RBI for each specific case. Such regional offices form integral part of the foreign vendors and their functions are totally controlled by their corporate office abroad and hence are not entitled to any agency commission.

11.5 PROJECTION OF FE REQUIREMENT:

Labs/Estts are required to forward their consolidated requirement of foreign exchange (FE) to DFMM/ DRDO HQ in the month of February for the next Financial Year (FY) as per **DRDO.FE.01**.

11.6 FE RELEASE & NOTING

11.6.1 Bulk Release & Noting: Allocation of bulk FE and its noting will be made by DRDO HQ (DFMM). This allocation will be made at the beginning of financial year and on as-required basis.

11.6.2 Item release by Labs/ Estts/ Program: No separate approval/ sanction for FE release would be required for import procurements. The release of FE will only be noted at the Budget Cell of the Labs/ Estts. after the expenditure sanction has been concurred by financial advisor and approved by CFA as per the delegation of financial power. Payment will be made to the beneficiary as per the terms and conditions of the SO/ Contract through CDA (R&D)/ Bank concerned.

11.6.3 FE release would be noted on the basis of CIF/CIP cost. It will, therefore, be ensured that amount paid towards customs, freight and insurance charges are noted against the foreign exchange allocation even if these are paid in Indian rupees.

11.6.4 FE release would not be noted in excess of bulk allocation in anticipation of additional release from DRDO HQ. Additional allocations will be sought well in advance from DFMM to obviate delay.

11.6.5 Lab will ensure availability of funds in rupee in the relevant budget head to cover FE released on cash outgo basis in the financial year.

11.7 DENOTING/ RENOTING OF FE:

Unutilized bulk FE allocated to the Lab/Estt by DRDO HQ on cash outgo basis for the financial year will lapse at the end of the financial year. Similarly, unutilized item-wise financial year release on cash outgo basis for all the cases lapses at the end of the financial year and needs to be denoted and renoted, if required, in the next FY.

- a) **Bulk Denoting:** Surplus FE available with Lab against bulk allocation may be denoted by sending a request to DFMM as soon as it is noticed.
- b) **Item Denoting/ Renoting:** All Denoting/ Renoting of the item-wise FE released against item shall be done at Lab level only.

11.8 REPORTING AND MONITORING OF FE:

The status of FE release/ noting made at Lab/Estt level will be reported periodically to DFMM, DRDO HQ.

11.9 END USE CERTIFICATES:

In case, End Use Certificate (EUC) is demanded by the Seller for getting export clearance, Labs/Estts will provide the same as per the guidelines issued by Directorate of International Cooperation (DIC), DRDO HQ from time to time.

11.10 IMPORT CERTIFICATES:

For certain categories of stores, Import Certificate is required to facilitate export by the Seller from their country. Such certificates will be issued by DIC, DRDO HQ. Labs/Estts may approach DIC, DRDO HQ for the same.

11.11 PAYMENT TO FOREIGN SELLER:

Payment to foreign Seller is normally made through LC/ DBT as per following provisions:

11.11.1 The LC for the amount payable will be opened as per the milestone specified in the order/ contract through the paying authority. In the event of cancellation of a supply order/ contract due to reasons beyond control of the Lab/Estt, the banking charges already incurred for opening of LC will be regularized as cash loss as per the delegation of financial powers. Procedures for payment through LC and DBT are given in **Annexure 'A'** of this Manual. Availability of funds will be as per provisions of para 9.1.3 of this Manual.

11.11.2 Advance Payments: Advance payment to a foreign Seller, as per conditions specified in the order/ contract would be made against proforma invoice and BG/ Standby LC in favour of the Director of the Lab/Estt, for 110% of advance payment, from a first class bank. Before payment, Labs/Estts should refer the received BG/ Standby LC to the State Bank of India to authenticate the status of the bank from which it is given by the foreign Seller. Format of the BG is given at DRDO.BG.02.

- a) Advance payments to Govt. Dept., Govt. research institutions etc. of foreign countries would be governed as per the terms and conditions of umbrella agreement, if existing, between the two Governments.
- b) The advance payments to the foreign Sellers by Labs/Estts would be subject to the Rules of the RBI in force on the date of payment.

11.11.3 Payment of Training, Installation & Commissioning and AMC Charges: Payment for these services should be released after completion of service preferably through DBT.

11.12 INSURANCE COVERAGE:

The transit insurance coverage will invariably be taken for all procurements on Ex-Works/ FCA/ FOB/ CPT/ CFR basis. Air Consolidation Agency (ACA) contract of DRDO has provision of mandatory insurance cover for all imports. For destinations not covered under ACA Contract or where Labs/Estts is not using the facility of ACA contract for whatever reasons, transit insurance coverage will be taken through a nationalized insurance agency or their subsidiaries for all imports.

11.13 SHIPPING AND AIR-FREIGHTING:

The consignment will be dispatched by the foreign Sellers as per the shipping instructions contained in the supply order/ contract.

11.13.1 Where the mode of transportation of shipment is by sea, the Lab/Estt will follow the shipping instructions issued by the Ministry of Shipping & Transport, Parivahan Bhawan, Sansad Marg, New Delhi – 110 001.

11.13.2 For dispatch of consignments by air, the Labs/Estts will follow the instructions given as in the ACA Contract concluded by DFMM.

11.13.3 Cases of direct shipment are to be avoided. However in exceptional cases of direct shipment, the Labs/Estts may make suitable arrangement for completing other formalities like customs clearance, etc. The services of ACA/ Embarkation HQ may be availed after finalizing the terms.

11.14 CUSTOMS CLEARANCE:

Government has exempted certain imports made by DRDO from payment of Customs Duty through notifications issued from time to time. These benefits will be availed by the Labs/Estts on imports by issuing necessary Custom Duty Exemption Certificates (CDEC) as per prescribed formats.

11.14.1 Direct Imports: Direct import implies that Lab/Estt is importing directly from foreign Seller. Every financial year, DRDO HQ may authorize one/more officer(s) not below the rank of Deputy secretary as nominated by Lab/Estt through a certificate signed by CC R&D (R) /DG (R&M) to issue CDECs for all direct imports under custom notification 51/96 as amended. In addition, direct import by DRDO Labs/ Estts/Programmes is also covered under custom notification 39/96 as amended. Govt. may impose custom duty

which needs to be paid in spite of issuing CDEC. Lab/Estt would take suitable action for the payment of customs duty directly or through clearing agent.

- a) Following documents will be required to clear the goods from customs:
- (i) Original Bill of Lading duly endorsed by bank and consignee (for ship consignments),
- Or
- Original Air Way Bill (AWB) or Bank Release Order (BRO) (for air consignments),
- (ii) Invoice,
 - (iii) Packing list,
 - (iv) Copy of supply order/ contract,
 - (v) Technical write-up and descriptive catalogue/literature,
 - (vi) CDEC if applicable, and
 - (vii) Any other relevant documents.
- b) On the arrival of cargo or based on the manifest filed by the carrier, the bill of entry is made by the clearing agency and submitted to the appraiser who will, in turn assess the Customs Duty, if leviable, or exempt the consignment from duty. To avail custom duty exemption, it is essential to ensure that the nomenclature/ description of stores and cost tally with that in invoice to obviate any doubt as discrepancy may lead to imposition of customs duty.

11.15 DEMURRAGE/ WAREHOUSE CHARGES:

In respect of Demurrage/ Warehouse charges, payment will be made first by Lab/ Estt./ Embarkation HQ to the concerned appropriate authority without taking concurrence/ approval of financial advisor/ CFA. The payment will be regularized by sending the case to the appropriate Financial Advisor/ CFA on a monthly basis for obtaining ex-post-facto concurrence/ approval.

11.16 REFUND CLAIMS:

If customs duty is paid for any consignment which is otherwise eligible for duty-free import, the refund claims will be filed with custom authority immediately. All relevant and supporting documents will be enclosed along with the claim for submission to Asst. Commissioner of Customs (Refunds) for claiming refunds.

11.16.1 Appeals: Refund claims are filed with the Asst. Commissioner of Customs (Refunds)

with necessary documents. At times claims are rejected for reasons like:

- a) Relevant documents not produced by the consignee,
- b) Discrepancies exist in the documents produced,
- c) Customs Notification under which exemption is claimed is not mentioned or mentioned inaccurately, and
- d) Delay in filing refund claim, etc.

Adequate care should be taken to ensure that customs refund appeals are not rejected due to procedural lapses.

11.16.2 Appeal to Higher Authorities: If the appeal for claim has been rejected by Asst. Commissioner of Customs (Refunds), Lab/Estt will file the appeal with the Commissioner of Customs (Appeals) within mandatory period as decided by Customs to avoid rejection. If this appeal is also rejected, and Lab/Estt considers the refund claim should be processed further, an appeal can be filed with Customs Excise & Service Tax Appellate Tribunal (CESTAT), New Delhi within stipulated time, on payment of prescribed fees. Generally, the decisions of CESTAT are final and binding. The appeals can, however, be taken up further with higher authorities in accordance with procedures described in Customs Manual (<http://www.cbec.gov.in>).

11.16.3 Labs/Estts will maintain a register for 'Refund Claims for Customs Duty' which will be updated with the latest progress of each case. Director and Head, MMG of the Lab/Estt will periodically inspect this register.

11.16.4 Pay-back Demand Notice: All refund claims, which have been passed and refund issued, undergo scrutiny of Central Revenue Audit. If any discrepancy in the claim is found during such audit scrutiny, Custom authorities issue Pay Back Notice to the importer for returning the amount refunded forthwith, along with the reasons for making such untenable refund claims. In such cases, Lab/Estt will react promptly to sort out problems. Inept handling of such cases will complicate the situation and may invite adverse criticism from the higher authorities.

11.17 LOSS/ DAMAGE/ SHORT-LANDING:

Defence consignments are not normally opened by the Customs. If loss/damages are suspected, a survey can, however, be conducted at the behest of the consignee/clearing agent in order to ascertain the loss/damage through a Survey Board duly constituted by Director. Survey Board will have members from Lab/Estt, clearing agent,

carriers and insurance company. The board will submit its report within 30 days to the Lab/Estt and clearing agent. Notice of liability for the loss/damage will be sent to the Seller/carrier as the case may be, within 14 days of the completion of survey and claim for the loss/damage/short-landing will be lodged within 120 days from the date of Airway Bill/ Bill of Lading.

11.18 INLAND TRANSPORTATION:

For air consignments through ACA contract, the consolidation agent will arrange transportation to the Labs/Estts on prescribed rates as per the prevailing contract. In case of sea consignments, Lab/Estt may approach Embarkation HQ to arrange for transportation by rail/road and pay transport charges. Else Lab/Estt will depute a representative for collection of stores directly from airport/ Embarkation HQ/ port.

11.18.1 It is important that Lab/Estt must obtain Handling Instructions from the Seller, especially for the heavy/ delicate/ fragile consignments, and ensure its availability to the Consolidator/ Inland Transporter to ensure safe transportation/ loading–unloading.

11.19 ACCEPTANCE/ ACCOUNTING OF IMPORTED STORES:

The procedure for inspection and acceptance of imported stores will be as per the terms of the supply order/ contract.

11.20 DOCUMENTS USED IN IMPORT:

Brief description of commonly used documents in import are given below for clear understanding:

11.20.1 Bill of Lading/ Airway Bill: These documents are evidence of the fact that the goods have been dispatched by the exporter by sea/air and authorises the consignee/ importer to claim the goods on arrival in India.

11.20.2 Invoice: The commercial invoice describes the merchandise, indicates the price, identifies the Buyer and the Seller, vessel/name of the carrier, port of discharge, export and import permit numbers, etc.

11.20.3 Certificate of Origin: This is required by the Customs authorities for clearance and for assessment of duty, as duties on imports are country specific.

11.20.4 Weight Certificate: This certificate helps in organizing logistic arrangements for the carriers and freight forwarders and transporters.

11.20.5 Insurance Policy: It is a contract between the insurer and the insured. The insured pays a premium and the insurer agrees to indemnify against loss/ damage and other perils of sea/ air carriage.

11.20.6 Packing List: Packing list indicates the exact nature, quantity and quality of contents together with address, dimensions, weight, etc. of each package in a shipment and helps in clearance through Customs.

