

Regional Study Centre
C.D.A CHENNAI

(READING MATERIAL)
COURSE
ON
I.F.A.

DATE : 30.08.2006

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Background

APPENDIX I No.F.10(3)-E (Coord)/67 dated 18th October, 1968

The basis of the arrangements envisaged in the scheme of enhanced delegation of powers is that the Finance Ministry will exercise its control mainly by a proper scrutiny of the schemes, etc. before inclusion in the budget and through an adequate system of reporting and test checks.

It will be observed that under the new scheme Ministries will have full powers of re-appropriation within a Grant provided. There is no diversion of funds intended for plan schemes to non-plan activities and there is no augmentation of the total provision made for Administrative expenses (i.e. pay, allowances, and other charges) under a particular Grant.

The scheme provides that the Internal Financial Adviser should be consulted in all cases before the exercise of delegated powers although it is open to the Administrative Secretary to overrule his advice by an order in writing. It should be clearly understood that the full responsibility for a decision taken in exercise of the delegated powers rests on the Administrative Ministry irrespective of whether it is in accordance with the Internal Financial Adviser's Advice or not.

As it will now be compulsory for the Ministries to consult their IFAs in the field of delegated financial powers, the Ministries should indicate in the sanctions issued by them in the exercise of the delegated powers that they have been issued after such consultation.

**COPY OF GOVERNMENT OF INDIA, MINISTRY OF
FINANCE, DEPARTMENT OF EXPENDITURE**

OM No.F.10(29)-B(COORD)/73

DATED 6th OCTOBER, 1975

Sub : Scheme of Integrated Financial Advisers

Under the existing Scheme of budgetary and financial control and delegation powers to Ministries as introduced vide this Ministry's O.M. No.F. 10(3)-E(Coord)/67 dated 18th October, 1968, the Ministries have an Internal Financial Adviser, who is in charge of their Budget and Accounts Section and as required to be consulted in all of exercise of delegated financial powers, and an 'associate' Financial Adviser manned in the Department of Expenditure, who is required to be consulted in matters falling outside the delegated field. The 'associate' Financial Adviser is attached to group of Ministries. In pursuance of the policy to delegate enhanced financial powers to the Administrative Ministries to match their responsibilities and to improve their competence in the field of financial management by developing appropriate internal attitudes and skills, the question whether the functions of 'associate' Financial advisor and Internal financial advisor could with advantage, be integrated in a single official, forming part of the Administrative Ministry, has been under consideration. It has been felt that the Financial Adviser should be associated with the Administrative Ministry in a larger measure than at present to enable him to play a more effective and constructive role in its development activities and should bring his financial expertise to bear in assisting the Secretary of Administrative Ministry and other senior officers in the planning, programming, budgeting, monitoring and evaluation functions of the Ministry. A scheme of 'Integral Financial Adviser' has accordingly been drawn up in consultation with Department personnel and Administrative reforms, the salient features of which are outlined in the Annexure.

2. In the new Scheme, the Financial Adviser will be responsible both to the Administrative Ministry and to the Ministry of Finance, with assistance, the Administrative Ministry will be able to fully exercise the enhanced powers delegated under the department of Expenditure O.M. No. F.10(13)-B(Coord)/75 dated 10th April 1975 and, outside the scope of the delegations, he will function under the general guidance of the Finance Ministry. He will assist in budget formation, scrutiny of projects and programmes for approval by the Ministry of Finance and post budget vigilance to ensure that there are neither considerable shortfalls in expenditure nor unforeseen excesses for which provision has not been made either in the original budget or in the revised estimates. The close association of Integrated Financial Adviser and his staff with the formulation and implementation of all proposals involving expenditure

should facilitate the more effective discharge of the Financial Advisor's responsibility. It is cardinal to the working of the new scheme that the Financial Adviser should be associated with Financial Adviser will also be responsible for the preparation of the Ministry's performance budget and the monitoring of progress of schemes against the budget. The maintenance of an efficient accounting system is necessary for this purpose.

3. In matters involving any deviations from the budgeting and accounting procedures, consultations with the Budget Division of the Department of Economic Affairs will continue to be obligatory. Similarly, in respect of the formulation of Ministry's development plans, Finance Division in the Department of Expenditure would have to be consulted. The Public Investment Board (PIB) and Expenditure Finance Committee (EFC) procedure would also continue to be applicable to the Integrated Financial Adviser. The responsibilities of the Establishment Division and the Staff Inspection Unit of the department of Expenditure would also not be affected by the approved changes.

4. In the first instance, the scheme will be introduced in the following Ministries/Departments :

- (a) Health & Family Planning
- (b) Works & Housing
- (c) External Affairs
- (d) Education & Social Welfare
- (e) Information & Broadcasting
- (f) Science & Technology and
- (g) Shipping and Transport (where the scheme has already been introduced as an experimental measure)

It is proposed to extend the scheme to other Ministries/Departments soon thereafter.

5. Pending further consideration of the need for formation of centralised and decentralised, single or multiple level cadres of finance and accounts and the scheme for absorption of the present associate finance staff in such cadres, in the initial stage, the Financial Adviser, the officers and staff working in the associate Finance Divisions in the Department of expenditure will be transferred to the Administrative Ministries as follows according to requirements :-

Officers of services other than the central Secretariat Service will be treated as on deputation to the Administrative Ministry instead of to the Finance Ministry

Officers of the Central Secretariat Service including Grade I and selection grade will be treated as transferred to the Administrative Ministry

Members of the decentralised cadres of various grades of CSS will be transferred on loan basis from their present cadre to the cadre of the Administrative Ministry on a purely temporary basis.

6. When the scheme is introduced, certain changes will be necessary in the organisational structure in the Administrative Ministry and in the Department of Expenditure. Creation/abolition of some posts will be involved. The details of the revised organisational structure in the Administrative Ministry out of the posts and personnel to be transferred from Department of Expenditure to the Administrative Ministry along with the work will be communicated to the respective Ministries separately.

7. The new scheme will be introduced in the Ministries/Departments mentioned in para 4 as soon as suitable officers to man the posts of Integrated Financial Adviser become available. A separate communication will be sent to them in this respect.

8. The Administrative Ministries/Departments are also requested to make necessary arrangements for housing the additional staff to be transferred from the associate Finance Divisions in the same building, as such arrangements are essential for the proper functioning of the scheme.

Sd/-

N N K Nair

Joint Secretary to the Govt. of India

To All Ministries/Departments of the Govt. of India

SALIENT FEATURES OF THE SCHEME OF INTEGRATED FINANCIAL ADVISER

- The post of Associate Financial Adviser in the Ministry of Finance (Department of Expenditure) and Internal Financial Adviser in the Administrative Ministry will be amalgamated and there will be a single "Integrated Financial Adviser" of the rank Joint Secretary/Additional Secretary for the Ministry, who will be part of the Ministry itself.
- The Integrated F.A. will be selected jointly by the Administrative Ministry and the Finance Ministry although he will be under the control of the Administrative Ministry which appoints him. The assessment of his performance (i.e. the writing of the Annual Confidential Report) will be made jointly by the Administrative Ministry and the Finance Ministry, for which suitable arrangement will be devised separately.
- The Integrated Finance Division will be constituted out of the present complement of the staff sanctioned for the Internal Finance in the concerned

Ministry and the associate Finance in the Department of Expenditure, with some major changes. Staff on the associate Finance side will also borne on the establishment of the Administrative Ministry concerned.

- The officers and staff of Integrated Finance Division would be required to have a background and training in Finance and Accounts and would be appointed in consultation with the F.A.
- F.A. and his staff will function from the Administrative Ministry and they shall, as far as possible have their office located in that Ministry's building.
- The Integrated F.A. would be consulted in all cases before the exercise of the delegated powers. It will, however, be open to the Administrative secretary to over-rule his advice by an order in writing, as provided as present under the scheme of Internal Financial Adviser. In matters beyond the powers delegated to the Ministry, the Integrated F.A. shall be responsible to and have the right of access to the Ministry of Finance and to the Finance Minister through the Secretary (Expenditure of Finance Secretary).
- If any important change in the duties and function of integrated F.A. In contemplated approval of the Ministry of Finance will be necessary. The scheme will be introduced in three phases viz.

First Phase:

The Associate Finance set up of the Department of Expenditure will be placed under the Secretary of the Administrative Ministry along with the F.A. i.e. all the relevant posts now in the Department of Expenditure will be transferred to the Administrative Ministry. Simultaneously, Internal Financial Adviser of the Administrative Ministry with his staff hitherto working directly under the Secretary will be placed under the Integrated FA.

Second Phase:

After a brief period, not exceeding three months, of working of the transitional arrangements in the first phase, there will be complete integration of Associate Finance and Internal Finance Wings under the integrated FA and the working of the division, as a whole, will be streamlined and rationalised so as to avoid any overlapping of functions. The process of the same officers at the lower levels attending to both Associate and Internal Finance functions will start as early as possible and will be completed within a period not exceeding 3 months of the introduction of the first; and

Third Phase:

The Integrated Finance Division will switch over to the Desk Officer System as quickly as possible. This system will apply to financial advice functions. The accounts and budget work will continue to be handled under the conventional system with suitable adaptations.

On the introduction of the system, not only the Financial Adviser but also the next officer below him of the level of Director/Deputy Secretary would simultaneously deal with both internal and associate finance functions.

Office of the Controller of Defence Accounts Southern Command, Pune
Part I Office Order No.323 dated the 13^m Oct 1975

Sub:- Delegation of Powers to Min. of Def.

Govt. of India, Min of Fin Defence New Delhi letter No.F.21(2)/COORD/74 dated 10 ' July 1975 on the above subject received under CGDA New Delhi Circular memo No.13119/At-Coord dated 28th July 75 is reproduced below for information and guidance of all concerned together with G of I, Min of Fin (Deptt of Expdr) (Def Div) letter No.21(2)/Coord/74 of 1.8.75 received under CGDA No.13199/AT-Coord dt.17.9.75.

The existing organisation of the Financial Adviser, Min of Fin (Def) will be utilised as the Internal Financial Adviser for the Min of Defence to exercise the enhanced powers contained in the schedule Status quo shall however be maintained in exercise of financial powers so far vested in the Min. of Defence in that the existing IFA shall deal with cases so far delegated to the MOD.

In the exercise of delegated powers it will be open to the Secretary, Min of Def. Secretary Department of Def Prod and Def Supplies and Secretary, Deptt of Def. Research & Development to overrule the advice of the internal Financial Adviser by an order in writing. It should clearly understood that full responsibility for a decision taken in irrespective of the delegated powers rests with the Administrative Ministry irrespective of whether it is in accordance with the Internal Financial Adviser advice or not. In referring cases to the Min of Fin (Def) in future a clear distinction between delegated and other field should be borne in mind.

These orders are meant to define the areas of delegation of powers to the Ministry and should not be interpreted as detracting in any way from the financial and cognate powers which may be or have been delegated by other order to the Ministry of Defence.

The Integrated Financial Adviser System was introduced in the Departments of Production, Defence Supplies and Research and development of the Defence Ministry under this Ministry's OM No.F. 10(13)/5(Coord)/76 dated 6.5.76. The question of introducing this system in the Deptt of Defence has been under consideration of the Govt. for some time past. It has now been decided to introduce the Integrated Financial Advice System in the Deptt of Defence also with effect from 1.8.83, the following instructions are issued:-

- The Defence Division of the Ministry of finance (Department of Expenditure), now headed by the Financial Adviser, Defence Services will be transferred to the administration of the Ministry of Defence.
- The appointment of FA(DS) and Addl. FAs/IFAs will be made jointly by the Ministry of Defence and Ministry of Finance.
- The Defence Accounts Department will continue to report to the Financial Adviser, Defence Service who will be the cadre controlling authority as before.
- In matters within the delegated powers of the Ministry of Defence, FA(DS) or his officers will be consulted before exercise of financial powers. In such cases, it will be, open to the Administrative Secretary to over-rule the advice of the Financial Adviser Defence Services, by an order in writing, but it will also be open for the FA(DS) to request that the matter be placed before the Raksha Mantri.
- In all matters beyond the powers delegated to the Ministry, FA(DS) and his officers will function as Associate Finance and will be responsible to and have the right of access to the Ministry of Finance, and to the Finance Minister through Secretary (Expenditure).
- Schemes costing more than Rs. 2 crores but less than Rs. 10 crores will be processed on file for obtaining the concurrence of Ministry of Finance.
- Schemes costing over Rs. 10 crores will be examined by the Expenditure Financej Committee presided over by the Secretary (E) with Defence Secretary, Secretary] (EAD) as members and FA(DS) as Secretary (Defence Production) and SA to RM, would be invited when items concerning their departments come up for discussion. The recommendations of the above Committee will be subject to formal approval of the Ministers concerned/CCPA etc., as per existing instructions.