11.21 EXPORT OF ITEMS NOT REPAIRABLE IN INDIA:

Occasions may arise when imported equipment/ defective parts needs to be sent to OEM/ authorized agency for repairs/ replacement. Following documents would be required for booking the store for export:

- a) Export proforma,
- b) Requisition for carriage,
- c) Packing note-cum-invoice,
- d) Airworthy certificate,
- e) Airlift sanction,
- f) Firm's letter of acceptance,
- g) A copy of expenditure sanction accorded by CFA
- h) 'Not Repairable in India' certificate by the Director of Lab/Estt,
- i) Initial import details like Bill of Entry, Bill of Lading/ AWB, etc., and
- j) Appropriate safeguards to protect the Govt. property in the form of BG/ Insurance cover.

11.22 SPECIAL PROVISIONS FOR EQUIPMENT IMPORTED FOR DEMONSTRATION/ TRIAL/ TRAINING:

Special items imported by DRDO Labs/Estts for the purpose of trial or demonstration of defence equipment are exempted from payment of customs duty under S No. 8 of Customs Notification No. 39/96 (Goods imported for trial, demonstration or training before an authority under the Ministry of Defence in the Government of India) as amended. A certificate from the Under Secretary to the Government of India in the Ministry of Defence is to be produced to the Assistant/ Deputy Commissioner of Customs, in each case that the goods imported are for the purpose of trial, demonstration or training. The Lab/Estt will undertake, in each case, to pay the duty leviable on such goods (except those which are certified by the said Under Secretary as having been consumed in the process of trial, demonstration or training) which are not re-exported within a period of two years from the date of import or within such extended period that the said Assistant/ Deputy Commissioner may allow.

11.23 DRAWBACK CLAIMS:

Sometimes goods imported after paying custom duty are to be exported back to the country of origin, on non-returnable basis. In such cases, a drawback claim can be preferred on the Customs. Procedure for such claims is laid down in Customs Act, 1962 as amended.

11.24 SMALL VALUE IMPORTS THROUGH TA (DEFENCE) ABROAD:

For requirement of small value items where bidding process may not attract any response or is not considered worthwhile, the services of Technical Advisers (TAs) of High Commission of India (HCI), London/ Indian Embassy in USA and Russia, may be availed for import/ purchase of such items.

11.24.1 Labs/Estts intending to avail such services, will seek demand approval/ expenditure sanction from CFA/ noting of FE release and place funds at the disposal of High Commission/ Indian Embassies through DFMM, DRDO HQ to enable TAs to make payments for the purchases made through their liaison.

11.24.2 The normal procedure for freight forwarding and custom clearance, etc. will be applicable for such procurements.

11.25 REPEAT ORDER AND OPTION CLAUSE:

Provision for Repeat Order/ Option Clause will be governed as per provisions in the contract/ supply order as in the case of indigenous procurement.

11.26 PACKAGING AND DISPATCH:

The stores are required to be packaged to withstand the conditions of shipment and short term storage in transit and in the country of destination. Following guidelines should be observed in this regard:

11.26.1 The Seller shall be responsible for any loss or damage or expenses incurred by the Buyer because of inappropriate packing.

11.26.2 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.

11.26.3 The Seller shall also comply with the detailed packaging and dispatch instructions as specified in the contract/ supply order.

CHAPTER 12

DESIGN, DEVELOPMENTAL AND FABRICATION CONTRACTS

12.1 GENERAL:

With the growth of indigenous industry and concurrent growth of the magnitude of the tasks assigned to DRDO during last three decades, it has become necessary for the organization to depend on the industry for sub-system development/ fabrication for successful execution of the projects. It is obviously not possible to lay down rigid set of procedures/ rules covering all contingencies for development/ fabrication contracts. Therefore, flexibility has been built in to encourage potential firms/ partners to undertake design, development and fabrication of items, equipment, plant and machinery required by DRDO. Considering the industrial infrastructure and expertise now available in the country, it is appropriate that DRDO should explore assigning the tasks of development/ fabrication for the system/ equipment designed by them to the private industry.

- 12.1.1 Development contracts, unlike the normal contracts/ supply orders, involve development work against given design data/ technical specifications/drawings. Due to vagaries of the nature of work based on evolving design, the prospective firms may be reluctant to undertake such tasks owing to high level of risks expected during development/ engineering processes.
- 12.1.2 Fabrication contracts involve lower risks and lesser uncertainties but firms are hesitant to take up such contracts due to small quantitative requirements and relatively heavy investments. These contracts are generally entered into for specific items, which are not available off-the-shelf and are specifically fabricated to meet specific requirements.
- 12.1.3 The terms and conditions in respect of development/ fabrication contracts need to be negotiated on the case to case basis. The progressing of development/ fabrication contracts should be based on a collaborative approach between Lab/Estt and Development Partner with the understanding that both are equal partners aiming at optimum results.
- 12.1.4 Design, development and fabrication contracts undertaken by DRDO under 'Buy (Indian- IDDM)' category, relevant provisions of DAP-2020 as amended will be applicable.

12.2 PRINCIPLES AND POLICY:

Whilst it is not possible to lay down any rigid rules covering all the contingencies that may arise in the finalization of specific development contracts, the following guiding

principles may, however, be followed:

- a) Exploration of sources in the public and private sector should be as wide as possible before placement of development order to encourage competition.
- b) Ability of the Development Partner to execute work of the desired quality in the required time schedule should be evaluated and verified by the Techno Commercial Evaluation Committee.
- c) Development contracts should preferably be concluded with two or more partners in parallel, subject to the other bidder(s) agreeing to match the negotiated price and conditions of L1, else, the full order may be placed on the L1 firm. Placement of parallel contracts on two parties is desirable to have more than one source of supply at bulk production stage. Besides, it also increases the probability of successful completion of the developmental work in time. The ratio of splitting of the proposed quantity between bidders and criteria thereof must be mentioned in the RFP. Ratio of splitting would be preferably in favour of L1.
- d) If requirement is meager or sources are limited or proposal is not considered cost effective, a single source having expertise in the requisite field may be considered with appropriate justification and approval of the CFA.
- e) The ability of the firm to take up bulk production should be borne in mind while exploring the sources for contracts which are likely to lead to large scale production.
- f) For assigning development/fabrication task, the information available with DGQA, other DRDO Labs/Estts and Scientific Depts. may also be utilized to select appropriate partner. The selected firm should have the capacity and capability to undertake development and bulk production, even if it entails setting up of a separate production line, provided their policies do not forbid them from such commitments. Where bulk production is envisaged after design and development by DRDO, association of a suitable production agency may be considered during design and pre-production phases.
- g) The RFP document would be issued free of cost. The facility to use testing/ infrastructure facilities available in DRDO Labs may be extended to development partner(s) as per mutually agreed terms on case to case basis. Labs would decide the same and it would be reflected in the RFP. However, the anticipated cost of such usage would be indicated in the proposal to CFA to determine the cost of development.

- h) Free Issue Material (FIM) to be used as raw material for use in developmental/fabrication contract, would be safeguarded as per the provisions of para 6.43.2 (c) and 7.3.15 of this Manual.

12.3 INTELLECTUAL PROPERTY RIGHTS (IPR):

The IPR developed under a developmental contract, funded by DRDO, will be the property of Govt. of India. In such cases, the firm will provide technical know-how/ design data for production of the item to the designated production agency nominated by the DRDO. It will, however, be permitted to receive, upon demand, a royalty free license to use these intellectual properties for its own purposes, which specifically excludes sale or licensing to any third party.

12.3.1 Joint IP Rights: In case of design, development and fabrication of capital equipment of general nature where no design and development input is provided and only broad specifications are given by the DRDO Lab/Estt, and/or the developer is sharing the developmental cost, joint IP rights would be considered.

12.3.2 Even where joint IP rights are accepted, DRDO/ MOD/ GOI reserves the right to develop an alternate source. In such cases it would be mandatory for the developer to transfer the know-how of the product to the agency designated by DRDO. However, in such cases development partner would be entitled to receive license fee/ royalty as per mutually agreed terms.

12.4 TYPES OF CONTRACTS:

- a) Developmental Contract
- b) Fabrication Contract

12.5 DEVELOPMENTAL CONTRACT:

Developmental contract is concluded for the development of an item as per given design and specifications by DRDO for producing a specified quantity by the selected development partner. These contracts may subsequently lead to placement of fabrication/production contracts with unit production cost worked out based on successful completion of the contract.

12.5.1 Developmental contracts are concluded to cover the following contingencies.

- a) Where the industrially engineered models are to be developed by the contractor based on the complete design data already evolved in the DRDO Lab/Estt during design and development of a laboratory prototype. In such contracts, the development would be based on the preliminary design/ technical specifications, drawings and other information provided by DRDO Lab/Estt. The contractor will,

however, prepare production/working drawings, material specifications and other documents and develop an industrially engineered model. The development partner would guarantee the material, workmanship and performance of the equipment for a specific period.

- b) Where designing, developing and engineering are to be undertaken by the development partner as per given specifications under guidance of the DRDO Lab/Estt, the expertise available in the industry will be utilized for accomplishment of developmental task within stipulated time frame. Such contracts should envisage the development of an industrially engineered model/ equipment and supply of the same at various stages of progress of trial with drawings and other related documents by the development partner as required. The development partner would also be required to submit technical document stipulating guarantee for the design, material, workmanship and performance of the equipment for a specific period.

12.6 TYPES OF DEVELOPMENTAL CONTRACTS:

Developmental contracts will normally be of the following types :

- a) Firm-Fixed-Price Contract.
- b) Fixed Price Contract with Price Variation Clause.
- c) Fixed Price Contract providing for Re-determination of Price.
- d) Fixed Price Incentive Contract.
- e) Cost Plus Contract.

Brief description/scope on each type of contract is given below:

12.6.1 Firm-Fixed-Price Contract: Firm fixed price contract means a contract in which a lump sum amount is agreed upon for development/indigenization 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 Lab/Estt of DRDO can estimate reasonable price of development/ indigenization.

12.6.2 Fixed Price Contract with Price Variation Clause: 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 original delivery period exceeds beyond 18 months.

12.6.3 Fixed Price Contract Providing for Re-determination of Price: This type of contract is intended to eliminate the impact of contingencies due to causes other than those foreseen in the case of fixed price contract with price variation. These contingencies may be due to the development partner's unfamiliarity with the raw materials or manufacturing processes, long term contracts, lack of specifications or the use of performance rather than product specifications. In such cases prospective re-determination of price could be done –

- a) On request by either party
- b) At stated intervals/ at a determinable time.

12.6.4 Fixed Price Incentive Contract: This type of contract is designed to provide a greater incentive to the development partner to reduce the contract costs by providing higher profits if costs are reduced and lower profits when costs rise. These costs, the ceilings on target cost, target profit, a price ceiling and the formula for arriving at final cost are all settled before the execution of the contract. This contract type will only be applicable for ab-initio developmental contracts.

12.6.5 Cost Plus Contract: In this type of contract, the development partner is reimbursed the costs incurred and also receives a negotiated profit for performing the contract, i.e., the profit of the development partner and not the cost of development is fixed. Development partner's responsibility towards cost of the item is minimum except that he has to use the same care and prudence as is expected under fixed price contracts. This type of contract should be encouraged and concluded with development partner only when the uncertainty which is involved in the contract performance is of such a magnitude that the cost of performance cannot be estimated with sufficient reasonableness to permit a type of fixed price contract. It is also necessary to ascertain that the development partner has cost accounting machinery and that the cost is clearly defined. A strict R&D surveillance has to be maintained by the Dept. to ensure that costs are allocated fairly and correctly by the development partner. The RFP should provide for the access to Development Partner's books of accounts for verification of the costs by inclusion of a book examination clause in the contract. Where supplies or works have to continue over a long duration, efforts should be made to convert future contracts on a fixed price basis, after allowing a reasonable period to the development partner to stabilize their production methods.

12.7 FABRICATION CONTRACT:

Fabrication contract means a one-time contract concluded with a contractor or a firm 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 Lab/Estt.

- 12.7.1** Fabrication contracts, which do not have elaborate system requirements, test procedures and activity monitoring, can be placed following the normal procedures for supply orders as given in the preceding chapters. Material Management Forms as applicable for supply orders may be used for fabrication contracts with suitable modification wherever required. Any other additional terms and conditions if applicable to the fabrication contract may be included wherever desired.

12.8 CFA FOR VARIOUS CONTRACTS:

Various types of contracts can be adopted depending upon the nature, complexity and time span of the developmental work/project. Firm-Fixed-Price contracts, Fixed Price Contracts with Price Variation Clause and Fabrication Contracts will be concluded by Lab/Estts as per the delegated financial powers vis-à-vis mode of bidding. Fixed-Price contracts providing for Re-determination of Price, Fixed Price Incentive contracts and Cost Plus contracts will be adopted only with the prior approval of Secretary Defence (R&D) or higher authorities through DFMM. Concurrence of finance will be taken as per the delegation of financial powers.