- Cases relating revision of cost estimates in respect of items approved by EFC, where excess is over 20% and is originally approved cost, will be referred to EFC as hithertofore.
- FA(DS) will have the right to access to RM and FM through Secretary (E) on such issues where he differs from the view of the Administrative Ministry

Ministry of Defence Finance DAD(Coord)

Sub : Delegation of enhanced Financial Powers - IFA Scheme MOD
UO No.F. 15(2)/C/84 dated 27/5/86 superseding OM No. 10(3)-E(Coord)/83 dated 16/7/83 in light of MOF OM No.F.I(II)-EII(A)/85 dated 11/4/86

- a. Old powers schemes costing > Rs. 2 crores & < Rs. 10 crores to be sent to MOF

Now > Rs. 5 crores & < Rs. 20 crores to be sent to MOF

- b. Under old powers Schemes costing > Rs. 10 crores to be examined by expenditure Finance Committee headed by Secy(E), Def. Secy, Secy (EAD) and FA(DS). Secy. Def Prod., SA to RM to be invited depending on relevant schemes. Committee recommendations will be sent to CCPA/GOM as the case may be.

Now under new powers schemes costing over Rs. 20 crores only will go by above route.

APPROACH PAPER

BACKGROUND OF THE INTEGRATED FINANCIAL ADVICE SYSTEM IN THE SERVICES HQRS

1. The concept of the Integrated Financial Advice system took shape and introduced in the Ministries of Govt. of India in the wake of the decision on Departmentalisation of Accounts in 1976. The main aim of the Scheme is to expedite decision-making and to ensure that all expenditure proposals are subjected to financial scrutiny before the expenditure is sanctioned/committed.

2. The IFA system was introduced in the various Ministries at different points of time after the Delegated Financial Powers envisaged in the system in 1976. In the Ministry of Defence, this Scheme was brought into use in 1983. Basically, the concept covers the Advisers would be integrated with the Ministry/Departments and the financial Advice rendered by them under this Scheme would be in respect of the delegated powers. This would mean that while exercising their delegated powers, the authorities concerned are required to consult their IFAs. In so far as Defence is concerned, the delegated powers fall under two categories viz. Those which could be exercised without consulting Finance and those which are to be exercised only in consultation with Finance. Therefore, in so far as Defence is concerned, the IFA scheme covers only those delegated powers which are required to be exercised in consultation with Finance. However, of late, it has been an accepted principle that any enhancement of existing powers would be subject to these being exercised with Financial concurrence.

3. In the light of the recommendations of the sub committee of the Committee Defence Expenditure, the Ministry of Defence decided in November 1991 that exercise of the delegated Financial Powers should be with the advice of the Financial Advisers. The 19th Estimates Committee of Parliament was assured that idea to establish the Scheme was being processed and senior officers of the Organisation of the CGDA were being positioned at various levels for the implementation of Scheme. Accordingly, IFAs have been created and positioned in the Services HQrs as also HQrs. DGBR vide the under mentioned Govt. orders :

- (a) MOD F No. 665/Addl.FA(C) dated 4/4/94 - IFA Air HQrs
- (b) 840/Addl FA (J)/94 dated 22/3/94 - IFA Naval HQrs
- (c) AN-I/1179/1/VKPC-XXV dated 17/8/94 - IFA Army HQrs
- (d) BRDB No.F 731/C18 BBDB/BWA/94
Delegation dated 23.3.95 - IFA DGBR
- (e) MOD No.AirHQ/61279/35/4/LR/1215/
DO-II Air-I dated 26/9/95 Maintenance - IFA HQrs Command, IAF

No.AN-I/1179/1/VI(PC-XXV)
Government of India
Ministry of Defence (Fin)
New Delhi
Dated the 17th August 1994

The CGDA
West Block V. R K Puram
New Delhi - 110066.

Sub : Introduction of Integrated Financial Advice System at the
Army **HQrs**

The IFA Cell will function under the Deputy Chief of Army Staff (P&S). DCOAS (P&S) will initiate the ACR for the IFA which will be reviewed by the FA(DS).

Charter of duties of the IFA at the Army HQrs will be as follows :-

- i. He shall be the Integrated Financial Adviser at Army Headquarters
- ii. He shall render advice on financial matters which fall within the competence of various authorities at Army Headquarters within the delegated financial powers as and when sought for. Such authorities will however, continue to exercise these powers independently as hitherto fore,
- iii. He will vet all proposals falling within the enhanced financial powers (as and when sanctioned)
- iv. He may render advice and assist in case of all proposals/cases requiring Government sanction, if called upon,
- v. He, or his representatives, will participate in various TPCs/PNCs held at Army Headquarters,
- vi. He will monitor the processing of draft audit paras, audit paras, internal audit objections etc., concerning the Army to ensure adequate attention and speedy remedial measures. For this purpose he will maintain close liaison with Regional CsDA, CGDA, DG ADS and MOD
- vii. He will assist in preparing and monitoring a data base on committed liabilities
- viii. Any other duties relating to finance/accounts as assigned to him by the DCOAS(PD&S) and FA(DS)
- ix. In case of difference of opinion, PSOs and the DCOA(P&S) may refer the matter to FA (DS).

Dated 23rd September, 1992

The Chief of the Army Staff,
Sub : **Exercise of financial powers by Army Authorities in consultation with, the accredited CsDA or CsDA's reps,**

Sir,

The financial powers of the various authorities in the Army for hiring of transport have been enhanced recently vide Army Instruction 10/92 in modification of the earlier powers contained in A.I. 42 of 86. These enhanced financial powers are to be exercised by various authorities in consultation with their respective CsDA or CsDA's reps as stipulated therein. Similar stipulations had also been provided in some of the Government Orders issued recently enhancing the existing financial powers in various matters. Similar stipulation may also be laid down in such orders, which may be issued in future also. With a view to ensure that the system functions efficiently and smoothly without any problems, the following instructions are issued for guidance and also compliance by various authorities in all such cases.

(a) The consultation stipulated in the Government Orders would be provided by the representative CsDA or CsDA's reps as nominated. For this purpose, the CGDA has already drawn up the requisite system for providing financial advice to the authorities at different levels of representatives of CDA.

(b) The various authorities will exercise the enhanced powers only in consultation with respective CsDA or CsDA's reps.

(c) The financial advice/concurrence will be provided by the CDA/CDA's reps in writing and will be based on regular notings on file. However, in cases of extreme urgency where time does not permit to float regular files, decision could be taken in meetings/discussions for which detailed deliberations/ minutes will be recorded. Proper briefing papers prepared with the approval of CFA will be made available to the CDA's reps sufficiently in advance of the meetings/discussions. All such cases should be followed up, immediately, by regular notings on file where the decisions taken during meetings/discussions will be recorded and the financial advice recorded in writing. While discussion and meetings are not precluded these are no substitutes to regular notings on files. Such cases should, however be kept to the minimum possible.

(d) With a view to avoid or reduce cross notings and back references, the proposal initiated on files should be detailed self-contained and comprehensive-containing all facts and data relevant to the case. For this purpose it is desirable that the CFA's and CsDA's reps liaise mutually so that requisite information and material will be made available for such proposals.

(e) The authorities should also make available, without exception, any information data or documents relevant to the case as asked for by CDA's reps in the proper perspective and expedite financial advice.

2. This issues with the approval of Ministry of Defence (Finance) vide I.D. No.105/B dated 16/9/92.

TENDERING

Types of Tendering

4.1. **PAC Tendering.** Certain items, particularly equipment, are the propriety product of a manufacturing firm. Such items are only available with that firm or their dealers, stockist or distributors as the detailed specifications are not available for others to manufacture the item. In such situations, a Propriety Article Certificate (PAC) is issued to the original equipment manufacturer (OEM) and items procured on PAC basis from that particular firm or their authorised dealers or distributors. While PAC is issued only in respect of the concerned OEM, the item may be bought from any supplier listed in that particular PAC provided the purchase is accompanied by a proper manufacturer certification. PAC once issued will be valid for three years from the date of issue unless cancelled earlier by the CFA.

4.1.1 PAC bestows monopoly and obviates competition. Hence, PAC status must be granted after careful consideration of all factors like fitness, availability, standardisation and value for money. PAC certificate should be granted preferably by Head of Establishment / Unit to avoid dilution. Many OEMs do not manufacture assemblies, sub-assemblies and components but out source these items. Hence, such items may be available at cheaper prices with the actual manufacturers. The procurement officers must therefore keep abreast with the proper source knowledge and procure items from the right source to protect the interest of the state. However, the spares have to be sourced from OEM or OEM approved/recommended manufacturers only in order to make the OEM responsible for the malfunctioning of the main equipment in which the spares have been fitted.

4.2 **Single Tender.** As per note 27 of Annexure to Rule 102(i) of GFR, "invitation to one firm only" is called 'Single Tender'. Single Tendering for non PAC items may be resorted to only on the grounds of urgency or operational or technical requirements. The reasons for single tender enquiry (STE) and selection of a particular firm must be recorded and approved by the CFA prior to single tendering. Purchases on STE basis should be made from reputed firms after determining reasonableness of rates. However, when defence PSUs/OFB have specifically developed an item for the department of defence or have taken TOT, such sources could be treated at par with the PAC firms.

4.3 Limited Tender. Limited Tender Enquiry (LTE) may be resorted to in case of indigenous procurement : -

- (a) When the requirement of stores is urgent and the desired delivery schedule cannot be met if the open tenders are invited. The indenting officers should place on record and nature of urgency and why the demand could not be anticipated earlier.
- (b) When the sources of supply are definitely known and limited.
- (c) When it is not in Public interest to call for open tenders due to security reasons.
- (d) When Govt. policies designate specific agencies.
- (e) Besides, when possibility of fresh source(s) beyond those being tapped is remote, TE may also be resorted to for military specific items when the specifications are very stringent, quality of item is of prime importance and the items are generally not available in open market. The indenting officer should place on record the detailed justification.
- (f) The minimum number of suppliers to whom **LTE should be sent is normally six**. In case less than six approved suppliers are available, LTE may be sent to available approved suppliers with approval of the CFA duly recording the reasons,
- (g) In case it is proposed to exclude any registered/approved supplier, detailed reasons like failure in supply should be duly recorded and approval of IFA be taken before exclusion.

(h) Adequate time should be given for submission of quotes, which should not be less than **three** weeks. Longer period could be given in case of import and in complex cases.

(i) **Existing instructions in the OFB MM Handbook that 80% of provisioning requirement should be sourced from established sources and balance 20% through OTE can continue keeping in view their mandate to comply with production targets. However, the present criterion that an established source should have successfully supplied twice to merit issue of a limited tender can be changed to include all registered approved vendors who have supplied 'once'. This would have the potential of increasing competition in LTE.**

4.3 **Open Tender.** Open Tendering is the preferred mode of procurement for common use items of generic or commercial specifications to ensure adequate competition. All items of common use, which are normally available in open market with a wide range of sources, should be procured against open tender enquiry (OTE). Open tender system involves wide publicity through advertising media (Press, Trade, Journals etc). Open tender notifications will be sent to Director General of Commercial Intelligence and Statistics, Calcutta for publication in their weekly issue of Indian Trade Journal and to the DAVP, New Delhi for publication in leading National News Papers.

All OTEs should be put on the Ministry of Defence web site, service HQrs/OFB, DRDO HQrs web site (Wherever in place) to ensure wide publicity.

In case of OTE, tender forms are also sent to all registered suppliers for the particular range of items. Normally, **Four** weeks time should be given to submit the quotes. Ministry of Finance in their OM dated 17-7-2004, Appendix 'D' has maintained that NIT for open tenders should be on the departments website and also on the main website of NIC. This should be invariably done in case of Non-lethal/Security non sensitive items. **Bidding documents, which are distributed by an electronic system, must be secured to avoid possibility of modification and restriction of access to bidders.**

4.4.1 In OTE cases where, an unregistered firm claiming compliance of technical specifications meets the laid down technical parameters detailed in RFQ, before opening the commercial bid of such firm, the approval of the sample and capacity verification by the AHSP/designated inspection agency would be mandatory.

4.4.2 While issuing TE for development order and for LTE, there should not be any mix up in the sources.

Earnest Money Deposit

4.5 Earnest money deposit has to be taken in OTE cases. The specified EMD should be absolute value and not a percentage of the quoted value and should not exceed Rs. 2 lakhs. The EMD instruments are TR/DD/FDR/IPO/Bankers Cheque /BG. Without EMD offer should be rejected unless CFA waives in case of NSIC/DGS & D registered firms. EMD should be adjusted towards security deposit in case of successful firm and refunded to the unsuccessful firms. EMD is to be forfeited if successful tenderer withdraws, amends, impairs, and derogates from tender within validity.

Tendering Process

4.6 **Preparation of Tender.** Tender Enquiry (TE), also called Request for Proposal (RFP), is the most important document in the procurement process. The TE must be prepared with due care and with complete details of the items or services required, terms and conditions including payment terms, and clear instructions to the bidders. The TE must contain full and clear specifications, scope of requirement and the evaluation criteria, both for technical bids and commercial bids.

4.6.1 For commercially off the shelf (COTS) stores, where qualitative requirements and technical specifications are clear, single commercial bid system may be followed. Stores where two-bid system is to be followed are enumerated at para 4.12.

4.6.2 Standards and specification, quoted in bidding documents shall promote broadest competition while assuring the critical performance or other requirements for the goods. Reference to the Brand names, catalogue numbers shall be avoided.

4.7 **Instruction to Bidders.** The broad instructions are as under: -

(a) **Eligibility** . Eligible bidders would be Indian companies registered with DGQA or other registering authorities **like OFB** and to manufacture the tendered items in India. Firm should obtain valid type approval certificate for the tendered item against technical specifications given in the bid documents prior to placement of order.

(b) **Clarification of Bidding Documents** A prospective bidder requiring any clarification of the bidding documents shall notify to the purchaser in writing and the purchaser will respond in writing to the clarifications sought not later than **14 days** prior to the date of opening of the tenders. Copies of the query and clarification by the purchaser shall be sent to all prospective bidders who have received the bidding documents.

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

(d) **Bid Validity** A bid shall remain valid for 90 days **in case of single bid RFP & 120 days in case of two-bid system**, unless otherwise specified, from the date of opening of tender. A bid valid for shorter period can be rejected by the purchaser, as being non-responsive. In exceptional circumstance the purchaser may request the consent of the bidder for an extension to the period of bid validity. Such requests shall be made in writing. The bid security provided shall also be suitably extended. A bidder accepting the request and granting extension shall not be permitted to modify his bid. Bidding documents should be made carefully and retendering should be resorted to sparingly.

(e) **Late Bids.** Any bid received by the purchaser in case of competitive bidding, after the deadline for submission of bids shall be rejected and returned unopened to the bidder.

(f) **Modification & Withdrawal of Bids.**

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

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

(h) **Agents of supplier.** One agent cannot represent two suppliers or quote on their behalf in a particular tender enquiry. Such quote has to be rejected. CVC (CTE) No. 12-02-6~CTE/Sp-I(1)-2 dated 07 Jan 2003 refers in this regard.

(j) **Preliminary Examination.** Purchaser shall evaluate the bid to determine whether they are complete, whether any computational error have been made, whether required sureties have been furnished, whether the documents have been properly signed and whether the bids are generally in order.

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

(l) Prior to detailed evaluation, the purchaser will determine the substantial responsiveness of each bid to the bid documents. A substantially responsive bid is one, which conforms to all terms and conditions of the bid documents without material deviations. Deviations from or objections or reservations to critical provision like Bid Security, Warranty and Guarantee, Applicable Law, Taxes and Duties will be deemed to be a material deviation.

(m) **Evaluation and comparison of substantially responsive bids.**

The evaluation and comparison of responsive bids shall be done on the prices of the goods offered inclusive of levies & taxes i.e., ST and ED, CDE, Packing & Forwarding, Freight and Insurance etc., as indicated in the price schedule of Bid documents but exclusive of Octroi/Entry Tax which will be paid extra as per actual, wherever applicable.

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

(o) **Right to vary quantities.** The purchaser reserves the right to increase or decrease **upto 50%** of the quantity specified in the schedule of requirements without any change in the unit price or other terms and conditions within the agreed delivery schedule.

(p) In exceptional situation where requirement is of an emergent nature and it is necessary to ensure continued supply from the existing vendors, the purchaser reserves the right to place repeat order **upto 100%** of the quantities within a period of 12 months from the date of successful completion of purchase order at the same rates and terms subject to the condition that there is no downward trend in prices.

4.8 **Format of RFP** The suggested format for RFP/TE for indigenous procurement of stores and spares as well as replacement equipment is placed at Appendix 'B' The RFP would follow general principles promulgated in DPP-2002 (version Jun 2003) except the provisions relating to Field trials, G.S. evaluation, Technical oversight committee and EPG. DPP - 2002 (6/2003) is available at www.mod.nic.in.

4.9 Dispatch/Transmission of Tenders. It is important that adequate care is taken to dispatch/transmit Tender Notice in such a manner to ensure that the firms get them in time. Normally, tender notices should be sent by registered post. In case of PAC or STE, these may be sent by secure FAX in addition to dispatch by mail. Even in case of advertised or open tendering, Tender Notice must be sent by post to the past successful suppliers and likely suppliers registered with the department.

4-10 Publicity. OTE and global Tenders are required to be published in the newspapers and ITJ, Calcutta. OTE should also be put on the MOD web site, the web site of the respective department, where available so as to ensure that all firms capable of supplying the items/service come to know about the TE. In cases of procurement of highly sensitive nature having national security implications, the tender documents are not be put on the web site. In such cases decision must be taken at the level of CMD or Head of the department, recording specific reasons for not putting an open tender on web site. In this regard, CVC No. 98/ORD/1, office order No. 44/7/04 dated 05 Jul 2004 is placed at **Appendix 'C'**.

4.10.1 Ministry of Finance vide their OM dated 14 Jul 2004 has enjoined upon all Govt. departments to

(a) Publish all NITs (Notice Inviting Tenders), as case of open tenders on their websites and also on website of NIC.

(b) Put copy of S.O. exceeding Rs. 5 lakhs on website to facilitate information sharing on similar purchase. Copy of OM dated 14 Jul 2004 is placed at **Appendix 'D'**. This should be done in the defence context for 'non-lethal items' / security non sensitive items only.

Composition of TNC

4.11 TNC, wherever formed should invariably have a user rep, rep of designated inspection agency, rep from procurement agency and CFA rep apart from the Chairman. Finance rep need not be associated in TNC.

Two Bid System

4.12 There are cases of procurement where it becomes essential to seek both technical bids and commercial bids for proper evaluation of offers. Two-bid system of tendering should be followed for plant and machinery equipment, complex items like IT and communication systems and in turn key projects where qualitative requirements (QRs), technical specifications can not be clearly firmed-up ab initio as they are not clearly known and which would involve Techno-Commercial evaluation.

4.12.1 The RFP should lay down user requirements in a comprehensive, structured and concrete manner and should be broad based and express the user requirements in terms of functional characteristics. It's formulation must not prejudice the technical choices by being narrow and tailor-made.

4.12.2 The performance parameters should be verifiable and classified as :-

(a) Essential parameters providing for minimum essential military requirements.

(b) Desirable military requirements corresponding to task that the system is intended to fulfill in an operational way.

(c) Fulfillment of essential parameters would be the basis for further consideration by TEC (Technical Evaluation Committee).

(d) There should not be any interchange of essential and desirable parameters after issue of RFP.

4.12.3 **Waival & RFP:-** Waival/amendments of essential parameters (QRs) can be done by respective Service HQs before issue of RFPs. Once QRs have been finalized, the sources of procurement shall be ascertained and short-listed out of OEMs, authorized vendors etc. The RFP should contain four parts, viz, first part elaborating general requirement of the equipment, nos. required, time frame for deliveries, ESP, training warranty and guarantee conditions etc., Second part to delineate essential and desirable parameters, the third part to outline the commercial aspects namely the payment terms, performance guarantee, Warranty guarantee and standard contract terms and the fourth part to define the criteria for evaluation and acceptance in terms of technical and commercial contents.

4.12.4 There should be normally no waiver of essential parameters after the issue of RFP as there would be legitimate allegation of denial of opportunity by firms who could have met the diluted essential parameters had these been tendered abinitio. This is particularly relevant with single vendor/resultant single vendor where waiver to essential parameters is given after issue of RFP and receipt of tenders.

However, in case of operational exigencies, if any, subsequent waiver/amendment in essential parameters is considered inescapable after issue of RFP, this would need approval of next higher CFA.

4.12.5 TEC:-A broad based TEC including representatives of user service, maintenance agency and SQ as deemed necessary will prepare a compliance statement bringing out the extent of variations and differences, if any, in the technical characteristics of equipment offered by various vendors with reference to QRs and compliance or otherwise to essential parameters. The TEC shall invite those vendors who meet essential parameters for technical presentation /clarification. The Finance Member need not be a member of the TEC. The TEC report should be approved by the CFA and should form part of the proposal. The TEC report will be in the format as given at **Appendix 'E'**. The following aspects should be kept in mind by TEC:

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

4.12.6 Those offers which meet the essential parameters and recommended by the TEC and duly approved by CFA, would be considered by the Price Negotiation Committee who in turn will evolve methods for benchmarking of price and holding internal meetings to finalise approach for conducting negotiations with LI vendors.

4.12.7 In case of procurement (whether from indigenous or from foreign source) involving two-bid system, it may not be practicable to incorporate all possible details in the technical spec(s), thereby requiring elaborations/ clarifications during technical discussion. This may necessitate submission of revised commercial bids consequent upon discussion during TEC/CNC.

4.12.8 If the original price bids have not been opened, it would be advisable to give equal opportunity to all technically acceptable vendors to give their revised commercial bids in a sealed cover. The CNC would take into account the revised commercial bids to arrive at LI.

4.12.9 Before taking such a decision for calling revised commercial bids where original price bids have not been opened, approval of CFA would be invariably taken. The Supreme Court, in its judgment, in FCI Vs Kamadhenu Cattle Feed Industry (1993) had also endorsed the approach to give equal opportunity to all qualified vendors.

Tender Opening

4.13 In case of two-bid system, only technical bids are opened first. In such cases, the tender opening officer/committee should sign on the sealed envelopes containing commercial bids and obtain initial of the trade representatives, if present. Thereafter, these sealed envelopes are to be placed in a bigger envelope and sealed duly signed by the tender opening officer/ committee and trade representatives.

4.13.1 In order to facilitate the bidders to submit their bids in time and with assurance of receipt by the department, a tender box is to be placed in an easily accessible but secured place clearly indicating the name of the department and the term 'Tender Box'. On the pre-published tender opening date, the box is to be opened by the tender opening official, preferably a committee of at least two officials, at the time and place already promulgated. The firm's authorised representatives are invited and permitted to attend the tender opening.

4.13.2 In cases where the tenders are required to be submitted by hand, it may be ensured that the names and designation of atleast two officers are mentioned in the bid documents. The information about these officers should also be displayed at the entrance reception of the premises where tenders are to be deposited so as to ensure convenient approach for the bidders.