12.9 COSTING AND TIME ESTIMATION:

Cost of developmental/ fabrication contracts will be estimated considering all elements of cost, both Non-Recurring Expenditure (NRE) and prototype costs, systematically as per costing and industrial engineering methods. These methods mainly rely on the information furnished to the cost accountants by the engineers/ scientists through their past experience of having performed similar (or same) task or by their precise estimation of various inputs required to complete the contract, based on the firmed up design drawing/data. The developmental contracts, which are being executed for the first time, may not be amenable to these cost accounting techniques, hence personal experience/ logical assessment/ experience of similar development by other Labs/Estts may be utilized for arriving at approximate cost & time estimate and in achieving optimum value for money when the contracts are concluded. Directors of Lab/Estt may hire services of professional engineering and costing consultants (if desired, whenever in-house costing is inadequate) for proper cost estimation in case of expected high value contracts.

- 12.9.1** In case the developmental contract leads to production, it is expected that per unit

production cost should not be more than prototype cost (as per developmental contract) after offsetting inflation. Sometimes, it is seen that firms undercut/ offer discount to become L1 in the developmental phase and later jack up prices during the production phase. Care should be taken by the CFA on the merit of the case to safeguard Govt. interest.

12.10 PROCESSING OF DEVELOPMENTAL CONTRACT:

Some of the important steps involved in the processing of developmental contract are as follows:

- a) Firming up of vendor qualification criteria
- b) Framing and Issue of RFP
- c) Techno-commercial Evaluation of bids and convening of CNC
- d) Placement of Contract/ Supply Order
- e) Post Contract Management

12.11 INITIATION & APPROVAL OF DEMANDS:

Procedure for initiation and approval of demands for developmental/ fabrication contracts will be as per Chapter 4 of this Manual. There would be no requirement of "Performance Security" for the "Development Contracts" entered into by DRDO. This will apply to "Development Contracts" only, as defined in Para 12.5 above. However, Warranty Bond would continue to be obtained from successful development partner to cover the DRDO interest during the warranty period.

12.12 FIRING UP OF VENDOR QUALIFICATION CRITERIA:

Identification of appropriate vendors is a vital step and must be well considered. Labs/Estts may use EOI route for firming up of vendor qualification criteria to find a suitable developmental partner(s) as per procedure mentioned hereunder.

- 12.12.1** For identifying firms willing to participate as developmental partner in respect of different categories/ products/ components, notice inviting Expression of Interest (EOI) to be published on Central Public Procurement Portal (CPP-Portal) and DRDO Website only. A notice calling for EOI/RFI will be issued/ published with "in-principle" approval of CFA / DG Cluster (whichever authority is lower). The minimum number of products/ components required to be submitted by the vendor for evaluation and likely demand for those products/ components for the next two to three years after development may be indicated, if feasible, in the EOI. The attention of known prospective development partner(s) will also be drawn towards EOI/RFI.

- 12.12.2** The EOI will contain the broad specifications and desired vendor qualification criteria, i.e., details of the resources desired with the firm in developing the product/component. The interested firms would be asked to submit the details of infrastructure and resources available with them.
- 12.12.3** Interested firms will be allowed to visit the Lab/Estt to see the product/ component required to be developed or to discuss the specifications of the proposed product. This would be indicated in the EOI.
- 12.12.4** The Director of the Lab/Estt would constitute a committee to study desired resource details, the details submitted by the firms and discuss the same with firms to fine tune the broad specifications and firm up the vendor qualification criteria for the developmental of product/ component. The committee will also estimate cost and time required to realize the product. This committee will comprise of Chairman, technical expert from a sister Lab/Estt or outside expert from other Govt. Dept./ academic institution, MMG rep. and member secretary from User group. Rep of Finance may be co-opted, if felt necessary in a given case.
- 12.12.5** In addition to above, the other provisions prescribed in the chapter 4 of this Manual will be taken into account for processing of EOI.

12.13 REQUEST FOR PROPOSAL (RFP):

For developmental/ fabrication contracts, RFP should consist of general information regarding the manner and methodology of bid submission, standard terms and conditions, special terms and conditions for the contract being contemplated, vendor qualification criteria, details of product/component to be developed, evaluation criteria for the bids and template for price bid. The RFP (**DRDO.BM.02**) will be prepared and dispatched to all respondents of EOI as per the provisions given in Chapter 6 of this Manual. The applicability of performance security in case of development contracts would be governed as per para 12.11 above. While framing the RFP for developmental contracts, vendor qualification criteria would be given special emphasis, as it is one of the important factors for successful completion of the contract and identification of potential bulk production partner. The bidders will invariably be asked to mention Non-recurring Cost (NRE) with appropriate break-up and cost of prototypes explicitly in all cases.

- 12.13.1 Acquiring Manufacturing Drawings and Associated Hardware:** To develop an alternate source of supply of an item developed and productionised by the development partner, it is essential that the manufacturing drawings are available with Lab/Estt. Since manufacturing drawings are evolved and finalised, it is likely that the

development partner would claim his rights on such drawings and may not agree to part with them. Therefore, suitable clause should be included in the RFP clarifying that manufacturing drawings prepared during the development phase shall be the property of the DRDO/ Ministry of Defence and will be handed over to DRDO whenever required. Further, these will also not be used by the development partner for any purpose other than stated in the contract, without the written consent of DRDO. All dies/ tools/die sets/ jigs/ fixtures/ moulds fabricated under the contract which are charged separately will be returned to the Lab/Estt unless specified otherwise in the contract.

12.13.2 Return of Documents: Documents, specifications, drawings issued to development partner(s) or prepared by them will be property of DRDO and the same will be returned to DRDO on demand. A provision to this effect shall be made in the RFP. A certificate to the effect that required documents have been received in the Lab/Estt would be furnished by the user. Any loss or damage to these documents shall be recovered from the development partner.

12.13.3 Apportionment of Quantity: In cases where it is decided to award developmental contracts to more than one development partner, it should be explicitly specified in the RFP. The ratio of splitting of the quantity between various development partners including criteria thereof must be pre-disclosed in the RFP as per provisions of para 6.45.1 of this Manual. The apportionment of the quantity would be done subject to the other vendor(s) agreeing to match the negotiated price and terms & conditions of L1. In case of deviation, the full order may be placed on the L1 firm, else alternate source may be explored through separate bidding.

12.14 PRE-BID CONFERENCE:

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

12.15 REQUIREMENT OF SAMPLE:

Requirement of samples, if any, would be reflected in the RFP along with the manner of their submission. The samples would be taken on no cost no commitment basis. Clarifications where required, would be discussed in the pre-bid conference.

12.16 BID PROCESSING AND CONDUCT OF CNC:

All other procedures e.g. bid opening, evaluation of techno-commercial bids, conducting of CNC etc., would be done as per the details given in Chapter 6 of this Manual.

12.16.1 Bid Evaluation: In cases where infrastructure requirement for the developmental contract has been specified, TCEC will evaluate the feasibility/ verify the infrastructure details submitted by the firms in order to assess their manufacturing capability and genuine potential for developing the product/ component.

12.17 BREAK UP OF QUOTED PRICE:

The vendor should be asked to submit the detailed break-up of cost under the headings materials (indigenous/ imported, quantity, cost), labour (number of man hours, man hour rates, etc.), design and developmental, drawings and details of overheads which will be vetted by the user at the time of CNC. Where applicable, the last purchase price (LPP) of imported item or equivalent item may be taken as the base price to arrive at the reasonableness of the quoted rates. In case LPP is not available the base price will be arrived at by the process of benchmarking which will be done prior to opening of the commercial bid. L1 will be determined as per provisions of para 8.3 with reference to the developmental cost, including the cost of prototype and the total quantity for which the initial orders are to be placed.

12.18 COST ESTIMATION:

For all developmental contracts costing above Rs. 5 crore, Director of the Lab/Estt will constitute a separate Cost Estimation and Reasonability Committee (CERC) to estimate a reasonable cost of the proposed developmental/ fabrication work. Invariably user and finance reps would be members of this committee.

12.19 PRE-REQUISITES FOR PLACING DEVELOPMENTAL/ FABRICATION CONTRACTS:

The following steps will invariably be followed while entering into a developmental contract:

- a) Publication of EOI, where required.
- b) Vendor qualification criteria will be part of RFP.
- c) Non-Disclosure Agreement (NDA) will be signed.
- d) Pre-bid conference will be held if required.
- e) Cost estimate by CERC, as per para 12.18 of this Manual, to arrive at benchmark

price prior to conduct of CNC.

- f) The payment milestones/ stages will be defined unambiguously.
- g) Contract Monitoring Committee (CMC)/ Progress Review Committee (PRC) will be constituted as per the details given in para 12.22 of this Manual.

12.20 SIGNING OF CONTRACT:

The contract will be prepared as per MM Forms issued by DFMM and signed by both the parties after approval of CFA as per the provisions of Chapter 9 of this Manual.

12.21 CONTRACT COMMENCEMENT AND COMPLETION DATES:

Care should be taken to ensure that the date of contract commencement and the date of completion must be deterministic at any given point of time. Stages if any should have well defined time schedules and specific milestones.

12.22 MONITORING PROGRESS AND MANAGEMENT OF CONTRACTS/ AGREEMENTS:

12.22.1 Responsibility to monitor the progress and operation of the Developmental/ Fabrication contract will rest with the Lab/Estt that has concluded such contract. The Lab/Estt will provide necessary guidance to the development partner as required from time to time and will maintain close liaison with them to clarify any doubts during course of its execution.

12.22.2 A Contract Monitoring Committee/ Progress Review Committee would be constituted by the Director of the Lab/Estt with a member from MMG & QAC and a senior member from other than user group. The committee would meet at least once in every quarter of the contract period to monitor the progress of development. In case the progress is not found satisfactory, committee would recommend suitable remedial measures. Where required, the committee may advise extension of contract period or short/ stage closure of the contract.

12.22.3 The recommendations of the committee on changes would be put up to to the CFA.

12.22.4 Any decision on cancellation of contract, stage or short closure of the contract would be taken by the CFA with concurrence of associated finance, if applicable.

12.23 ACCESS TO CLASSIFIED DOCUMENTS/ SYSTEMS:

The nature of activity for developmental task demands a comprehensive knowledge of the complete system/ documentation. Development partner will be allowed to access pertinent classified details/documentation in the interest of execution of task.

Association of the development partner will be desirable for effective rectification of design defects, if any, during trials of systems/ sub-systems, being developed as part of the contract. In all such cases, the development partner and his employees, connected with the assigned task, will be subject to the provisions contained in the Indian Official Secrets Act and required to render certificate to that effect.

12.24 APPROVAL OF MILESTONES/ ACTIVITIES:

Contract having more than one process/ stage may require inspection/ approval of completion of each process/ stage. The contract should clearly address this issue.

12.24.1 It is recommended to specify that the development partner shall give notice in writing to the Lab/Estt for such inspections at least 10 days in advance. In the absence of such notice by the development partner, the development partner shall be held responsible for delay and in the event of any dispute in this respect; the decision of the Director shall be final and binding.

12.25 AMENDMENTS TO CONTRACT TERMS AND CONDITIONS:

Any amendment in the contract would be done as per the provision contained in Chapter 10 of this Manual.

12.26 REPEAT ORDER:

Placement of Repeat Order, if specified in the contract, would be governed as per provisions of para 10.11 of this Manual after offsetting the NRE cost.

12.27 PROCUREMENT OF DEVELOPED STORE FROM AGENCIES ASSOCIATED WITH DEVELOPMENT:

Any item developed/ manufactured by Indian industry, public or private, with transfer of technology from DRDO or through development contract, shall be procured from the industry (ies) concerned only. The same industry(ies) shall also be approached for repairs, overhauling or any other service for which facility has been set up by the industry (ies) exclusively for development/production of the said item. Such cases would not be treated as single tender procurement.

CHAPTER 13

PROCUREMENT OF TECHNICAL BOOKS AND JOURNALS

13.1 GENERAL:

The major objective of DRDO Libraries/ Technical Information (Resource) Centres/ Knowledge Centres (KCs) is to provide relevant, required and current information at the right time to the scientists working on various projects in the DRDO Labs/Estts. These are not academic or general libraries but are special libraries and deal with publications in special and focused subject areas. Books, technical reports, standards, patents related information, databases, scientific journals and periodicals in print and digital form are some of the important types of documents required by DRDO libraries. Sometimes, journal articles, audio-visual, optical, multimedia and e-learning material as well as ephemeral material may also be required for procurement.