(CVC OFF Order No.41/06/04 dated 08 Jun 04)

4.13.3 The tender opening officer/committee, should open the envelopes in presence of the trade representatives, serially number each bid and initial with date on each page of the tender. The prices and important terms and conditions should be encircled and initialed in red ink and any alterations in tenders made by the firm should be initialed legibly to make it perfectly clear that such alterations were present on the tender at the time of tender opening. The tender opening officer/committee should read out the name of the firm, EMD, if any, and the prices, taxes, duties quoted by the firm.

Tender Evaluation

4.14 Technical Evaluation. Whenever there is a two bid system of tendering followed, technical evaluation of the bid becomes a vital step not only to ascertain conformity of the technical bid with the technical specifications of the tender, but also to bring all bidders on a level playing field in respect of qualitative requirement. Technical evaluation is normally carried out by a technical negotiation committee (TNC) and IFA need not be associated at this stage. TEC report, once finalised would be sent to CFA for acceptance.

4.15 Commercial Evaluation. Evaluation of commercial bids is the core activity in any purchase decision. If the correct evaluation of quoted rates, freight, insurance, taxes, duties and other expenses involved is not carried out as per criteria incorporated in the RFP, purchase decision may become deficient and faulty. While detailed guidelines on establishing reasonability of prices and ranking of bids are also discussed in Chapter 13, some factors which need to be taken into account are:-

(a) **Duties and Taxes.** All taxes and duties to be paid in connection with the procurement of an item need to be considered including those for which exemption certificates are issued.

(b) **Delivery Period.** Delivery Period and delivery compliance are important variables for evaluation of bids.

(c) **All Inclusive Cost on Delivery.** The ultimate cost to the state on delivery to the consignee's premise should be the deciding factor for ranking of bids.

Amendment and Extension of Tender Opening Period

4.16. Whenever, amendment to the tender enquiry becomes necessary either due to change in required quantity or specification or as a result of clarification to the query of the supplier, such amendments must be intimated to all vendors to whom the TE was sent. In all such cases and also when the vendors seek extension of time to submit the quote, adequate time must be given to all vendors to enable them to rework their bid before submitting the same. When giving extension becomes inescapable, action should be taken well in advance of the expiry of tender submission period.

Resultant Single Vendor Situation

4.17. There are cases when only a single quote or a single valid acceptable quote is received even against LTE or OTE. This results in a single vendor situation indicating lack of competition. These cases will not be treated as procurement against Single Tender Enquiry and shall be progressed as an LTE or OTE case as applicable.

4.17.1 As per note 27 of Rule 102(i) of GFR, "invitation to one firm only" is single tender. As per amplification note 6 of DPP 2002, when TEC shortlists only one vendor, such cases are not to be treated as single tender case for getting CFA approval. Rule 26 of DFPR clearly stipulates that provisions of DFPR are not applicable to expenditure debitible to defence estimates. Accordingly if a single valid quote is received against LTE/OTE/GTE it may not be treated as a single tender contract.

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

4.17.3 However, there is a need for taking precautions to protect the interest of the state. The following precautionary measures will be considered by the CFA while approving procurement against resultant single vendor situation in case of LTE: -

- (a) One extension of tender opening date should be given before opening the single quote.
- (b) Specific approval of CFA is to be obtained before opening single quote.
- (c) CFA is to satisfy himself about the method of dispatching TE and consider the possibility of TE either not reaching the vendor or not reaching in time to enable them to quote before approving opening of a single tender.
- (d) In case, a single quote out of the multiple quotes received emerges as the acceptable quote after evaluation, then the reasons for rejection of each quote is to be recorded in detail.

Re-tendering

4.18 **Re-tendering** - Re-tendering may be considered by the TPC/CFA with utmost caution, under the following circumstances: -

- (a) Offer do not confirm to essential specification.
- (c) Wherever there are major changes in specification and quantity, which may have considerable impact on the price.
- (c) Prices quoted are unreasonably high with reference to assessed price or there is evidence of a sudden slump in prices.
- (d) There may be cases when the lack of competition is due to restrictive specification, which do not permit many vendors to participate. The CFA must consider if there are reasons for review of specification of the item to facilitate wider competition. Re-tendering will be done only after approval of IFA and CFA in all cases.

CFA- Competent Financial Authority

5.1 **Individual CFA** -A number of authorities at various levels have been vested with financial powers and they act as the CFA in their official capacity subject to the financial limit and prescribed conditions. The individuals, who are CFA, can sanction and approve expenditure with or without concurrence of IFA as prescribed in regulation. A CFA may, at his own discretion or if so stipulated, can appoint an advisory or Price Negotiation Committee (CNC) to assist him in decision-making. However, his decision will be final and at his own responsibility and accountability.

5.2 **Committee CFA** In some cases, the financial powers are not vested in an individual but in a committee which becomes a CFA. Normally, the composition of the committee is also stipulated in Govt. regulations and the finance member is invariably a part of the committee CFA. Such committee CFA holds their own CNC and takes a collective decision. Each member is responsible and accountable for the quality of decision made.

Disagreement

5.2.1 In case of disagreement with the IFA, the CFA can over rule the IFA and send a report to the next higher CFA as well as the IFA/CDA giving intimation along with reasons for over ruling the financial advice. In such a situation, it would be open to the IFA to take up with the higher IFA and CFA or drop it.

5.2.2 In the case of Committee CFAs, detailed minutes will be recorded leading upto the final decision. Accordingly there would be no necessity for specific overruling of IFA in writing in the event of difference of opinion with the IFA..

Sanction and Indent Approval

5.3 A sanction is a written authority from the CFA authorising the expenditure. A sanction invariably indicates the reference to authority under which expenditure is being authorised, the financial implication, the item for which the expenditure is approved and the budget code head. Whenever the final expenditure exceeds the sanctioned amount, additional financial sanction of the respective CFA, subject to limit of delegated powers, is to be obtained.

Acceptance of Necessity,

5.4 **AON in case of scaled items would actually amount to vetting of quantities, assessment of physical requirement of various resources with respect to targets fixed and budget availability. Where there is no difference of opinion regarding procurement of scaled items, RFP could be vetted simultaneously.**

5.4.1 In case of Non scaled and New items, existing process of obtaining AON will continue. (DPB ID dated OS. 11.2004).

5.4.2 **In case of AON of scaled items where inventories are maintained through automated systems and IFAs have been provided terminal on the same, vetting by IFA will be restricted to quantity vetting only and the same will be done on the automated systems based on data available in such automated systems within five working days for the normal cases and two working days for urgent/ operational cases; otherwise the case can be processed for CFA approval. Where inventories are not maintained through**

automated system, vetting of quantity will be done for scaled items by IFAs within seven working days.

Technical Negotiation

5.5 There are cases when there is a felt need for technical evaluation of offers or some clarification necessary about the technical parameters of the item/equipment before considering order placement. In such cases, two bid system is followed and quotations are invited as separate technical and commercial bids. Initially, only technical bids are opened and a duly appointed Technical Negotiation Committee carries out, technical evaluation. The TNC is not authorised to discuss commercial aspect of the case. **IFA need not be associated in TNC.**

5.5.1 The main objective of the TNC is to prepare technical matrix showing how the technical parameters of bids received compare with against the parameters tendered out. RFP must provide for essential and desirable parameters. If the offers confirm to essential parameters they should be accepted. The recommendations of TNC should be put up to the CFA for approval.

Price Negotiation

5.6 Price negotiation is normally required to ensure that the interest of the state is fully protected and the price paid is reasonable. Such negotiations are invariably conducted by a duly appointed Contract Negotiation Committee (CNC) including a finance member unless the negotiation is carried out by the committee CFA itself. CNC is invariably conducted in case of single tender situations including PAC cases, or when price is considered high with reference to assessed reasonable price. CNC should determine L1 and put up their recommendations to the CFA for approval. Detailed record of discussions regarding compliance with tendered QRs, price and contract clauses held during the CNC should be prepared and placed on record in the form of minutes of the meeting.

5.7 **Composition of CNC.** Apart from the Chairman, there should be a rep, of user, Finance, Designated inspection agency, Maintenance Agency and the CFA where applicable. CFA can co-opt any other member like a costing expert in case of high value single vendor offers.

5.8 Price Reasonableness The basic objective of the CNC is to establish reasonableness of price being paid by the Govt. This is a complex task and many factors need to be considered. Detailed guidelines are contained in Chapter 13 of this manual. However, factors like the last purchase price (LPP), movement of price indices the market intelligence regarding cost of the item or similar items, material composition, cost analysis of raw materials, technological intricacies involved, whether of current production or otherwise, maintenance requirements, spares and warrantee etc. need to be considered while examining price reasonableness.

Role of CFA in Purchase Decision

5.9 The CFA must consider all aspects of the case including the quoted terms and conditions of the contract, delivery period, taxes and duties applicable, freight, insurance and other charges and the compliance to the specification before a purchase decision is taken. One of the important elements of the CFA process is the need to ensure level playing field to all bidders by proper ranking of their offers so that the decision making process is totally transparent. **The financial implication should be considered as the all-inclusive cost to the state on delivery to the designated consignee.** Conditional offers and those with specifications not in conformity with the tendered specifications (Essential QRs) should not be considered.

5.9.1 While taking the purchase decision, the CFA needs to establish whether or not proper procedures have been followed at various stages of procurement, purchase policies of the Govt. have been complied with and capacity and financial status of the firm have been checked. Purchase decisions should be taken through a formal order in written form.

Apportionment of Quantity

5.10 If L1 does not have the capacity to supply within the delivery period as per RFP, after loading L1 fully as per its capacity and past delivery, order can be placed on L2, L3..... for the balance quantity at L1's rate.

5.10.1 When it's not possible to obtain L1's rate and there is an operational or production compulsion, CFA can approve the price differential upto 5%, within his financial powers in consultation with IFA.

5.10.2 **For any price differential above 5% approval of next higher CFA would be necessary.**

(DPB ID dated 18.10.2004)

Repeat Order

5.11 Repeat orders against a previous order may be considered for approval by the respective CFA in urgent cases subject to the following stipulation: -

- (a) Items ordered have been delivered successfully.
 - (b) Original order did not cover urgent/emergent demand.
 - (c) It is not placed to split requirement to avoid sanction of the next CFA.
 - (d) There is no downward trend in price as ascertained through market intelligence.
 - (e) The firm is prepared to hold the same prices terms and condition including delivery schedule as per service requirement.
 - (f) The requirement is for stores of identical nature/specification, nomenclature etc.
- Minor improvements in spec(s) or phasing out of products due to obsolescence should not be precluded from purview of repeat order.**
- (g) It is placed within **12 months** from the date of supply against previous order and only once.
 - (h) Repeat order quantity is to be normally restricted to a maximum of 100% of last order quantity, both in case of indigenous procurement and import orders.
 - (j) The original order placed should be on the basis of lowest (negotiated) price and was not on delivery preference.
 - (k) This provision could be exercised in case of PAC/Single Vendor OEM case. However, **where multiple vendors are available, necessary care should be taken in exercising the option clause.**

(1) In case S.O/contract where option clause has been availed of, it may not be desirable to place further repeat orders.

(DPS ID dated 18.10.04)

Accountability

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

Role of IFA

5.13 The defence managers, particularly the military leaders may not possess adequate expertise in financial matters. The IFA is therefore an important advisor to the CFA with expertise in financial matters as well as about rules and regulations. The IFA must participate in the decision making process as a team member and be accountable for optimal use of resources allocated and achievement of organisational targets / goals.

Recording of Minutes

5.14 The CFA and IFA must ensure that there is proper documentation at each stage viz AON, TEC and CNC and discussion leading to finalisation of contract clauses and prices be properly recorded providing detailed justification for taking decision and accepting deviations from standard terms.

5.15 **At Indenting Stage.** The IFA is supposed to vet the quantity indented/ projected for procurement as at para 5 . 4 above , so as to ensure timely provisioning. In order to ensure that is no infructuous provisioning, the IFA must have access to all inputs required to assess the basis of the projection of indented quantity. In case an IT based management system is operational in the department, the IFA is to undertake such vetting of quantity on the system itself. **However, such vetting must be completed expeditiously within the stipulated time frame so as to obviate delays in meeting the operational/production and maintenance requirement.**

5.16 Tendering Stage. Vendor selection and tendering methodology are vital activities in the procurement process. The IFA, should be consulted in case of STE and LTE. In case the list of approved vendors have been forwarded by the AHSP then IFA need not be consulted at this stage. Vetting of TE will be required where there are deviations from standard terms.

5.16A Both RFP vetting of STE/ LTE enquiry could be processed simultaneously through IFA.

5.17 Procurement Stage. IFA plays an important role in advising the CFA, either as a member of the committee CFA or as an advisor to the designated CFA, regarding the propriety of procedures and practices followed, ranking of bids, determination of L1, fixation of reasonable price (Bench marking) and assessment of price reasonableness as well as in conduct of effective negotiations, where considered necessary to ensure both financial probity and value for money.

5.18 Post Contract Management. Post contract activities, particularly amendment to the contract or the terms and conditions thereof need to be handled with a lot of care and after proper analysis of implications. The IFA is to be consulted in post contract amendments having financial implications. Concurrence of IFA should be obtained if such DP extension is proposed without imposing LD or with token LD. However, amendments and post contractual activities as per the terms and conditions of the contract may be approved by the CFA and concurrence of IFA would not be needed unless there are deviations and financial implications.

5.19 Time Frame. It is imperative that the procurement process is fully responsive to the need of the defence services and department and facilitates expeditious procurement so that requirements are met on time. To this end, it is essential that all scrutiny and vetting are undertaken expeditiously and advise rendered within a specified time frame. Ministry of Finance task Force constituted on revision of procurement Norms has recommended (11/2003) that there should be clear time frame for each process and stage of procurement.

5.20 The time frame as placed at **Appendix 'A'** and '**A1**' is suggested for all activities in the procurement process to ensure that the bids are finalised within validity period. Two time frames are being provided, one for normal commercial offers and another involving two-bids. In case, time frames can't be adhered to in specific cases, extension to validity of bids should invariably asked for.

CONTRACT

Law

6.1. The statutory provisions governing purchase transactions are:-

- (a) Indian Contract Act 1872.
- (b) Indian Sale of Goods Act 1930.
- (c) Arbitration and Conciliation Act 1996.

6.1.1 Govt. contracts, including those for defence procurement, are governed by the same law, which are applicable to private contracts. An agreement is called a contract enforceable by law when the following conditions are satisfied. A defect affecting any of these conditions renders a contract unenforceable.

(a) **Competency of the Parties.** Under law any person who has attained majority and is of sound mind or not debarred by law to which he is subject, may enter into a contract. Minors, persons of unsound mind and those declared insolvent cannot enter into contracts.

(b) **Freedom of Consent of both Parties.** The consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake.

(c) **Lawfulness of Consideration.** The consideration or object of an agreement is lawful, unless it is forbidden by law or is of such a nature that if permitted it would defeat the provisions of any law or is fraudulent or involves or implies injury to the fraudulent property of another or the court regards it as immoral or opposed to public policy.

6.1.2 Categories of persons or bodies capable of entering into legal contract include individuals, partnership concerns, limited companies, state agencies and corporations.

6.2 Parties to Contract. The parties to contract are the purchaser and the contractor named in the schedule of contract.

Signing of Contract

6.3 All contracts concluded by the departments of the central Govt. are in the name and behalf of the President of India. However, the contract, after due approval of the CFA, may be signed by a staff officer, duly authorised by the CFA in writing. The specimen signature of such staff officer is to be sent to all concerned including the paying and inspection authority. As for the contractor, the person signing the offer or conveying the acceptance of the contract is deemed to have been authorised by the supplier unless otherwise stated.

Acceptance of Contract

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

6.4.1 **Contract Effective Date** The contract effective date is to be invariably indicated in each contract as per agreed terms and conditions. The effective date will be the date on which the last of the conditions, as applicable, is complied with, viz :-

- (a) Date of signing of contract.
- (b) Furnishing of performance Bond in the form of PBG by the seller
- (c) Obtaining the Export License for supply of stores by the seller and a confirmation in writing sent to the buyer within specified days of signing of contract.
- (d) Receipt of Bank Guarantee for advance payment
- (e) Date of Issue of End User Certificate. The supplies shall provide the End User Certificate within 30 days of signing of the contract.

Types of Contract

6.5 Govt. contracts can be of many types depending on the nature of the item being procured, work to be executed, services required to be rendered and support to be provided. Though the provisions contained in the manual may not be applicable to the contracts for works and project in totality, these will normally apply to all other types of revenue contracts. The general categories of contract could be:-

- (a) Purchase order for items of stores, spares or equipment.
- (b) Rate Contract.
- (c) Price Agreement.
- (d) Service Contract.
- (e) Annual Maintenance Contract (AMC).
- (f) Consultancy Contract.
- (g) Works Contract/Project.
- (h) Development Contract.

Amendment to Contract

6.6 Amendment to a contract already concluded may become essential in certain situations when either side requests for such a change and the same is acceptable to either side :-

- (a) For enhancement in contract rates financial concurrence of IFA has to be invariably obtained except in cases where the contract provides for price variation clauses or the change is due to variation in ED/Custom Duties.
- (b) Financial Advisor should be consulted for vetting of price variation clauses/exchange rate variation clauses.

6.6.1 In case of MOD contracts, approval of concerned JS in consultation with Def (Fin) would be necessary for amendment to contract under his delegated powers.

Termination of Contract

6.7 A contract may be terminated in the following circumstances:-

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

CONDITIONS OF CONTRACT

Conditions of Contract

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

Standard Conditions of Contract

7.2.1 In order to facilitate clear understanding of the conditions of contract, a set of standard conditions, generally applicable to all contracts, is formulated and made available to all firms dealing with the department. The Standard Conditions of Contract (SCOC) are made available to the firm at the time of registration itself. It is desirable that the SCOC are publicised on the Defence web site also. The Tender enquiry should invariably make a reference to the applicability of SCOC and bidders are expected to conform to the SCOC. The contract must stipulate that the SCOC are applicable in addition to any special conditions specific to the contract, which might have been mutually agreed between the parties. The draft standard conditions of contract is placed at **Appendix 'F'**. The draft SCOC is exhaustive. The relevant clauses as applicable should be included in all contracts.

7.2.2 Similarly while placing Supply Order on the Firms/PSUs, these general conditions should in spirit also be applicable. Acceptance of Supply Order by the Firms/PSUs is essential to make the same as legally valid document.

Special Conditions of Contract

7.3. Special conditions of contract are supplementary conditions applicable to the specific tender and contract. Such conditions become essential particularly in cases of contract for supply of services or even equipment. There may be a need to stipulate conditions like stage inspection, acceptance trials, installation, setting to work, and commissioning or pre-defined stages of payment for services. Such conditions should be mentioned in the Tender Enquiry as well as in the contract.

Security Deposit /Performance Bank Guarantee (PBG)

7.4. Performance Security deposit payable to the purchaser is furnished by the supplier, in the form of Bank Guarantee (BG) issued by a scheduled bank in the prescribed format, within 30 days from the date of contract. This deposit is meant to compensate the purchaser for any loss suffered due to failure of the supplier to complete his obligations as per the contract. Preferably, performance security is payable by the supplier at the rate of 5% of the contract value. The PBG is kept with the Purchaser and must be valid for the entire period of contract and may be retained for the duration of the warranty period. The BG is returned to the supplier on successful completion of all his obligations under the contract. In case the execution of the contract is delayed beyond the contracted period and the purchaser, with or without LD, grants extension to delivery period, the supplier must get the BG revalidated if not valid already. **SSI units registered with NSIC/DGS & D are exempt from paying EMD/Security deposit.**

Delivery

7.5. Timely delivery as per DP stipulation in Contract / Purchase Order is one of the most important procurement objectives as timely availability of items is vital, particularly for the department of defence. The stores are considered to have been delivered only when these are handed over to the consignee after due inspection by the designated inspection agency. Most contracts stipulate door delivery at the consignee's end by road. In some cases, the stores are also despatched by rail, in which case the delivery is deemed to have been made on receipt of RR and inspection note. **In certain cases where the contractor offers stores for inspection during the last few days of contract DP or on the last day of the contract DP, the inspector can inspect the store and sentence it as per standard franking clause.**

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

7.5.2 When the supplies do not materialise by the stipulated contract delivery date, the purchaser has the option of

- (a) Extending delivery date.
- (b) Re-fixing delivery date.
- (c) Cancel the contract and repurchase non-supplied qty.

7.5.3 For deciding on these options the Purchase Officer has to balance the time factor required for making repurchase and whether the supply can be arranged earlier than the period of extension sought for at cheaper rates from alternative sources and in the latter case whether the indenter can reasonably wait to take advantage of lower trend in prices. Extension shall be granted only where the competent Purchase Officer is convinced that supplier would come forward during extended DP. Detailed instructions are contained at chapter 12 of DGS &D Manual 1998.

Liquidated Damages (LP)

7.6 Compensation of loss on account of late delivery **where loss is pre-estimated and mutually agreed to** is termed as the Liquidated damage (LD). The guidelines for levying LD for delayed supplies as given in GO1 Letter No. 2(5)/2QOO/D(Supply~II) dated 05th Nov 2004 is placed at **Appendix 'G'**

7.6.1 Law, allows recovery of pre-estimated loss provided such a term is included in the contract and there is no need to establish actual loss due to late supply [Mala Baux Vs. UOI (1970)]. The legal position with regard to claim for liquidated damages is as follows :-

- (a) Whatever the quantum of the loss sustained, the claim cannot exceed the sum stipulated in the contract.
- (b) Only reasonable sum can be calculated as damages, which in a given situation may be less than the sum stipulated.
- (c) What is reasonable sum depends on fact.
- (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 L/D has been abolished by the Indian Contract Act and in every case, the Court is not bound to award more than 'reasonable compensation' not exceeding the amount so named.

7.6.2 Consequential damage is imposed over and above LD in case of time critical Turn Key Projects.

7.7 **Quantum of LD.** As a general rule, if the contractor fails to deliver the stores or any instalment thereof within the DP or at any time repudiates the contract before expiry of such period, the CFA without prejudice to the right of the purchaser to record damages for breach of contract may recover from the contractor as agreed L/D including admin expenses and not by of penalty a sum equivalent to 0.5% of the prices of any stores which the contractor has failed to deliver within the period agreed for delivery in the contract, for **each week or part thereof** during which the delivery of such stores may be in arrears where delivery thereof is accepted after expiry of the aforesaid period. The total damages shall not exceed **value of 5% of undelivered goods. The LD cannot exceed the amount stipulated in the contract.** [NC Sanyal Vs. Calcutta Stock Exchange (1971)]

7-8 **Token LD.** There may be situations when there are reasons for the delay in delivery by the supplier, but these are not adequate to waive off the LD all together. In such cases, at the sole discretion of the purchaser, a **token LD up to 10% of normal LD** may be imposed. Such cases must be approved by the CFA who approved the contract along with concurrence of 1FA.

7.9 **Waiver of LD.** There could be cases when the delay in delivery was due to reasons not within the control of the supplier or when the supplier cannot be held responsible for the delay in delivery. In such cases, the CFA may consider waiving off the LD with the concurrence of 1FA. However, in such cases, adequate reasons must be recorded to justify such a waiver of LD.

Payment

7.10 **Payment Terms.** Payment terms are of great importance both for the purchaser and the supplier as the cost of finance plays a very important role in deciding the cost of an item or service being contracted for. Normally, 95% of the contract amount is released against provisional receipt of the item at the consignee's premises along with inspection note and other documents. Balance 5% is released after the stores have been properly checked and accounted for.

7.11 **Advance Payment.** As per the current policy of the Govt. no advance should be offered in the TE and the first stand of a procurement officer should be of no advance. However, in exceptional cases of contract for manufacturing of equipment, system or that for a project with long execution time, advance up to a maximum of 15% of contract value may be approved by the departments against **valid BG** from a scheduled bank. Advance of more than 15% can be approved only by the MOD. However, in some cases, stage payment at predefined stages of contract completion may be allotted by the CFA. As per CVC Guidelines, mobilisation advance should be interest bearing. However, in MoD contracts, due to operational requirement, urgency etc., it may not be possible to obtain such terms from the supplier. In such cases, necessary record of circumstances and facts may be kept to that effect.