13.2 DEMAND INITIATION:

The demand for the technical books and journals would be raised by the Library in-charge of the Lab/Estt on the basis of requirements projected by the users of technical library. Library in-charge may also raise demand for the periodicals and journals to complete/ continue the collection in the Library.

13.3 LIBRARY ADVISORY COMMITTEE (LAC):

Director of the Lab/Estt may appoint a Library Advisory Committee consisting of Chairman of the rank of Scientist 'E' or above, three to five members representing various subject disciplines of the Lab/Estt and the Library In-Charge (Officer-In-Charge) who will also be the Member Secretary. The LAC is an essential body advising and guiding the library in its activities and services. The LAC also advises the Director of the Lab/Estt on the policy matters pertaining to administration of library.

13.3.1 Functions of LAC:

The basic functions of the LAC are as under:

- a) To lay down the general library policy and rules,
- b) To scrutinize the demands for procurement of print and digital documents and make necessary recommendations for approval of the CFA for balanced growth of library resources,
- c) To lay down and review the procedures for the library to optimize efficiency and usage of the library services,

- d) To deal with any other matter concerning the library that may arise from time to time.

13.3.2 The LAC will be advisory in nature and not to perform any administrative functions. The decisions taken by the LAC will be subject to the approval of the Director of the Lab/Estt.

13.4 PROCUREMENT OF BOOKS/ PUBLICATIONS OTHER THAN PERIODICALS:

Bidding process will not be mandatory for procurement of books/ publications other than periodicals. The procurement procedure involves selection of books/ publications, placement of order, receiving, accessioning, bill processing etc. are governed as per the procedures outlined in "Procedures for Management of Libraries and Technical Information Centre" issued by DESIDOC. These functions are almost common for acquisitions of all kinds of library books/ publications except periodicals and scientific journals.

13.4.1 In view of high costs, no library can afford to purchase all the information, materials, documents needed or demanded by its readers even if they are relevant to the establishment. Library should procure documents by following the golden rule "the most relevant documents covering core and major subject interests of the establishment, for the largest number of users and at the least cost" within the resources available. Therefore, selection and procurement are important functions of a library for balanced resources for current and potential use.

13.5 PROCUREMENT OF PERIODICAL PUBLICATIONS:

Acquisition of periodical publications is different because generally advance payment is mandatory for subscription and renewal of periodicals. Either of the following methods of procurement may be followed for procurement of periodicals.

- a) Bidding process
- b) Direct ordering

LAC may scrutinize the procurement proposals of periodicals and recommend procurement through bidding or direct order placement to CFA on case to case basis. In the absence of specific recommendations, bidding process must be followed for procurement of periodicals. Direct ordering should be recommended only in exceptional cases where bidding process is not practical.

13.6 GUIDELINES FOR PROCUREMENT FOR BOOKS/ JOURNALS:

DRDO has libraries/ Technical Information Centers/ Knowledge Centers functioning in

its Labs/Estt. Keeping in view the special needs of these libraries, library procedure manual titled “Procedures for Management of Libraries & Technical Information Centers”, as amended, issued by Defence Scientific Documentation and Information Centre (DESIDOC) after requisite approval of Secretary Defence (R&D) with the concurrence of Addl. FA (R&D) & JS will be applicable. This manual provides detailed guidelines for procurement of books, technical reports, standards, patents related information, databases, scientific journals and periodicals in print and digital form, journal articles, audio-visual/ optical/ multimedia and e-learning material.

CHAPTER 14

OUTSOURCING OF SERVICES

14.1 GENERAL

14.1.1 Rule No. 198 of GFR-2017 iterates that a Ministry or Department may outsource certain services in the interest of economy and efficiency and it may prescribe detailed instructions and procedures for this purpose without, however, contravening the guidelines given in succeeding paragraphs.

14.1.2 Out sourcing is the act of transferring some of an organization's non-core functions to service providers/ contractors.

14.2 PURPOSE OF OUTSOURCING:

Outsourcing is often used to acquire services for following reasons:

- a) Unavailability of service in-house
- b) Focusing on core services
- c) Reduction in cost
- d) IT support etc.

14.3 TYPES OF SERVICES THAT MAY BE OUTSOURCED:

Types of services that are out-sourced by Lab/Estt may be classified in following categories:

- a) Services for which specific Government orders have been issued.
- b) Services for which requirements are well known and the skill-set of the service provider who can do the job is also well known, and there is no significant advantage to have a service provider having higher skill-set. Such services would be out-sourced as per the provisions given in earlier chapters.
- c) Services for which minimum skill-set of the service provider who can do the job is well known but service provider having higher skill-set would add significant value to the outcome because requirements cannot be expressed in quantifiable terms.
This chapter specifically addresses out-sourcing of such services.

14.3.1 The following services have been covered under separate orders and, therefore, would continue to be outsourced as per those orders.

- a) Outsourcing of services pertaining to Basic Research Services e.g. Contract for

Acquisition of Research Services (CARS), Contracts for Acquisition of Professional Services through IDST (CAPSI) will be governed as per the extant orders.

- b) All Security Contracts will be governed as per the guidelines issued by Directorate General of Resettlement (DGR)/ Ministry of Defence.

14.4 IDENTIFICATION OF LIKELY SERVICE PROVIDERS:

Lab/Estt will prepare a list of likely and potential service providers/ contractors on the basis of formal or informal inquiries from other Ministries or Departments or Organizations involved in similar activities, scrutiny of 'yellow pages', and trade journals, if available, website etc.

14.5 SELECTION OF SERVICE PROVIDERS:

The selection of service provider/ contractor will be done as per any of the following methods; as considered appropriate with the approval of CFA as per delegation of financial powers in vogue.

- a) **Quality and Cost Based Selection (QCBS):** Under normal circumstances, this method of evaluation shall be used for services which are of generic and recurring nature for which standard operating procedures have been prescribed along with minimum qualifying criteria. The service provider will be selected on L1 basis only as per the procedures described in preceding Chapters.
- b) **Combined Quality Cum Cost Based System (CQCCBS):** This method of selection shall be used for highly technical projects/ services/ assignments which have high impact and hence it is essential to engage highly skilled agency which offers their professional services. Output of such services is highly dependent on the expertise of the service provider. For such services weightage needs to be given to higher technical standards, while finalizing the prices. The service provider will be selected on L1-T1 basis as per para 14.8 of this Manual.

14.6 DEMAND INITIATION & APPROVAL UNDER QCBS:

Demand will be initiated and approved as per the provisions given in Chapter 4 of this Manual. CFA will be determined as per the delegation of financial powers in vogue for selection of service provider.

14.7 DEMAND INITIATION & APPROVAL UNDER CQCCBS:

Selection of service provider under CQCCBS implies that the evaluation of bids will be done on the basis of both "Non-price Attributes" and "Price Attributes". The Non-price

attributes comprises of parameters related to technical competency/ managerial ability such as availability of qualified personnel and support staff; experience of key personnel or availability of in-house QA practices etc. The Price attribute is related to the price quoted by the bidders. The demand approval process in such cases would inter-alia require compliance of following:

- a) RFP will be prepared and issued with concurrence of finance. Standard format of RFP would be appropriately modified to incorporate following:
 - (i) Details of work or service to be performed by the contractor.
 - (ii) The facilities and the inputs that would be provided to the contractor by the Lab/Estt.
 - (iii) Eligibility and qualification criteria to be met by the contractor for performing the required work or service.
 - (iv) The statutory and contractual obligations to be complied with by the contractor.
 - (v) Suitable evaluation criteria wherein weightages of “Non-price Attributes” and “Price Attributes” to be mentioned upfront.
 - (vi) In case of outsourcing consultancy services, following Terms of Reference (TOR) will be included in the RFP:
 - Purpose/ objective of the assignment;
 - Detailed scope of work;
 - Expected input of key professionals (number of experts, kind of expertise required);
 - Proposed schedule for completing the assignment;
 - Reports/deliverables required from the service provider.
 - Background material, previous records etc. available and to be provided to the service provider.
 - Procedure for review of the work of service provider after award of contract.
 - (vii) Standard formats for technical proposal.
 - (viii) Standard formats for financial proposal.

- b) **Pre-bid Meeting:** A pre-bid meeting will invariably be prescribed in the RFP for selection of service provider under CQCCBS. The date and time for such a meeting should normally be after 15 to 30 days of issue of RFP and should be specified in the RFP itself. During this meeting, the scope of assignment, responsibilities of either parties or other details should be clearly explained to the prospective bidders so that there is no ambiguity later on at the time of submission of technical/financial bids. Where some significant changes are made in the terms/ scope of RFP as a result of pre bid meeting or otherwise considered necessary by the Lab/Estt, a formal Corrigendum to RFP may be issued. In such cases, it should be ensured that after issue of Corrigendum, reasonable time is available to the bidders to prepare/submit their bid. If required, the time for preparation and submission of bids may be extended suitably.
- c) Two bid system will be followed for all cases irrespective of the cost. The submitted bids would be evaluated as per the provisions given for the two bid system in Chapter 6 of this Manual. CNC will be conducted for all cases under **CQCCBS**.
- d) CFA will be determined as per the delegation of financial powers in vogue for selection of service provider.

14.8 EVALUATION UNDER COMBINED QUALITY CUM COST BASED SYSTEM (CQCCBS):

- 14.8.1** Under CQCCBS, the proposals will be allotted technical and financial weightage depending upon the nature of assignment.
- 14.8.2** Proposal with the lowest cost, evaluated as per the provision of Chapter 8 of this Manual, may be given a financial score of 100 and other proposals given financial scores that are inversely proportional to their evaluated cost.
- 14.8.3** The total score, both technical and financial, shall be obtained by weighing the quality and cost scores and adding them up. The proposed weightages for technical and financial shall be specified in the RFP.
- 14.8.4 Highest Points Basis:** On the basis of the combined weighted score for technical and financial, the service provider shall be ranked in terms of the total score obtained. The proposal obtaining the highest total combined score in evaluation of quality and cost will be ranked as H-1 followed by the proposals securing lesser marks as H-2, H-3 etc. The proposal securing the highest combined marks and ranked H-1 will be invited for negotiations, if required and shall be recommended for award of contract.

As an example, the following procedure can be followed. In a particular case of selection of service provider, It was decided to have minimum qualifying marks for technical qualifications as 75 and the weightages of the technical bids and financial bids was kept as 70 : 30. In response to the RFP, 3 proposals, A, B & C were received. The TCEC awarded them 75, 80 and 90 marks respectively. The minimum qualifying marks were 75. All the 3 proposals were, therefore, found technically suitable and their financial proposals were opened after notifying the date and time of bid opening to the successful participants. The CNC examined the financial proposals and evaluated the quoted prices as under:

| Proposal | Evaluated Cost |
|-----------------|-----------------------|
| A | Rs. 120 |
| B | Rs. 100 |
| C | Rs. 110 |

Using the formula LEC / EC , where LEC stands for lowest evaluated cost and EC stands for evaluated cost, the committee gave them the following points for financial proposals:

| Proposal | Evaluated Cost | Cost Marks |
|-----------------|-----------------------|-------------------------------------|
| A | Rs. 120 | $(100/120) \times 100 = 83$ points |
| B | Rs. 100 | $(100/100) \times 100 = 100$ points |
| C | Rs. 110 | $(100/110) \times 100 = 91$ points |

In the combined evaluation, thereafter, the evaluation committee calculated the combined technical and financial score as under:

| Proposal | Evaluated Cost | Cost Marks | Combined Marks |
|-----------------|-----------------------|-------------------|--|
| A | Rs. 120 | 83 points | $(75 \times 0.70) + (83 \times 0.30) = 77.4$ pts |
| B | Rs. 100 | 100 points | $(80 \times 0.70) + (100 \times 0.30) = 86$ pts |
| C | Rs. 110 | 91 points | $(90 \times 0.70) + (91 \times 0.30) = 90.3$ pts |

The three proposals in the combined technical and financial evaluation were ranked as under:

| Proposal | Evaluated Cost | Cost Marks | Combined Marks | Rank |
|-----------------|-----------------------|-------------------|-----------------------|-------------|
|-----------------|-----------------------|-------------------|-----------------------|-------------|

| | | | | |
|---|---------|---------|----------|----|
| A | Rs. 120 | 83 pts | 77.4 pts | H3 |
| B | Rs. 100 | 100 pts | 86 pts | H2 |
| C | Rs. 110 | 91 pts | 90.3 pts | H1 |

Proposal C at the evaluated cost of Rs.110 was, therefore, declared as winner and recommended for negotiations/approval, to the competent authority.

- 14.8.5 Outsourcing by Choice:** In exceptional situations should it become necessary to outsource a job by nomination to a specifically chosen service provider/ contractor, the CFA may do so in consultation with finance. In such cases the detailed justifications, the circumstances leading to the outsourcing by nomination and the special interest or purpose it shall serve shall form an integral part of the proposal.
- 14.8.6 Expenditure Sanction:** The expenditure sanction would be obtained from the CFA and contract will be entered as per the provisions given in Chapter 9 of this Manual.
- 14.8.7 Contract Monitoring:** Lab/Estt may constitute a committee of not less than 3 officers of appropriate level to continuously monitor the performance of service provider/ contractor. Payment as per the schedule would be released to the service provider after receipt of satisfactory service report and confirmation for ensuring compliance of contract obligations & statutory rules governing payment of wages to the employees of the service provider.
- 14.8.8 Extension of Contracts:** Extension of the contracts for outsourcing the services shall be done in accordance with para 10.12 of this Manual.

CHAPTER 15

RATE CONTRACT/ PRICE AGREEMENT

15.1 OBJECTIVE:

The basic objective of a procuring entity is to provide store of right quality, in right quantity, at the right place, at the right time and right price to meet the requirement of the user. One of the ways of ensuring this is to conclude a “Standing Offer Agreement (SOA)” for all common use items which are regularly required and whose prices are likely to be stable and not subject to considerable market fluctuations. It requires Buyer to enter into an agreement with appropriate firms/ manufacturer to supply their product against requirement at a fixed price and as per the terms & condition of the agreement. Rate Contract (RC) and Price Agreement (PA) are types of SOA. These agreements enable procuring entity to procure indented items promptly and with economy by cutting down the order processing and inventory carrying costs.

15.2 RATE CONTRACT (RC)/ PRICE AGREEMENT (PA):

RC: It is a contract between the Buyer and the Seller wherein the Seller agrees to provide, on demand, specified goods or services under specified terms & condition during a set period at a definite price.

PA: It is a contract between the Buyer and the Seller wherein the Seller agrees to provide, on demand, specified goods or services under specified terms & condition during a set period at a definite discount structure.

15.3 SALIENT FEATURES OF RC/PA:

- a) Neither quantity is mentioned nor any minimum drawal guaranteed in the contract.
- b) It is in the nature of a standing offer from the firm.
- c) Seller is bound to accept any order placed on him during the validity of the RC period.

15.4 TYPES OF ITEMS SUITABLE FOR ENTERING INTO RC/PA:

Following types of common use items may be considered for entering into RC/PA:

- a) Items required by several users on recurring basis and having clear specifications.
- b) Fast moving items with short shelf life or storage constraints.
- c) Items with minimum anticipated price fluctuation during the currency of the contract. Items with high probability of considerable price fluctuation should not be considered

to be covered except for short term contract.

- d) Items that take long gestation period to manufacture and for which there is only one source for manufacturing.

15.5 ADVANTAGES OF RC:

15.5.1 To Buyers:

- a) Facility of bulk rate at lowest competitive price.
- b) Saves time and effort in tedious and frequent bidding at multiple user locations.
- c) Enables buying as and when required.
- d) Just in time availability of supplies reduces inventory carrying cost.

15.5.2 To Sellers:

- a) Access to large volume of purchase without going through bidding process and follow up at multiple user locations – saving in administrative and marketing efforts and overheads.
- b) Rate contract lends respectability and image enhancement.

15.6 GUIDELINES FOR ENTERING INTO RC:

Stores of standard types required in bulk quantity which are common and in regular demand, and for which the price is not subject to appreciable market fluctuations, shall be purchased against Rate Contract/ Price Agreement (RC/PA) based on assessed future consumption.

15.6.1 Rate contract/ Price Agreement (RC/PA) will normally be entered into, if the annual drawals against the contracts are expected to exceed Rs.10 lakh.

15.6.2 Normally the duration of a Rate Contract/ Price Agreement should be for a period not exceeding three years.

15.6.3 No new RC/PA should be placed with the firms having backlog against existing contracts and also if the backlog is likely to continue for the major portion of the new contract period.

15.6.4 RC/PA should be placed only on registered and/or reputed and established firms, which are capable of supplying the stores as required.

15.6.5 In cases where a firm already has a RC/PA with any other Government Department, Central/ State Public Undertaking, etc., it should be ensured that the contract is entered

into on not less favourable terms and conditions than those agreed to by it with the other Departments, Undertakings, etc.

15.7 CFA DETERMINATION FOR ENTERING INTO RC/ PA:

CFA for entering into such contracts will be determined based on the anticipated value of annual drawal vis-à-vis mode of bidding. RC/PA with validity period of more than three years would be concluded with prior approval of Secretary Defence (R&D) with the concurrence of Addl. FA (R&D) & JS for all CFAs in DRDO.

15.8 PERIOD OF RC/PA:

Normally the duration of such agreement should be for a period not exceeding three years. No extension to validity of the contract is required when deliveries against outstanding supply orders continue after expiry of the validity period.

15.9 PROCESS OF CONCLUDING RC/PA:

15.9.1 Finalization of scope: The scope of RC/PA will be finalized by MMG of Lab/Estt after consolidating the demand of other Labs/Estts in the station, if applicable.

15.9.2 Demand initiation and its approval: Rate Contract can be entered into by the Lab/Estts either for items required by several users (Lab/Estt) in a station on recurring basis or for meeting the specific requirement of a particular Lab /Estt.

15.9.3 RC cases which are suitable for a specific Lab may be processed and finalized by the Lab as per provisions of this chapter without referring to HQrs. RC cases which involve multiple Labs would be referred to DFMM/DRDO HQrs only for nomination of a nodal Lab. Thereafter, the consolidated RC case would be processed and finalized by the nodal Lab. CFAs for the consolidated RC case would be decided as per the approval chain in the DFP pertaining to the nodal Lab.

15.9.4 Mode of Bidding: The default mode of bidding to finalize a RC will be on the basis of open bidding. PA will be concluded only with the manufacturers/exclusive dealers. Other mode of bidding may be adopted in exceptional cases with due justification.

15.9.5 Bidding Process: This will be done as per the provisions contained in Chapter 6 of this Manual. Format of RFP would be suitably modified for conclusion of RC/PA by inclusion of the special terms and conditions for such contracts. Some of these conditions are given in para 7.3 of this Manual. All the cases of RC/PA would be scrutinized by CNC as per para 6.38 as applicable. The L1 bidder would be determined as per provisions of para 8.3 of this Manual.

15.10 CFA APPROVAL FOR SIGNING RC/PA:

Approval of CFA for concluding RC/PA would be obtained as per the delegation of financial power, based on the recommendation of CNC. CFA would be determined on the cumulative anticipated annual withdrawal against such RC/PA even if parallel RCs are entered through separate bidding.

15.11 SCRUTINY AND APPROVAL OF RC/PA:

A draft contract will be prepared by MMG as per the format **DRDO.RC.01** and the same shall be scrutinized, by an officer specifically authorized by Director of RC/PA concluding Lab/Estt, for its correctness vis-a-vis rate and terms & conditions approved by CFA. The draft contract may also be referred to finance rep for scrutiny. Thereafter, the agreement should be signed and dispatched as per para 9.2.4 and 9.2.5 of this Manual. Copy of the contract will also be sent to all the Labs/Estts who may be using it.

15.12 PARALLEL RC:

In cases it is observed that the rate contractor does not have capacity to cater for expected demand or where it is desired to have a wider vendor base for whatever reasons, RCs will be concluded with more than one firm for the same store/ service. Such contracts are known as parallel RCs. Parallel RCs will be concluded with other bidders at L1 rate and terms & conditions. For the sake of transparency and to avoid any criticism, all such RCs are to be issued simultaneously.

15.13 SPECIAL CONDITIONS APPLICABLE FOR RC/ PA:

15.13.1 Earnest Money Deposit (EMD) is not applicable.

15.13.2 In the schedule of requirement, no quantity is mentioned; only the anticipated drawal may be mentioned without any commitment.

15.13.3 Performance cum Warranty Bond of reasonable amount from the RC/PA holders will be obtained prior to entering into such agreement.

15.13.4 Payment Terms: Payment up to 100% may be released on receipt of stores at consignee's premises against Invoice, Inspection Note, and Certificate in respect of Fall Clause. The balance payment will be made after accounting of items by the consignee.

15.13.5 The Buyer reserves the right to conclude more than one RC for the same item.

15.13.6 The Buyer as well as the Seller may withdraw the RC/ PA by serving suitable notice to each other. The prescribed notice period is generally not less than thirty days. However, supply orders placed during the notice period will be honoured by the Seller.

15.13.7 In case of emergency, the Buyer may purchase the rate contracted item through ad-hoc contract with a new Seller.

15.13.8 Usually, the terms of delivery in RC/PA are FOR dispatching station. This is so, because such agreements are to take care of the users spread all over the country. However, wherever it is decided to enter into RC/PA which is FOR destination, the cost of transportation should be separately asked for.

15.13.9 The Buyer and the authorized users of the RC/PA are entitled to place supply orders up to the last day of the validity of the agreement and, though supplies against such supply orders will be effected beyond the validity period of the agreement, all such supplies will be governed by the terms and conditions of the RC/PA.

15.13.10 Supply orders, incorporating definite quantity of goods to be supplied as per the terms and conditions of agreement, will be issued for obtaining supplies on need basis.

15.13.11 Fall Clause: All RC/ PA will be governed by "Fall Clause". The following Fall Clause will invariably form part of the agreement:

- a) The prices charged for the stores supplied under the agreement by the Seller shall in no event exceed the lowest price at which the Seller sells the items of identical description to any other person/organization during the period till performance of all supply orders placed during the currency of the agreement is completed.
- b) If, at any time, during the said period, the Seller reduces the sale price of such stores or sells stores to any other person/organization at a price lower than the price chargeable under the agreement, he shall forthwith notify such reduction or sale to the authority which has concluded the RC/PA; and the price payable under the agreement for the stores supplied after the date of coming into force of such reduction or sale shall stand correspondingly reduced.
- c) However, the above stipulation will not apply to:
 - (i) Export by the Contractor.
 - (ii) Sale of stores as original equipment at prices lower than the prices charged for normal replacement.
 - (iii) Sale of stores such as drugs, perishable goods which have expiry dates.

15.13.12 Certificate in respect of Fall Clause:

- a) While submitting his bills for the goods supplied against the Rate Contract/ Price Agreement, the Contractor shall give the following certificate also:

“I/We certify that the stores of description identical to the stores supplied to the Government under the contract herein have not been offered/sold by me/us to any other person/ organization up to the date of bill/the date of completion of supplies against supply orders placed during the currency of the RC/PA, at a price lower than the price charged to the Government under the contract.”

- b) If the Contractor sells any goods at lower than the contract price, except covered by any of the three exceptions indicated above as per para 15.13.11 (c) of this Manual, such sales have also to be disclosed in the aforesaid certificate to be given by the Contractor to the Government. The obligations of the Contractor in this regard will be limited with reference to the goods identical to the contracted goods sold or agreed to be sold during the currency of the contract.

15.13.13The successful bidder shall maintain stocks at the station and shall make deliveries against supply orders from such stocks within the specified period.

15.14 PERFORMANCE SECURITY / WARRANTY BOND:

Depending on the anticipated overall drawal against a RC/PA and, also, anticipated number of parallel RCs to be issued for an item, the authority concluding such contract will obtain Performance Security / Warranty Bond in the form of BG of reasonable amount from the RC/PA holders. A suitable clause to this effect is to be incorporated in the RFP. It shall, however, not be demanded in the supply orders issued against RC/PA.

15.15 PLACEMENT OF SO AGAINST RC/PA:

The demand for the procurement of items on RC/PA will be approved by CFA as per delegation of financial powers vis-à-vis mode of bidding on which the agreement has been concluded. Based on the approval of such demand, MMG will place the SO on RC/PA holder as per the format **DRDO.RC.02**.