7.12 **Paying Authority.** The CDA is the paying authority for most contracts by the defence department. Normally, the designated office of the CDA, including IFAs, preferably co-located with the central purchase organization release the payment. **Payment should be made within 21 working days in respect of bills supported by requisite auditable documents.** Consolidated observations, if any should be forwarded within 10 working days by paying authority to the CFA.

Option Clause

7.13 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.

7.13.1 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 in their letter-dated 3.06.2004 have also reiterated the need to look at the downward trend before exercising option clause.

7.13.2 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%.

Risk and Expense Purchase

7.14 Risk and expense purchase is undertaken by the purchaser in the event of the supplier failing to honour the contracted obligations within the stipulated period and where extension of delivery period is not approved. While initiating risk purchase at the cost at the expense of the supplier, the purchaser must satisfy himself that the supplier has failed to deliver and he has been given adequate and proper notice. Whenever, risk purchase is resorted to, the supplier is liable to pay the additional amount spent by the Govt., if any as compared to the contracted amount. Factors like method of recovering such amount should also be considered while taking a decision to invoke risk purchase.

7.14.1 Risk purchase at the cost and expense of the supplier may not be always a practical proposition as it may not be feasible to enforce recovery without legal action. This clause is rarely invoked in case of import contract for this reason. In such cases where the item is of proprietary nature or there is only one qualified firm to supply the items and there is remote possibility of procuring the same item from an alternative source, it will be essential that instead of having risk and cost clause in such contract, the contract should have performance guarantee clause to cover any such default. **(DPB ID dated 19.10.04).**

Force Majeure

7.15 Present orders of the Govt. stipulate that force majeure clause should not be included in the TE or the contract. When a supplier insists on including force majeure clause, this should be included only in the Govt. approved format placed at **Appendix 'H'**.

Arbitration

7.16 There may arise a situation when there is a dispute between the purchaser and the supplier, which could not be resolved through mutual discussions. In such circumstances, the parties may agree for arbitration. MOD/CFA's should prepare a panel of arbitrators for selection by the Defence Secretary /CFA's who appoint an arbitrator, whose decisions taken after due consideration of factors brought out by both parties are considered final. The option of approaching Ministry of Law for appointment of Arbitrator can also be exercised. **In respect of Services HQs, OFB and DRDO HQrs, they have power for appointing Arbitrators within their delegated financial powers.** A standard Arbitration clause has been placed at **Appendix 'J'**

7.16.1 There may be situations when either party may approach a court of law for appointing an independent arbitrator. In case of import contract, the arbitration is normally in the international court of law. Purchase officers must consult the legal advisor and Govt. counsel in all cases of arbitration.

RATE CONTRACT

General

8.1. The basic objective of procurement agency is to provide the right items of right quality and in right quantity, at the right place and right price so as to meet the requirement of the department. One of the ways to ensure this is to conclude Rate Contracts for all common user items which are regularly required in bulk by the department and whose prices are likely to be stable and not subject to considerable market fluctuations. A Rate Contract (RC) enables procurement officers to procure indented items promptly and with economy of scale and also cuts down the order processing and inventory carrying cost. The RC system takes care of supply chain management and enables efficient transaction both for the purchaser and supplier.

8.2. **Definition.** A Rate Contract (RC) is an agreement between the purchaser and the supplier to supply the stores/items at specified prices during the period of the contract. RC is in the nature of a standing offer and neither any quantity nor any anticipated drawal are guaranteed. The supplier is bound to supply any quantity at a specified rate during the currency of the RC. As the RC is a standing offer, either party can revoke it at any time after giving a reasonable notice and opportunity.

8.3. **Price Agreement.** While procuring equipment or a vehicle at the time of introduction into service, it may be expedient to enter into a Price Agreement/fixed Price Quotation with the OEM. The PA/FPQ can be finalized after due negotiation and market survey. Such PA/FPQ will be normally valid for three years and further extended suitably with next higher CFA's Sanction.

8.4. **Types of Items Suitable for RC** The type of items which should be considered for RC are:-

- (a) Items required by several users on recurring basis and having clear specification including type approval by the DGQA/AHSP.
- (b) Fast moving items with short shelf life or storage constraints.
- (c) Items with minimum anticipated price fluctuation during the currency of the RC. Items with high probability of considerable price fluctuation should not be considered to be covered by RC except for short term contract.
- (d) Items that take long gestation period to manufacture and for which there is only one source for manufacturing.

8.4.1 The vendor would need to certify that he is not selling to any other party at a lower rate and a "**fall clause**" is invariably included as per DGS&D provisions for RC.

Authorities Competent to Conclude RC

8.5. Rate Contract or price agreement for supply of stores, military hardware, equipment and spares should be concluded by the Central Procurement agencies in various wings of the MOD. However, items specifically required for repair and refit of defence equipment and platforms like ships and aircraft, the repair agencies may enter into RC while ASC or Base Victualling Yards in the Navy may enter into RC for supply of victuals. The respective Vice Chiefs of the Services or the HOD of the department should specify the level of CFAs for conclusion of RC for various types of items required for their department.

8.5.1 The price agreement or long term product support, however, should be concluded at the level of service headquarters or the central HQ of the department. Long term product support for major projects or equipment being procured under capital head or through the MOD will be concluded by the MOD.

8.5.2 All Rate Contracts and price agreements should be processed through the committee CFA or the TPC so as to ensure best value for money, quality assurance and transparency. Participation of finance member in all deliberations, particularly regarding the pricing and conditions of contract, is mandatory,

8.6 Period of RC. The CFA for concluding rate contracts for various periods are as indicated below:-

- (a) Normally, RC should be concluded for a period of **one year** by central procurement agency, Value of anticipated drawal during the period of contract should be taken into account while determining the level of CFA for conclusion of RC.
- (b) As far as possible termination period of RC should be so fixed as to ensure that budgetary levies would not affect the price and frustrate the contracts.
- (c) Any extension or conclusion of RC beyond a period of **One year** must be approved by the next higher CFA.

Process

8.7 Estimate/Indent/Requisition. A rate Contract can be concluded based on estimated annual requirements of various users. The contract concluding authority must scrutinise the estimates for their completeness in terms of authority for raising the indent, specification of the item, desired delivery schedule, packing and preservation, etc. Adequate budget provisions must be made and confirmed in the normal manner.

8.8 Selection of Firms. RC should be normally concluded only with registered firms based on capacity assessment by designated inspection agency. In respect of new items being bought on rate contract for the first time, RC can be awarded to unregistered firms also on the basis of favourable technical capacity and financial capabilities. Past performance of a firm will be a major consideration while awarding a Rate Contract. The following aspects should be kept in mind: -

- (a) No new RC should be placed with firms having backlog, which is likely to continue for major portion of the year.
- (b) Performance of the contractor for the last 3 years should be taken into consideration.
- (c) If the contractor does not have current RC, performance against earlier two immediate rate contracts should be considered.
- (d) If the RC holder is a defaulter in furnishing drawal report, this should be looked into, if the defaulter is bidding.

8.9 Price Negotiation. While concluding RC, it is preferable to conduct price negotiations by the CNC in order to obtain best value for money and also to clarify all aspects of the RC to avoid ambiguity and dispute at a later stage.

Conclusion of Parallel RC

8.10 In order to obviate situation when purchase has to be made in the normal manner during the currency of the RC due to failure of the RC holder or due to Demand for an item exceeds quantity offered by one vendor or where it is desirable to have a wider vendor base due to criticality of the items, it may become desirable to conclude parallel RCs. The CFA, based on the merit of each case, can decide the number of firms to be awarded RC for an item so that DDOs will have a wider choice. Efforts should be made to conclude parallel RC with firms located in different part of the country to cater for users over wider geographical spread. Parallel RC can be concluded with marginal price difference say up to 5%. In such cases approval of next higher CFA is to be taken.

8.11 **Signing of RC.** RC concluded for various wings of the MOD will be signed for and on behalf of the President of India. RC itself may be signed by the CFA or an officer authorised to sign financial documents on his behalf.

Amendment to RC

8.12 **Extension.** Normally, the period of contract is limited to One year, but in special cases, shorter period may be considered.. Any extension beyond a period of **One year** should be approved by the **next higher CFA.**

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

Payment

8.14 Standard Payment term as indicated below should be incorporated in all Rate Contracts:-

(a) **Upto** 98% on receipt of stores at consignee's premises against dispatch document, provisional receipt and copy number 1 of Inspection Note. However, in case it becomes essential to dispatch stores by train, 95% **payment** can be released against proof of dispatch, i.e., copy of the RR and inspection note.

(d) 2% on accounting of stores by the consignee.

(c) Payment should be effected by the paying authority within **21 working days** from the date of receipt of bill, if the supporting documents meet paying authority requirement. Consolidated observations, if any should be forwarded within 10 working days by paying authority to the CFA.

8.15 **Paying authority.** The concerned CDA will be the paying authority. However, the paying office may include all offices of the CDA including those co-located in the premises of the CFA concluding rate contract.

EVALUATION OF QUOTATIONS AND PRICE REASONABILITY

Introduction

13.1 In any purchase decision, the core issues to be decided by the CFA are whether the offered items meet the essential tender requirements, prices being charged are reasonable and the procedures followed are proper, fair and transparent. In this regard, provisions in General Financial Rules, 1963 (GFR) are as follows: -

"The responsibility and accountability of every authority delegated with financial powers to procure any item or service on Govt. account is total and indivisible. Government expects that the authority concerned will have public interest upper most in its mind while making procurement decision. This responsibility is not discharged merely by selection of cheapest offer but must conform to the following yardsticks of financial propriety: -

(a) Whether the offers have been invited in accordance with the governing rules and after following fair and reasonable procedures in prevailing circumstances.

(b) Whether the authority is satisfied that the selected offer will adequately meet the requirement for which it is being procured.

(c) Whether the price of the offer is reasonable and consistent with the quality required.

(d) Above all, whether accepted offer is the most appropriate one taking all relevant factors into account and keeping with the standards of financial propriety.

(Min of Fin OMNo. F 23 (10).E.II(A)/86 dated 29.06.89)

13.2 Provisions relating to economy in procurement of stores estimated cost for purchase of stores in the GFR is reproduced below: -

(a) **Rule 103** "Purchases shall be made in most economic manner in accordance with the definite requirements of the public service."

(b) **Rule 105(11)** All indents sent out shall state clearly and accurately the grant number and the head of account to which the cost of stores is debitable, the amount of appropriation provided and an estimate of cost of each item.

13.2.1 In many cases CVC had observed that the estimated rates were worked out in an unprofessional and perfunctory manner. CVC further observed that estimated rates are vital element in establishing the reasonableness of prices and therefore, 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 value etc.

Evaluation of Quote

13.3 The first step in arriving at the decision regarding reasonability of price or otherwise is to know the exact cost of the proposal. In order to do this, all valid quotes have to be ranked as per the criteria indicated in the RFP. In order to ensure that all offers are compared in an equitable and fair manner and the vendors are provided a level playing field, all elements of cost, including the terms and conditions with financial implications are to be taken into account while ranking quotes.

13.4 **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 will be rectified on the following basis:-

(a) 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.

(b) If there is a discrepancy between words and figures, the amount in words shall prevail.

13.5 Comparative Statement of Tenders. On receipt of all accepted tenders, the purchase cell is to collate them in the form of Comparative Statement of Tenders (CST). The CST will be exhaustive and is to include all details given in the quotations. Deviation from the tender documents is to be brought out in the CST. LPP, wherever available, should be indicated for a fair comparison of the offered prices. CST will be vetted by the IFA/IFA's representative with regard to original quotations, indents and other supporting documents. The IFA representative and purchase officer will sign the CST.

13.6 Bench Marking Before scheduled negotiation (wherever considered necessary) it would be advisable to work out estimated reasonable rate. In case of single tender cases, a technical team should make an assessment of estimated cost based on available information. The approach to be taken for assessing reasonability in different contingencies is given below.

Reasonableness of prices in Competitive Tendering

13.7 In the case of competitive tendering where two or more vendors are competing independently to secure a contract, the competitive bids form the basis for pricing. Database maintained on cost based on concluded contracts, price of the product available through market should also be used to assess reasonableness of the price offered.

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

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

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

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

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

(f) Effort should be made to check cost break up details as per format placed at **Appendix 'P'** to the extent possible. A Book examination clause should be invariably provided in the RFQ.

Last Purchase Price

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

- (a) LPP of more than three years vintage is not taken as a real scale for comparison. However, such LPP could be used as an input for assessing the rates.
- (b) LPP should pertain to a past successfully executed order of similar magnitude and scope of supply.
- (c) Factors like basket price and bulk discount offered need to be taken in to account while using LPP as a scales for comparing prices.
- (d) Price variation clause, if any, and the final cost paid by the Govt. in respect of last purchase to which LPP pertains to be considered.
- (e) Factors like items supplied against LPP being of current production or ex-stock supply need to be taken into account..
- (f) Market conditions and extraneous factors like re-starting production lines due to obsolescence may also have to be considered.

13.9 **Lack of competition.** Exists in the following situation:-

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

(DGS &D)

13.9.1 In the case of single tender not covered under para 13.9 above, analysis of the costs and price structure may be done to ensure that the price quoted is reasonable with reasonable profit margin. In this regard GFR rule 102 (1) and para 9 of the annexure containing instructions for purchase of stores is reproduced below: -

"Where the lines of manufacture are the monopoly of a single firm or a group of firms, or where a significant increase over the purchase price, not explained by a corresponding increase in price of raw material or of labour charges, is being asked for, the reasonableness of the offer is determined with reference to the actual cost of production plus a reasonable margin of profit. In such cases, the indigenous manufacturer should be asked to accept the order on actual cost plus a reasonable fixed margin of profit, with quoted price being the ceiling subject to adjustment after necessary cost check. Prior consent of the competent financial authority should be obtained by the purchases offer before entering into a contract relating to uncertain conditions, wages, and cost of raw materials. Wherever possible, the right to examine firm's books should also be reserved, except where details furnished by the firm provide an adequate check and are satisfactory in all respects."

Adaptation of Discounted Cash Flow Technique (DCF)

13.10 The Discounted Cash Flow is defined as "method of evaluation by which cash flow of the future are discounted to current levels by the application of a discount rate with a view to reducing all cash flow to common denomination and make comparison" : DCF is also defined as " a method of investment appraisal under which today's cash outflows are compared with today's cash inflows"

(Glossary of Management Accounting Terms published by the institute of Cost and Works Accountants of India.)

13.10.1 The DCF procedure is to reduce both cash inflow and out-flows into net present values (NPV) through the DCF methods, which would be more scientific and reliable. The use of Net Present Value (NPV) analysis in Cost and Price Analysis is based on the concept of time value of money. The 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 flow/inflows and the average cost of capital i.e., cost of borrowing becomes an important constituent in evaluation process.

13.10.2 The alternative with the smallest payment of net present value in the procurement is the obvious choice. The DCF may be made use of to facilitate determination of L1 in following procurement situations: -

- (a) To compare different payment terms of the vendors to a common denomination for determining L1 status.
- (b) To deal with the cases where entering into AMC over a period of 10 to 11 years is part of the contract for evaluating for L1 status.

13.10.3 Ministry of Finance has also clarified that determination of L1 by merely adding arithmetic values spread over 12 to 13 years (2 years warranty and 10 to 11 year AMC) would be an incorrect procedure for determining LI and the correct procedure would be reduced cash out flows into present values through the DCF technique for which the discount rate to be adopted should form part of the RFP.

13.11 **Discounting Rate.** The cost of borrowing to the Government is the relevant discounting rate for the purpose of evaluation. The Ministry of Finance and Company Affairs prescribes the lending rates of the loans to be charged by the Central Government from State Governments, Public Sector Undertakings and Financial Institutions etc. At present this rate is 9%.

13.11.1 In the RFP, where DCF method is to be used, a clause may be incorporated in the RFP as follows: -

"The buyer reserves the right to evaluate the offers received by using Discounted Cash Flow method at a discounting rate of ____%".

13.11.2 In case cash flow involves more than one currency, the same to be brought to a common denomination, say Rupees by adopting exchange rate as on the date of the opening of price bids. "Excel" or any standard spreadsheet has the features for carrying out this exercise.

13.11.3 Ministry of Finance & Company Affairs letter dated 11 Nov 2002 placed as **Appendix 'Q'** also clarifies the position on DCF.

Price Variation Clauses/Price Adjustment

13.12 Normally contract should be entered into on firm price basis. Nevertheless in the fluctuating market conditions, supplier often quotes variable prices, particularly when contract period exceed 12 months. DGS&D Manual has provided Standardised Price Variation Clauses. These clauses should be indicated in the RFP. A sample clause is indicated below:-

$$P_i = P_o (a + b \frac{L_i}{L_o} + c \frac{M_i}{M_o}) - P_o$$

Where P_i = Adjustment amount payable to the contractor P_o = Contract Price (Base Price) a = Fixed element representing Profit & Overloads

in contract price

b = Estimated % of labour component

c = Estimated % of Material component

L_o & L_i - Labour indicates applicable to appropriate Industry on the base date & date of adjustment respectively.

M_o & M_i = Material indicates for raw material on base date & date of adjustment.

The sum of the three coefficients a , b & c shall be (1)

13.13 **Conditions Applicable to Price Adjustment**

- (a) Base dates shall be due dates of opening of Tenders
- (b) Date of adjustment shall be midpoint of Manufacture.
- (c) Price adjustment will be applied only if the resulting increase or decrease is more than 2% of contract price

- (d) No price increase is allowed beyond original DP unless the delay is attributable to the buyer
- (e) Total adjustment will be a maximum of 10% of contract price
- (f) No price adjustment shall be payable on the portion of contract price paid to the contractor as an advance payment. The Price Variation Clause and its implication should be got vetted by IFA

Exchange Rate Variation (ERV)

13.14 In case delivery period exceeding one year from the date of contract involving import (foreign exchange), ERV clause is to be provided. The offer should indicate import content. In case DP is re-fixed / extended, ERV will not be admissible if this is due to default of supplier. Base exchange rate of each major currency used for calculating FE content of the contract is to be indicated. The base date for ERV would be contract date and variation on the base date can be given upto the midpoint manufacture unless firm has already indicated the time schedule within which material will be exported by the firm. Other conditions as above for price adjustment would be applicable.

13.15 Documentation for Claiming ERV

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

13.16 Single Tender/Noncompetitive Contracts - Indigenous Procurement:

Where after the analysis of technical bids only one party remains competing for a contract for supply of a product or service or where one vendor has been nominated including Defence Public Sector Undertakings, such a case becomes a non-competitive contract or a single vendor/tender contract. The cost and the price offered by the vendor in such cases, particularly when, in the recent past reasonable quantities of such items have not been procured which will facilitate any comparison, needs to be scrutinized to assess that the price offered is reasonable and economical. To assess the reasonable price the following steps could be considered for the projects supplied in the past indigenously or by an Indian vendor.

- (a) In case of products, which have been supplied in the past, the actual cost of production of the completed contract or supplies may be obtained in addition to the price quotation. The current Cost of Production may be assessed keeping in view the actual cost of production duly updated to current rates.
- (b) The break up of the material cost into the imported and indigenous material. In case of imported material, break down of Foreign Exchange content, foreign currencies involved, exchange rate adopted and other costs to be obtained. In respect of Direct Material, various types of material used, their spec(s), unit rates and usage factor and credit for scrap arising should be assessed by a Technical Team and rates vetted by IFA/IFAreps.
- (c) The man hour rate (MHR) rate and Total Standard Man Hours (SMH) should be assessed.
- (d) Cost Break up should be obtained as per format placed at **Appendix 'P'**
- (e) Balance sheets and profit and loss accounts during the last three years should be analysed, wherever made available.

(f) In case where advance or progressive payments are required to be paid, the advantage of advance in terms of lower cost of production should be considered.

(g) Where the order is for larger quantity, the benefit of economy of scale due to higher capacity utilisation and reduction of overheads particularly fixed overheads should be taken into account.

(h) There should be clear linkage between price negotiated and quantum of advance.

Web Sites

(j) In regard to price indices of indigenous items, website of Ministry of Industry www.eaindustry.nic.in should be accessed for the latest indices/trends. For metals and other minerals access www.mmr.online.com for updates. The other useful sites are www.tradinteUiQence.com and www.cmie.com. The monthly report of CMIE (Centre for Monitoring Indian Economy). COSMOS Package of CMIE giving updates on performance of listed Indian companies, RBI monthly bulletin, Economic survey and its Appendix containing statistical tables are excellent reference material for market trends. The World Economic Outlook - a monthly report from IMF, gives inputs on price trends of different countries. LME (London Metal Exchange) gives price trends of nonferrous details, which often show volatile trends. Indices of electronic items often show lower trends. Instructions issued by Ministry of Finance on its web site www.fmmin.nic.in should be assessed as also CVC's site www.cvc.nic.in.

(h) The price should normally be on 'Firm Price' basis. When contracts are concluded with provisions for variation in price, the formula on which price variation is based should be clearly spelt out indicating the base price of the raw material, labour, overheads and duties etc., on which price variation is to be allowed. Price variation should be considered up to the schedule date of delivery. Escalations beyond scheduled dates may be considered when the delay in execution of contract is attributed to the buyer.

(j) RFP, should invariably contain a 'Book Examination Clause' for high value single vendor cases. Costing expert should be associated in the CNC for cost assessment etc. **Adviser (Cost) MOD can be consulted beyond Rs. 20 Crore (Single vendor cases) who could be made a part of CNC to render advices on cost examination as is the case with the capital acquisition cases as per DPP 2002 (version 6/2003).**

13.16.1 The format in which data is to be sought from single vendor is placed at Appendix 'P'. Validation of total SMH figures could be a time consuming affair.

These are indicative guidelines and should not hold up finalisation of CNC negotiations. (DPB decision dated 19.10.2004.)

13.17 Single Tender / Noncompetitive Contracts - Foreign Procurement:

Apart from the parameters enumerated at Para 13.16 regarding analysis cost break up and price indices wherever feasible, efforts should be made to analyse.

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

(b) Compare with 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.

(c) DRDO and Production Agencies should be involved in assessing the reasonability of prices in such cases of high value.

(d) The foreign vendor may be asked, to provide the details of past supplies and contract rates if any of similar kind of product to other buyers.

13.18 Data **Base on Cost & Prices:** Each service HQrs. OFB and DRDO should have **costing expert as part of the Directorate of Financial Planning** which would advise on reasonableness of price, escalation clauses, cost verification where prices are fixed subject to a ceiling price. Service HQrs, OFB and DRDO should maintain data base on past

contracts showing details of items procured, their essential spec(s), unit rate, quantity, total value, mode of TE, number of tenders received, number of tenders considered acceptable, reasons, for exclusion of overlooked tenders, un-negotiated rates of LI and contract rates in order to help in ascertaining reasonability of prices of future procurements. In case of OFB & DRDO HQs the Addl FA, costing expert would function under the Fin/OFB respectively.

13.18.1 For **price indices**, internet facility should be accessed by officers dealing with purchases/associated with CNC from important sites as enumerated at para 13.16(g) above. The Directorate of Financial planning should subscribe to important publications like RBI Monthly Bulletin, CMIE'S monthly report, Economic Times/Financial Express, MMR etc.

13.18.2 Expert agencies should be approached for **market intelligence** forecasting trends and best practices. Public Sector Banks, particularly SBI, should be consulted before firming up major payments involving LC, Performance Bank Guarantee, reputation of foreign banks etc.

13.18.3 In assessing the reasonableness, general analysis of Financial/Cost ratios from published accounts and evaluation of Commercial/Technical information of the Vendor/Bidder may be undertaken. The allocation of overheads should be as per established principles of costing. Assessment should be made on the vendor's approach to controlling cost, adherence to delivery schedule, Cost Accounting System and other factors affecting contractor's ability to meet cost/schedule targets.