15.16 RENEWAL AND EXTENSION OF RC/PA:

It should be ensured that new RC/PA are made operative right after the expiry of the existing contract without any gap. In case, however, it is not possible to conclude new RC/PA due to some special reasons, timely steps are to be taken to extend the existing contracts with same terms, conditions etc. for a suitable period, with the consent of the Contract holders. Period of such extension should generally not be more than three months. While extending the existing contracts, it shall be ensured

that the price trend is not lower. RC/ PA of the firms, which do not agree to such extension, is to be left out of consideration for renewal and extension. Any extension of the existing RC beyond a period of three years would need the approval of Secretary Defence (R&D) with the concurrence of Addl. FA (R&D) & JS.

15.17 TERMINATION AND REVOCATION OF RC/ PA:

RC/PA is in the nature of standing offer and a legal contract comes into force only when a supply order is placed by the Buyer. Being just a standing offer, embodying various terms of the offer, the contract holder may revoke it at any time during its currency. However, reasonable opportunity i.e. not less than thirty days should be given to the contractor to represent against any revocation/cancellation of RC/PA.

CHAPTER 16

PAYMENT/ CLEARANCE OF BILLS

16.1 GENERAL:

After the stores have been received in good condition, inspected to the satisfaction of the user and Brought on Charge (BOC), it becomes obligatory on the part of Lab/Estt to clear the Seller's bills promptly. It is the responsibility of the Lab/Estt to ensure that the Seller's bills are paid as per terms and conditions stipulated in the supply order/ contract. To prevent any misuse and to promote transparency, all payments to Sellers may be made through electronic mode of payment only. The supply orders/ contracts may include a clause asking the Sellers to provide details of their banker's name, branch, branch code, branch address, account (a/c) number, type of a/c, MICR number, IFS Code and PAN with their bills as a measure of safety so as to enable the paying authority to credit the payment into Sellers' a/c directly through electronic mode of payment. In situations where electronic mode of payment is not possible, Lab Director will authorize the payment by account payee cheque. The Seller will furnish bankers details such as banker's name, branch and a/c no. to the paying authority. Details of payments made by cheque will be intimated to the local audit authorities periodically.

- 16.1.1** Lab/Estt will communicate the specimen signatures of the officers authorized, to the paying authority, to sign contingent bills, CRVs and other financial documents.

16.2 DOCUMENTS TO BE ENCLOSED FOR CLAIMING PAYMENT:

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

16.2.1 Documents to be submitted to the audit authority along with advance copy of the Supply Order/ Contract:

- a) Ink signed copy of the Supply Order/ Contract and amendments thereon with authority.
- b) An ink-signed copy of Financial Sanction of the CFA and amendments.
- c) A copy of the techno-commercial evaluation report in case of two bid system.
- d) A copy of the Comparative Statement of Bids (CSB)/ CNC proceedings, as applicable.
- e) PAC/ any other certificate that may be peculiar to the procurement.

Note: In case documents listed above are not sent in advance to the audit authority, they may be called for by such authority at the time of payment of bills/ post audit, where applicable.

16.2.2 Documents to be submitted to paying authority for payment along with the Bill:

a) **For Indigenous Sellers:**

- (i) An ink-singed copy of the Contingent Bill/ Seller's Bill duly countersigned
- (ii) An ink-signed copy of the Commercial Invoice
- (iii) A copy of the Supply Order/ Contract and amendments
- (iv) An ink-signed copy of CRV
- (v) Inspection Note/ Progress Report/ Job Completion Certificate/ Installation Report, as applicable
- (vi) Bank Guarantee/ Indemnity Bond for advance, as applicable
- (vii) Performance Security Bond and Warranty Bond, as applicable
- (viii) DP extension and Imposition/ waiver of LD with authority
- (ix) Self certification from the Seller that the GST/any other taxes received under the contract would be deposited to the concerned taxation authority. In this regard, extant Government orders will be applicable *as communicated by DRDO HQ.*
- (x) Details for electronic payment
- (xi) Certificate from user confirming receipt of required documents in case of Design, Developmental and Fabrication Contract
- (xii) Any other document/certificate that may be provided for in the supply order/ contract

b) **For Foreign Sellers:**

- (i) Clean on Board Airway Bill/Bill of Lading
- (ii) Original Invoice
- (iii) Packing List

- (iv) Certificate of Origin from Seller's Chamber of Commerce, if any
- (v) Certificate of Quality and year of manufacture from OEM
- (vi) Dangerous Cargo Certificate, if applicable
- (vii) Insurance Policy of 110% value in case of CIF/ CIP contract
- (viii) Certificate of Conformity and Acceptance Test at PDI, if any
- (ix) Phyto-sanitary/ Fumigation Certificate, if any
- (x) *Any other documents as provided for in the Contract*

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

16.3 PROCESSING OF BILLS:

All bills received will be registered centrally and processed for payment after ensuring the availability of funds under the relevant budget head. The following points will be ensured:

- a) Prompt action in case any discrepancy is detected in the contractor's bills.
- b) Bills prepared on prescribed form are pre-receipted bearing revenue stamps on bills as applicable.
- c) Amounts are shown both in words and figures and are rounded off to the nearest rupee.
- d) The nomenclature of the items and the quantities are in accordance with the supply order/ contract.
- e) The amounts claimed on account of incidental charges are admissible as per terms and conditions of the order/ contract.
- f) Cash receipts/ certificates are enclosed in support of packing and forwarding charges and original cash receipts for postage and insurance are enclosed, wherever applicable.
- g) GST Regd. No./ PAN is enclosed.
- h) CRV/ Inspection Report (IR) is enclosed with the bill. Nomenclature of the items

on CRV/ IR should exactly correspond to those shown in the supply order/ contract and the contractor's bill. Rates and total value of all items should be shown in the CRV/ IR.

- i) Receipted copy of the delivery challan is enclosed with the bill.
- j) In case of advance payments, Bank Guarantee/ Indemnity Bond or equivalent bond is enclosed.
- k) The arithmetical accuracy of the bills will be thoroughly checked before payment.
- l) Deductions will be made from the bills on account of demurrage/ wharfage paid by Lab/Estt on consignments due to late receipt of RR/ LR (Railway Receipt/ Lorry Receipt).
- m) Income tax will be deducted as applicable.

16.3.1 Time Schedule for Clearance of Bills: Expeditious processing of bills, after acceptance of stores, is essential to ensure the payment to the Seller within the prescribed time limit to avoid legal implication leading to payment of penal interest on delayed payments. For this purpose, Labs/Estts will issue local orders fixing time schedules for completion of inspection, accounting and submission of bills for release of payment to the paying authority.

16.3.2 The bills for accepted stores along with documents as prescribed in para 16.2.2 of this Manual will be forwarded by Lab/Estt (MMG) to Finance Section handling cash assignment or local CDA (R&D)/ paying authority for payment. On the receipt of the cheque slip/ intimation from the paying authority, ECS payment details or the cheque number, date and amount will be entered in the bill register and cheque slip inserted in the purchase file.

16.3.3 Balance Payment: In case of payments made from cash assignment, necessary entries in this regard will be made in the progress register. All payments (up to 90% or 95%) shall be entered in the progress register. The bills for the balance (10% or 5%) payments to the Seller shall be submitted with supporting documents as applicable to local CDA (R&D)/ paying authority for settlement.

16.3.4 Adjustment of Advances: All advances given to the Seller will be adjusted against the intermediate milestone payments or in any case against the final stage payment due to the Seller within six months from the date of receipt of stores/ completion of milestone/ service.

16.3.5 Advance payments made to the Seller, will be entered in the Advance Payment Register and submission of the adjustment/ final claims regulated with reference to this register.

16.3.6 Lab/Estt will maintain a Register of Bank Guarantees furnished by the Seller to them. The records should be maintained with a designated officer who will periodically check their validity during currency of the contract/ supply order and advise extension as required.

16.3.7 Payment against Time Barred Claims: Claims of Sellers preferred after 3 years are time barred by the Statute of Limitations. The time from which the limitations begin to run will generally be calculated from the date when the payment falls due/ from date of delivery and acceptance of goods, unless the payment claim has been under correspondence. Such time barred claims cannot be paid without the sanction of Govt. For claiming such an amount, the Seller has to make a request for special treatment to allow his payment and giving the justifications for such special treatment. The decision to accept or refuse such payments shall be taken by the Govt. on case to case basis. However, limitation is saved if the Seller has forwarded his initial claim within the time allowed and it had been under consideration with the Govt. during which time the claim may have been modified or corrected with the consent of the parties before it is admitted for payment. Such period of consideration will not be counted towards the period for limitations provided after such modifications or corrections the claim remains substantially the same. Time Barred claims will be sent to DFMM, DRDO HQ for necessary approval along with confirmation from concerned CDA (R&D)/ paying authority that payment has not been made. Thereafter, Lab/Estt will send a copy of the approved time barred sanction to the paying authority along with the claim of the Seller for payment.

16.3.8 These provisions exclude the payment withheld due to non-compliance of terms and conditions of the contract by the Seller.

16.4 LOST/ MISPLACED CHEQUES AND ISSUE OF FRESH CHEQUES:

In the event of loss/ misplacement of cheque, the following procedure will be followed:
(This procedure is not applicable in case of payment made through electronic mode.)

16.4.1 The beneficiary must lodge a written complaint to the Lab/Estt regarding loss/ misplacement of the cheque issued in his favour and non-realization of payment against a legitimate supply/ service rendered by him within the validity period of the cheque. After expiry of validity period, the Lab/Estt will obtain a Non-Payment Certificate (NPC) from the bank stating that the cheque has not been honoured and no

payment released to the beneficiary.

- 16.4.2** The Seller will execute an indemnity bond, duly notarized on the appropriate non-judicial stamp paper stating the fact of loss/ misplacement of the cheque (No. _____ Date _____ Amount _____) and non-encashment during the period of validity.
- 16.4.3** The above mentioned document, in original, will be forwarded to the concerned paying authority with a request to issue a Non-Payment Certificate (NPC).
- 16.4.4** The CDA (R&D), after verification and confirmation that the cheque in question has not been encashed, will issue NPC for issue of a fresh cheque.
- 16.4.5** If, after verification, the CDA (R&D) finds that the cheque has been paid, they CDA (R&D) will send a photocopy of the cheque to the concerned Seller to take up the matter with the bank for reconciliation and settlement.

16.5 PREPARATION OF CRV:

Lab/Estt will prepare CRVs immediately after receipt/ acceptance of stores. After acceptance of stores, CRVs along with the billing documents will be sent to paying authority for settlement of advance/payment. In cases where bill for balance payments are received later, CRV No. and CRV date should be mentioned while sending these bills for payment for linking by the paying authority.

16.6 TAX DEDUCTED AT SOURCE (TDS):

Paying authority will ensure prompt filing of the details of TDS periodically, in respect of procurement cases, as per the instructions of tax authorities. Utmost care has to be exercised while preparing the data of TDS and ensure that all information filled under TDS is correct.

16.7 MONTHLY EXPENDITURE REPORT (MER) TO PAYING AUTHORITY:

The finance section of Lab/Estt handling the cash assignment will close the accounts on 25th of every month except the month of March and prepare the MER for the month. The accounts for the month of March will be closed on the last working day of the month. The MER in respect of Build-up and projects must be prepared separately. The Finance Section will forward the MER(s) to CDA (R&D) within 3 working days from the date of closing of accounts.

16.8 EXPENDITURE MANAGEMENT UNDER SANCTIONED PROJECTS:

Lab/Estt will entrust the responsibility of expenditure management of projects to an

accounts officer or designated officer to assist the Programme/ Project Director. The accounts officer will receive a copy of MER and update the master register of the project. Prompt action must be ensured every month to reconcile any errors in booking of expenditure in respect of projects. It is the responsibility of the Programme/ Project Director to ensure periodic reconciliation of expenditure and rectification of all erroneous bookings before closure of a particular financial year.

16.9 MONTHLY EXPENDITURE REPORT (MER) TO DRDO HQ:

At the end of every month, all Labs/Estts will prepare the MER for the month in respect of build-up and projects as per the format prescribe by DFMM and will ensure its submission to DFMM as per the timeline prescribed by DFMM.

BANKING INSTRUMENTS

1.1 GENERAL:

Import is regulated by the Directorate General of Foreign Trade (DGFT) under Ministry of Commerce and Industry, Government of India. Authorized dealers, while undertaking import transactions, should ensure that the imports into India are in conformity with the Foreign Trade Policy in force (as framed by DGFT), 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 as amended and the directions issued by Reserve Bank of India under Foreign Exchange Management Act from time to time.

1.1.1 Banking Instruments in International Trade: The Uniform Customs and Practices for Documentary Credit (UCPDC) are a set of internationally recognized definitions & rules for interpretation of documentary credits, issued by the International Chamber of Commerce, Paris. ICC Publication No. 600 has been in operation since Jan 2007 and covers all aspects of international trade payments against documentary proofs. Lab/Estt should follow normal banking procedures and adhere to the provisions of UCPDC for payment to foreign firms.

1.1.2 Banking Instruments for Foreign Payments: Banking instruments used for effecting payment in case of import are as under:

- a) Letter of Credit (LC)
- b) Direct Bank Transfer (DBT)

1.2 LETTER OF CREDIT (LC):

1.2.1 LC is a written undertaking given by a bank on behalf of the Buyer (applicant) of goods or services to pay the Seller (beneficiary) of goods or services, a certain sum of money, provided the Seller presents the documents stipulated in the credit within the validity period of the credit.

1.2.2 Reasons for using LC: In international trade, the Buyer and the Seller are located in different countries and may not know each other. Countries generally have different legal systems, currencies and trade and exchange regulations. So the Buyer/ Seller needs some

security before releasing payment/ dispatching goods.

a) A Seller would want:

- (i) An assurance that he will be paid as per contractual terms.
- (ii) Convenience of receiving payments in their own country.

b) A Buyer would want:

- (i) An assurance that the Seller will dispatch the goods within time.
- (ii) To pay for the contracted goods only after they are dispatched by the Seller.

1.2.3 Advantages of LC:

a) For the Seller:

- (i) The bank honours the credit independent of the Buyer.
- (ii) The Buyer cannot withhold the payment under any pretence.
- (iii) Delays that can occur in transmitting bank funds are avoided to a large extent.

b) For the Buyer:

- (i) The goods will be delivered in accordance with the delivery conditions stated in the LC.
- (ii) Buyer pays only when the documents comply with the credit terms in all respect.

1.2.4 Parties involved in opening of LC:

- | | | | |
|----|------------------|---|---|
| 1) | Applicant | - | Buyer/ Importer |
| 2) | Issuing Bank | - | Buyer's bank |
| 3) | Advising Bank | - | Bank in Seller/ Exporter's Country |
| 4) | Beneficiary | - | Seller/ Exporter |
| 5) | Negotiating Bank | - | Paying Bank, authorized/ nominated by the issuing bank, to pay the money to Seller/ |

Exporter on presentation of documents

- 6) Reimbursing Bank - Bank which reimburses the money to the negotiating bank

1.3 TYPES OF LC:

1.3.1 Following types of LC may be used by the Buyer for making payment to the Seller as per the contractual terms and conditions:

- a) Irrevocable LC
- b) Confirmed LC
- c) Revolving LC
- d) Divisible LC

1.3.2 Irrevocable LC: A credit in which the Issuing Bank gives a definite, absolute and irrevocable undertaking to honour Buyer's obligations, provided beneficiary complies with all terms and conditions, is known as an irrevocable letter of credit. It implies that LC cannot be amended, cancelled or revoked without the consent of all parties. All LCs are deemed to be irrevocable.

1.3.3 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.

1.3.4 Revolving LC: In such LC, the amount of credit is restored, after it has been utilized, to the original amount thus obviating the necessity of opening a fresh LC for each dispatch/ shipment. Revolving LC is used when the Buyer is to receive partial shipment of goods at specific intervals over a long duration.

1.3.5 Divisible LC: A LC could be divisible or non-divisible. Divisible LC could be opened when more than one beneficiary is allowed and payment has to be made as per the consignment.

1.4 ESSENTIAL ELEMENTS OF LC:

The LC shall be opened as per the proforma **DRDO.LC.01** and essential elements as mentioned below are to be clearly stipulated while opening a LC:

- a) Type of LC
- b) Names & addresses of applicant and beneficiary
- c) Beneficiary's bank details
- d) Amount of credit and currency
- e) Validity of LC
- f) Latest shipment date (delivery date as per contract)
- g) Basis of delivery (FOB/FCA/CIP/CIF)
- h) Supply Order / Contract No. and date
- i) Shipment from..... To
- j) Details of consignee and/or ultimate Consignee
- k) Acceptability of part shipment
- l) Acceptability of trans-shipment
- m) List of documents required from beneficiary for release of payment
- n) Applicability and conditions of LD Clause

1.5 SPECIAL INSTRUCTIONS/ PROCEDURE FOR OPENING OF LC AND PAYMENT MECHANISM:

1.5.1 Process for opening of LC will be initiated by the Lab/Estt, as per the schedule of opening of LC in the contract, after receipt of the following documents:

- a) Performance security deposit;
- b) Export clearance, if applicable;
- c) Order acknowledgement;

1.5.2 Documents required for Opening of LC: Lab/Estt will process the case for the item-wise release of FE before opening of LC in the contract. The following documents are required by issuing bank through paying authority for opening of LC:

- a) Forwarding letter
- b) Request letter for opening of LC, as per **DRDO.LC.01**, with the condition that the Bank Release Order (BRO) will be issued by bank within 24 hrs.
- c) Form No. 2 - Application and guarantee, as per **DRDO.LC.02** (contains the details of documentary evidences required)
- d) Declaration cum Undertaking (under section 10 (5), chapter III of the FEMA, 1999)
- e) Application for remittance in foreign currency (Form A-1/A-2 (Stores/ Services)), as per format **DRDO.LC.03** and **DRDO.LC.04**
- f) Copy of Contract and amendments thereof

Five sets of above documents will be prepared by the Lab/Estt. Three sets will be forwarded to the issuing bank, one set will be forwarded to the paying authority and one will be retained by the Lab/Estt in the procurement file.

1.5.3 Opening of LC: subsequently, the Issuing Bank establishes the LC with a unique LC number allotted to each payment case and intimates the paying authority and the Lab/Estt. about the opening of LC.

1.6 RELEASE OF PAYMENT AGAINST LC:

1.6.1 Paid shipping documents are required to be provided to Advising Bank/ nominated Negotiating Bank by the Seller, as proof of dispatch of goods as per contractual terms, to get his payment against the LC. The Negotiating Bank forwards one set each of these documents to the Issuing Bank and the Landing Officer/ rep. of Consignee, as specified in the Contract, for getting the goods/ stores released from the Port/ Airport. The documents, the details of which should be specified in the contract, include:

- a) Full set of clean on board Air Way Bill (AWB)/ Bill of Lading (B/L) in original
- b) Original invoice in triplicate (ink-signed)
- c) Item-wise packing list

- d) Certificate of country of origin of goods
- 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/FAT, signed by Buyer's and Seller's QA Dept., if provided in contract
- i) Phyto-sanitary/Fumigation certificate, if applicable
- j) Warranty certificate, if applicable
- k) Any other document as mentioned in LC

1.7 AMENDMENT OF LC:

Any amendment to LC requires consent of both the parties. Director of Lab/Estt. is authorised to accord approval for processing the case for amendment of LC. However, in case, where amendment to LC requires amendment to the contract, prior approval of amending the contract shall be obtained by the Lab/Estt. from Competent Authority/ CFA, as applicable. The process for amendment of LC would be initiated after ensuring the followings:

- a) Request from the Seller for amendment of LC
- b) Re-confirmation regarding continuing availability of funds for releasing payment.
- c) Commensurate extension, if any, of BG by the Seller.
- d) The onus of bearing charges for LC extension would be on the Seller or the Buyer depending upon the one who seeks/ is responsible for the extension.

1.7.1 Documents required for Amendment of LC: All cases for LC amendment would be routed through the paying authority to the issuing bank along with the following documents:

- a) Forwarding letter
- b) Vendor's request for LC amendment
- c) Amendment to contract indicating the required DP, LD applicability

d) Certificate for onus of banking charges payable for LC amendment

1.8 DIRECT BANK TRANSFER:

1.8.1 Direct Bank Transfer (DBT): DBT mode of payment to a foreign Seller should be insisted upon in contracts up to a monetary value of US \$ 100,000. DBT payment may also be agreed to in case of contracts of higher monetary value, if acceptable to the Seller.

1.8.2 Advantages of DBT: Direct Bank Transfer shows a high degree of trust between the parties as the payment can be made by the Buyer after the receipt and inspection of goods at its premises. Payment through DBT is cost-effective as compared with LC.

1.8.3 Processing of DBT payment: The following steps are involved:

- a) Once the goods are ready and the Seller dispatches them by the agreed mode.
- b) The Seller sends one copy of the Bill of Lading/ Airway Bill along with the Invoice, in original (ink signed) to the Buyer directly confirming that one set of the documents has been sent to the port consignee for getting the goods/stores released from the Port/ Airport authorities.
- c) Following documents will be provided by the Lab/Estt to the bank through paying authority for processing the payment:
 - (i) Forwarding letter
 - (ii) Declaration cum Undertaking (under section 10 (5), chapter III of the FEMA, 1999)
 - (ii) Application for remittance in foreign currency (form A-1/A-2 (Stores/ Services)), as per format **DRDO.LC.03** and **DRDO.LC.04**
 - (iii) Original Invoice (ink signed)
 - (iv) Copy of Contract and amendments thereof
 - (v) All other shipping documents as specified in the contract viz. Packing List, AWB/ BOL, Insurance Policy, Certificate of Quality, Warranty certificate, etc.

1.8.4 It may be noted that the payment should be made within stipulated period. In case of delay in payment is apprehended, a 'no-interest liability certificate' should be obtained from the Seller to obviate imposition of interest on the outstanding amount.

1.9 BANK GUARANTEE (BG):

1.9.1 Definition: BG is a written undertaking obtained from the Seller through his bank, as a guarantee that he would fulfill the promise/ terms and conditions of the contract and to ensure the discharge of liability of the Seller in case of his default. Three parties are involved in the agreement, namely the Applicant (Seller), the Beneficiary (Buyer) and the bank as the guarantor.

1.9.2 Essential Elements of BG: The essential elements of BG are as follows:

- a)** The prescribed format in which BGs are to be accepted should be enclosed with the RFP and the language should be verified verbatim by the Buyer on receipt with the original BG format. The essential elements of BG indicated above should be cross-checked from the contract for correctness.
- b)** While accepting BG's of foreign banks it should also be checked that the Applicable Law indicated in the Agreement is Indian and the date of validity has been specified.
- c)** Sellers be told that BGs to be submitted by them should be sent directly by the Issuing Bank to the beneficiary by secured means.
- d)** The validity period of BG be checked (60 days beyond completion of all contractual obligations, including warranty period if any)
- e)** In exceptional cases, when BGs are received through the vendors/ Sellers etc., the issuing bank should be requested to immediately send an unstamped duplicate copy of the Guarantee directly to the beneficiary with its covering letter to facilitate validation.
- f)** As a measure of abundant caution, all BGs should be independently verified by the beneficiary when they are received from the Guarantor Bank. In case of BGs of foreign banks, assistance may be sought from SBI to check the authenticity of the BGs received. Such authentication would necessarily entail payment of service charges to SBI.

1.10 ACCEPTANCE OF BANK GUARANTEES:

1.10.1 Acceptance of various types of Guarantees: Acceptance of Bank Guarantee for indigenous and foreign vendors should be undertaken as follows:

- a) **Indigenous Vendors:** Bank guarantee issued by any of the Public Sector Banks or scheduled private sector commercial banks should be accepted.
- b) **Foreign Vendors:** The Seller will be required to furnish Bank Guarantee from a foreign bank of international repute (as per advice received from SBI, Foreign Division Branch regarding acceptability of the bank guarantee) drawn in favour of the Govt. of India/ Ministry of Defence.

1.10.2 Advisory Services of SBI: The Buyer may take the advisory services of SBI to authenticate the status of the bank from which the BG is being given by the foreign Seller. Under 'advisory' services to the Buyer e.g. with regard to acceptability of a BG furnished by a vendor from a foreign bank, the Bank only checks the risk status of the country and the credit rating of the bank in the international market. It, however, does not check the language or terms & conditions of agreement contained in the bank guarantee. Therefore, it is the responsibility of the Buyer to check the language given in the bank guarantee and verify whether it is as per the prescribed format, containing no ambiguity or conditions that are not verifiable by the banks. If the SBI advises that the guarantee is from a foreign bank of international repute and country-rating is satisfactory, the same will be accepted by the Buyer. In case the advice of SBI is that the guarantee is not from a bank of international repute with satisfactory country rating and/or a confirmation of a reputed Indian bank is required to be obtained, then the guarantee will be got confirmed by an Indian public sector bank or a scheduled commercial private sector bank. This confirmation would entail additional bank charges to be paid by the Buyer to the Confirming bank towards confirmation of the bank guarantee.

1.10.3 The following additional Services may be availed from SBI:

- a) In case of Sellers from high risk country, BG may be got executed through the branch of SBI/ their Correspondent Banks located nearest to the Seller's country.
- b) List of countries where the SBI has a branch office or tie-ups with correspondent banks is available on the SBI Website circular.

1.11 INVOCATION OF BANK GUARANTEE:

Guarantees can only be invoked by the Buyer after fulfilling the following conditions:

- a) The claim/ intimation should reach the issuing Bank on or before the expiry of validity of date of the guarantee. The claim letter should be faxed immediately and then sent

physically to be delivered to the bank concerned.

- b)** The claim/ intimation should be in strict conformity with the terms of the Guarantee.
- c)** Guarantor bank cannot enquire into the merits of the claim 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 by the bank.

PRE-CONTRACT INTEGRITY PACT

General

The pre-bid pre-contract Agreement (hereinafter called the Integrity Pact) is made onday of the month ofYear, between, on one hand, the President of India acting through Shri, Designation of the officer, Ministry/Department, Government of India (hereinafter called the 'BUYER', which expression shall mean and include, unless the context otherwise requires, his successors in office and assigns) of the First Part and M/s. Represented by Shri. Chief Executive Officer (hereinafter called the "BIDDER/Seller" which expression shall mean and include, unless the context otherwise requires, his successors and permitted assigns) of the Second Part.

WHEREAS the BUYER proposes to procure (Name of the Stores/Equipment/ Item) and the BIDDER/Seller is willing to offer/has offered the stores and

WHEREAS the BIDDER is a Private Company/Public Company/Government Undertaking/Partnership/Registered Export Agency, constituted in accordance with the relevant law in the matter and the BUYER is a Ministry/Department of the Government of India/PSU performing its functions on behalf of the President of India.

NOW THEREFORE,

To avoid all forms of corruption by following a system that is fair, transparent and free from any influence/prejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:-

Enabling the BUYER to obtain the desired said stores/equipment at a competitive price in conformity with the defined specifications by avoiding the high cost and the distortionary impact of corruption on public procurement, and

Enabling BIDDERS to abstain from bribing or indulging in any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also abstain from bribing and other corrupt practices and the BUYER will commit to prevent corruption, in any form, by its officials by following transparent procedures.

The parties hereto hereby agree to enter into this Integrity Pact and agree as follows:

Commitments of the BUYER

- 1.1** The BUYER undertakes that no official of the BUYER, connected directly or indirectly with the contract, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the BIDDER, either for themselves or for any person, organisation or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to the contract.
 - 1.2** The BUYER will, during the pre-contract stage, treat all BIDDERS alike, and will provide to all BIDDERS the same information and will not provide any such information to any particular BIDDER which could afford an advantage to that particular BIDDER in comparison to other BIDDERS.
 - 1.3** All the officials of the BUYER will report to the appropriate Government office any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.
- 2.** In case any such preceding misconduct on the part of such official(s) is reported by the BIDDER to the BUYER with full and verifiable facts and the same is prima facie found to be correct by the BUYER., necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the BUYER and such a person shall be debarred from further dealings related to the contract process. In such a case while an enquiry is being conducted by the BUYER the proceedings under the contract would not be stalled.

Commitments of BIDDERS

- 3.** The BIDDER commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any pre-contract or post-contract stage in order to secure the contract or in furtherance to secure it and in particular commit itself to the following:-
- 3.1** The BIDDER will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the BUYER, connected directly or indirectly with the bidding process, or to any person, organisation or third

party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.

- 3.2** The BIDDER further undertakes that it has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the BUYER or otherwise in procuring the Contract or forbearing to do or having done any act in relation to the obtaining or execution of the contract or any other contract with the Government for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Government.
- 3.3*** BIDDERS shall disclose the name and address of agents and representatives and Indian BIDDERS shall disclose their foreign principals or associates.
- 3.4*** BIDDERS shall disclose the payments to be made by them to agents/brokers or any other intermediary, in connection with this bid/contract.
- 3.5*** The BIDDER further confirms and declares to the BUYER that the BIDDER is the original manufacturer/integrator/authorized government sponsored export entity of the defence stores and has not engaged any individual or firm or company whether Indian or foreign to intercede, facilitate or in any way to recommend to the BUYER or any of its functionaries, whether officially or unofficially to the award of the contract to the BIDDER, nor has any amount been paid, promised or intended to be paid to any such individual, firm or company in respect of any such intercession, facilitation or recommendation.
- 3.6** The BIDDER, either while presenting the bid or during pre-contract negotiations or before signing the contract, shall disclose any payments he has made, is committed to or intends to make to officials of the BUYER or their family members, agents, brokers or any other intermediaries in connection with the contract and the details of services agreed upon for such payments.
- 3.7** The BIDDER will not collude with other parties interested in the contract to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract.
- 3.8** The BIDDER will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.

- 3.9** The BIDDER shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information provided by the BUYER as part of the business relationship, regarding plans, technical proposals and business details, including information contained in any electronic data carrier. The BIDDER also undertakes to exercise due and adequate care lest any such information is divulged.
- 3.10** The BIDDER commits to refrain from giving any complaint directly or through any other manner without supporting it with full verifiable facts.
- 3.11** The BIDDER shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.
- 3.12** If the BIDDER or any employee of the BIDDER or any person acting on behalf of the BIDDER, either directly or indirectly, is a relative of any of the officers of the BUYER, or alternatively, if any relative of an officer of the BUYER has financial interest/stake in the BIDDER's firm, the same shall be disclosed by the BIDDER at the time of filing of tender.

The term 'relative' for this purpose would be as defined in Section 6 of the Companies Act 1956.

- 3.13** The BIDDER shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of the BUYER.

4. Previous Transgression

- 4.1** The BIDDER declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any Public Sector Enterprises in India or any Government Department in India that could justify BIDDER's exclusion from the tender process.
- 4.2** The BIDDER agrees that if it makes incorrect statement on this subject, BIDDER can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

5. Earnest Money (Security Deposit)

5.1 While submitting commercial bid, the BIDDER shall deposit an amount (to be specified in RFP) as Earnest Money/Security Deposit, with the BUYER through any of the following Instruments.

- i)** Bank Draft or Pay Order in favour of
- ii)** A confirmed guarantee by an Indian Nationalised Bank, promising payment of the guaranteed sum to the BUYER on demand within three working days without any demur whatsoever and without seeking any reasons whatsoever. The demand for payment by the BUYER shall be treated as conclusive proof of payment.
- iii)** Any other mode or through any other instrument (to be specified in the RFP).

5.2 The Earnest Money/Security Deposit shall be valid upto a period of five years or the complete conclusion of the contractual obligations to the complete satisfaction of both the BIDDER and the BUYER, including warranty period, whichever is later.

5.3 In case of the successful BIDDER a clause would also be incorporated in the Article pertaining to Performance Bond in the Purchase Contract that the provisions of Sanction for Violations shall be applicable for forfeiture of Performance Bond in case of decision by the BUYER to forfeit the same without assigning any reason for imposing sanction for violation of this Pact.

5.4 No interest shall be payable by the BUYER to the BIDDER on Earnest Money/Security Deposit for the period of its currency.

6. Sanctions for Violations

6.1 Any breach of the aforesaid provisions by the BIDDER or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER) shall entitle the BUYER to take all or any one of the following actions, wherever required:-

- i)** To immediately call off the pre contract negotiations without assigning any reason or giving any compensation to the BIDDER. However, the proceedings with the other BIDDER(s) would continue.

- ii)** The Earnest Money Deposit (in pre-contract stage) and/or Security Deposit/Performance Bond (after the contract is signed) shall stand forfeited either fully or partially, as decided by the BUYER and the BUYER shall not be required to assign and reason therefore.
- iii)** To immediately cancel the contract, if already signed, without giving any compensation to the BIDDER.
- iv)** To recover all sums already paid by the BUYER, and in case of an Indian BIDDER with interest thereon at 2% higher than the prevailing Prime Lending Rate of State Bank of India, while in case of a BIDDER from a country other than India with interest thereon at 2% higher than the LIBOR. If any outstanding payment is due to the BIDDER from the BUYER in connection with any other contract for any other stores, such outstanding payment could also be utilized to recover the aforesaid sum and interest.
- v)** To encash the advance bank guarantee and performance bond/warranty bond, if furnished by the BIDDER, in order to recover the payments, already made by the BUYER, along with interest.
- vi)** To cancel all or any other Contracts with the BIDDER. The BIDDER shall be liable to pay compensation for any loss or damage to the BUYER resulting from such cancellation/rescission and the BUYER shall be entitled to deduct the amount so payable from the money(s) due to the BIDDER.
- vii)** To debar the BIDDER from participating in future bidding processes of the Government of India for a minimum period of five years, which may be further extended at the discretion of the BUYER.
- viii)** To recover all sums paid in violation of this Pact by BIDDER(s) to any middleman or agent or broker with a view to securing the contract.
- ix)** In cases where irrevocable Letters of Credit have been received in respect of any contract signed by the BUYER with the BIDDER, the same shall not be opened.
- x)** Forfeiture of Performance Bond in case of a decision by the BUYER to forfeit the same without assigning any reason for imposing sanction for violation of this Pact.

6.2 The BUYER will be entitled to take all or any of the actions mentioned at para 6.1(i) to (x) of this Pact also on the Commission by the BIDDER or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER), of an offence as defined in Chapter IX of the Indian Penal Code, 1860 or Prevention of Corruption Act, 1988 or any other statute enacted for prevention of corruption.

6.3 The decision of the BUYER to the effect that a breach of the provisions of this Pact has been committed by the BIDDER shall be final and conclusive on the BIDDER. However, the BIDDER can approach the independent Monitor(s) appointed for the purposes of this Pact.

7. Fall Clause

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

8. Independent Monitors

8.1 The BUYER has appointed Independent Monitors (hereinafter referred to as Monitors) for this Pact in consultation with the Central Vigilance Commission (Names and Addresses of the Monitors to be given).

8.2 The task of the Monitors shall be to review independently and objectively, whether and to what extent the parties comply with the obligations under this Pact.

8.3 The Monitors shall not be subject to instructions by the representatives of the parties and perform their functions neutrally and independently.

8.4 Both the parties accept that Monitors have the right to access all the documents relating to the project/procurement, including minutes of meetings.

8.5 As soon as the Monitor notices, or has reason to believe, a violation of this Pact, he will so inform the Authority designated by the BUYER.

- 8.6** The BIDDER(s) accepts that the Monitor has the right to access without restriction to all Project documentation of the BUYER including that provided by the BIDDER. The BIDDER will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors. The Monitor shall be under contractual obligation to treat the information and documents of the BIDDER/Subcontractor(s) with confidentiality.
- 8.7** The BUYER will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the parties. The parties will offer to the Monitor the option to participate in such meetings.
- 8.8.** The Monitor will submit a written report to the designated Authority of BUYER/Secretary in the Department/within 8 to 10 weeks from the date of reference or intimation to him by the BUYER/BIDDER and should the occasion arise, submit proposal for correcting problematic situations.

9. Facilitation of Investigation

In case of any allegation of violation of any provisions of this Pact or payment of commission, the BUYER or its agencies shall be entitled to examine all the documents including the Books of Accounts of the BIDDER and the BIDDER shall provide necessary information and documents in English and shall extend all possible help for the purpose of such examination.

10. Law and Place of Jurisdiction

This pact is subject to Indian Law. The place of performance and jurisdiction is the seat of the BUYER.

11. Other Legal Action

The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the extant law in force relating to any civil or criminal proceedings.

12. Validity

12.1 The validity of this Integrity Pact shall be from date of its signing and extend upto 5 years or the complete execution of the contract to the satisfaction of both the BUYER and the BIDDER/Seller, including warranty period, whichever is later. In case BIDDER is unsuccessful, this Integrity Pact shall expire after six months from the date of the signing of the contract.

12.2 Should one or several provisions of this Pact turnout to be invalid; the remainder of this Pact shall remain valid. In this case, the parties will strive to come to an agreement to their original intentions.

13. The parties hereby sign this Integrity Pact at on

BUYER

BIDDER

Name of the Officer

CHIEF EXECUTIVE OFFICER

Designation

Deptt./MINISTRY/PSU

Witness

Witness

1.....

1.....

2.....

2.....

* Provisions of these clauses would need to be amended/ deleted in line with the policy of the BUYER in regard to involvement of Indian agents of foreign suppliers.



Defence Research & Development Organisation
Directorate of Finance & Material Management
DRDO Bhawan, New Delhi-110 011