13.18.4 **Even when only one bid is submitted, it may be considered valid if the bid is satisfactorily advertised and price quoted is reasonable in comparison to market value and assessed price.**

13.18.5 Assessing of reasonability may be 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 a price and taking procurement decision.

I.T.POLICY

No.6(3)/98/D(O-I)

Government of India **Ministry of Defence**

New Delhi- 110011

Dated : 20th October, 1998

To

The Chief of the Army Staff

Subject: **DELEGATION OF SPECIAL FINANCIAL POWERS
FOR INFORMATION TECHNOLOGY RELATED
PROJECTS - ARMY**

Sir,

1. The undersigned is directed to convey the sanction of the President of India to the delegation of financial powers to Addl. DG Systems of Army HQ and other formation heads in Commands and lower formations for carrying out projects related to Information Technology for Indian Army.

2. The officers delegated powers to sanction expenditure on the above subject are indicated in Annexure I and II. The financial powers are to be exercised subject to the availability of funds in the budget of the financial year.

3. Yearly allocations to Additional Directorate General Systems will be made by Additional Directorate General of Financial Planning. The entire expenditure on this account will be debited to Major Head 2076, Minor Head 110 (H) Code 433/01, 433/02, 433/03 and 433/04 Estimates. The expenditure under this head will be maintained by Addl Directorate General of Systems and monthly report on progress of expenditure will be rendered to FP Dte, GS Branch, Army HQ.

4. These powers will be exercised by the various nominated functionaries only and not re-delegated to any of their staff officers.

5. As indicated in para 2 above, exercise of these powers by Additional director General and other functionaries will be carried out in consultation with the respective designated IFA/CDA. The details of IFA for respective Corps Cdrs are attached at Annexure III. This implies that the IFA/CsDA will be associated right from the stage of initiation of proposals for procurement/development till placement of orders. General instructions contained in this Ministry's letter No. 48503/ST-11/4810-B/D(QS) dated 23 Sep 92, regarding initiation, processing, clearance etc would be followed.

(a) All procurement procedures as already prescribed in various Govt. orders and other instructions will be complied with strictly in respect procurement of stores. All equipment and stores will be properly accounted for and issued where required under orders of Additional director General systems.

(b) The procurement under these delegated financial powers will normally not be done for items with long lead period so as to avoid carry over of liabilities from one financial year to another.

6. Relevant schedules in Financial Regulation will be deemed to have been amended pending issue of necessary corrections there-to.

7. This issues with the concurrence of Ministry of Defence (Finance) vide their U.O No. 2702/Addl. FA(P)/98 dated 16.10.98.

To,
The Chief of the Army Staff

**Subject: DELEGATION OF SPECIAL FINANCIAL POWERS
FOR INFORMATION TECHNOLOGY RELATED
PROJECTS-ARMY**

Sir,

1. The undersigned is directed to convey the sanction of the President of India to the delegation of financial powers to Addl G system of Army HQ and other formation heads in Commands and lower formations for carrying out projects related to Information Technology for Indian Army.

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4. These powers will be exercised by the various nominated functionaries only and not re-delegated to any of their staff officers.

5. As indicated in para 2 above, exercise of these powers by Additional Director General and other functionaries will be carried out in consultation with the respective dependent IFA/CDA. The details of IFA for respective Corps Commanders are at Annexure III. This implies that IFA/CsDA will be associated at various stages involving acceptance of necessity of the proposal (prior to approval of CFA), procurement action including issues of tenders, vetting CST, price negotiations, issue of supply orders as well as post contractual monitoring. General instructions contained in this Ministry's letter No 48503/ST-11/4810-B/D (OS) dated 23 Sep 92, regarding initiation, processing, clearance etc would be followed.

(a) All procurement procedure as already prescribed in various Govt. orders and other instructions will be complied with strictly in respect of procurement of stores. All equipment and stores will be properly accounted for and issued where required under orders of Additional Director General Systems,

(b) The procurement under these delegated financial powers will normally not be done for items with long lead period, so as to avoid carry over liabilities from one financial year to another.

6. Relevant schedules in Financial Regulation will be deemed to have been amended pending issue of necessary corrections there to. This supersedes Govt of I Ministry of Defence letter No 6(3)/9S/D (O-1) dated 20 Oct 98. corrigendum No. 6(3)/98/D (O-I) dated 12 Jan 99 and 10 Jul 99,

7. This issues with the concurrence of Ministry of Defence (Finance) vide their U.O No 237/dir (Fin/O) dated 31 Jan 2000.

Yours faithfully.

(S.D. BANGA)

Under Secretary to the Government of India

Appx. A of Annexure

to letter No10010/ AI/ FP-4/2421/2005-D(GS-I) dated 19Oct2005

OBJECTS OF EXPENDITURE OUT OF ACG AND ASG**PART - A : Annual Contingent Grant (ACG)**

In addition to the objects of expenditure as mentioned in Classification Hand Book -fence Services Receipts & Charges-1992, issued by the Controller General of Defence Accounts, expenditure out of ACG may also be incurred on the objects/items/services as listed in the succeeding paragraphs.

| Ser No. | Items |
|----------------|--------------|
|----------------|--------------|

- | | |
|-----|---|
| 1. | Candles, Calendars, Chicks, Clocks & Repair of clocks for offices and guard rooms, Confidential box for unit confidential documents, Conveyance charges debitable to office contingency, Cleaning material, Diaries, Dusters, Demurrage on Stationery, expenditure on the emergent of labour by Units/Formations, Forms to be obtained on payment from the Forms Press, Fees to postal authorities on a/c of window delivery, post bags and post boxes. |
| 2. | Fees for services of Govt. examiner of questioned documents. |
| 3. | Index cabinet. |
| 4. | Labels. |
| 5. | Lamps for camp offices. |
| 6. | Letter Scale. |
| 7. | Locks and keys for office boxes. |
| 8. | Loose leaf books for inspection guide. |
| 9. | Loose leaf binders. |
| 10. | Library allowance. |
| 11. | Library Grant for Central, Area and Brigade libraries. |
| 12. | Licence fees chargeable for Army washerman. |
| 13. | Line contingent allowance. |
| 14. | Labour Welfare fund for civilian (non-industrial) personnel. |
| 15. | Labour welfare fund for civilians employed in industrial establishments. |
| 16. | Maps. |
| 17. | Matches. |
| 18. | Memorial Registers. |
| 19. | Municipal tax and Cantt tax. |
| 20. | Musketry prize allowance TA. |
| 21. | Pad locks. |
| 22. | Postal bags. |
| 23. | Typewriters & Duplicators. |
| 24. | Postage charges on bearing covers. |
| 25. | Registration Books. |
| 26. | Ref. books for office use like (a) dictionaries, (b) directories, (c) handbooks, (d) Ready reckoners, (e) Govt. publications such as rules, (f) Regulations, (g) Year books, (h) Railway time tables, (i) Non official publications relevant to office work. |
| 27. | Receivers broad cast-cost of repairs and Battery charging. |
| 28. | Repairs to Adrema Machine. |
| 29. | Ration allowance to apprehended Military deserters or absentees in civil or state custody. |
| 30. | Registration and license fees. |
| 31. | Rewards for information leading to the conviction of incendiaries or for the recovery of stray cattle. |
| 32. | Rewards for information leading to the prevention of thefts. |
| 33. | Reward for apprehension of deserters. |

34. Sealing wax crucible with lamp and spirit for lamp.
35. Steel cupboards.
36. Strength Boards.
37. Tablecloths.
38. Treasury cheque forms for Regimental treasury chest.
39. Unit detail books and duty rosters.
40. Verification roll for Garrison duty companies.
41. Waste **paper baskets**.
42. Wooden frame for distribution of work on board.
43. Washing charges for towels, dusters and durries etc, got done outside the unit.
44. Washing allowance to Central Govt. class IV servants (employed at places other than Delhi & Shimla).
45. AMC/Maintenance/repair charges for equipment and items purchased out of ACG.
46. Boxes and packing material for office records.
47. Curtains, flooring/furnishing materials and linen for offices.
48. Cleaning and sanitation materials.
49. Display boards all types including letters, paints and markers etc for their updation/ upkeep.
50. Equipment for disposal of biomedical/biowaste, disinfectants.
51. Expenditure incurred on court cases, defence of law suits including documents charges.
52. Expenditure on consultancy, analysis/testing of evidential samples, chemical examination, forensic investigation etc, relating to defence prosecution in court cases.
53. Emergency lighting arrangements for sensitive installations including inverters and portable generators.
54. Expenditure related to holding of technical seminars/symposium.
55. Expenditure on purchase, testing, upkeep and maintenance of weights, measures and balances.
56. Expenses for preservation of materials and stores e.g. mothball etc.
57. Hindi teaching scheme cash award.
58. Interpreter charges.
59. Lamination/framing charges,
60. Legal fees for counsels/payment of awards by courts/compensation awarded by courts.
61. Office requisites like: (a) Furniture, (b) Executive tables and chairs, (c) Table glass, (d) Pen stands, (e) Filing cabinets, (f) Essential cutlery crockery, (g) Water coolers, (h) Drinking water containers & filters, (i) Water purification candles and equipment like: Aqua Guards, Coffee/tea makers/dispensers, Food warmer/hot cases, (j) Seals/rubber stamps, (k) All types of stationery .except computer stationery. Expenditure on items of stationery will be restricted to a maximum of 20% of the total allotment under ACG in a particular financial year subject to the ceilings and the provisions of Appx-II, Part-I Army, Schedule XI to MoD letter No A/89591/FP-1/693/2002/D/(GS-1) dt 22 Apr 02,
62. Office appliances/equipment like: (a) Reprographic machine, (b) Fax, (c) Intercomsets, (d) Paper shredder, (e) Lamination machine, (f) Answering machines (g) Dictaphones, (h) Heaters (i) Fans, (j) Air coolers/conditioners, (k) Voltage stabilisers, (l) Calculators, (m) Illumination devices, (n) Vacuum cleaners, (o) Laser pointers, (p) Clocks and (q) Such other items.
63. Name Plates/sign posts etc for offices and other accommodations.

64. Purchase of technical books and periodicals.
65. Passing out/attestation parades, convocations.
66. Perimeter fencing and security lighting, when not provided as MES works where operational urgency dictates immediate provision.
67. Paint for fuel, oils and lubricant (FOL) packing material.
68. Precis and dossiers etc for cadets/students officers in Category 'A' & 'B' Training establishments.
69. Recurring expenditure on maintenance, including Annual Maintenance Contracts (AMC) and consumables for office equipments/requisites purchases out of ACG, such as:(a) Plain paper copier (b) Typewriters-manual and electronic, (c) Spiral binding machine, (d) Portable generators, (e) VideocassetteA/CD recorders/players, (f) Televisions, (g) Closed Circuit Television (CCTV) systems (h) Video projection system, (i) Any other office equipment/ancillaries, (j) fridges.
70. Rewards for specially prompt and meritorious action in connection with the extinguishing of fires and the saving of life and property from damages arising there from.
71. Rewards for information leading to the conviction of personnel accused for bribery and corruption.
72. Security and safety alarm system e.g. metal detectors, CCTV systems, smoke detectors, security systems and electronic devices.
73. Upkeep and maintenance of employee's canteens.
74. Upkeep of trainee's accommodations in training Ests including curtains, coir mats, mattresses, pillows, buckets, table lamps and other accessories.
75. _ Upkeep and maintenance (other than civil works/electrical maintenance by MES) of: -(a) Outdoor/indoor museum equipment/war trophies, (b) Auditoriums, conference halls and briefing rooms.
76. Water pump for lining of water, Water storage PVC tanks for toilets etc,
77. Fire extinguishers for offices.
78. Furnishing items for unit MI Room, to include mattresses, pillows, doormats, table lamps, buckets, jugs, mugs etc.
79. Administrative and logistic expenses during international cooperation and multinational exchange programmes on as required basis and on specific orders of one of the Principal Staff Officers at Army Headquarters along with .necessary allotment of funds.
80. Freight charges for transport of stores/equipment procured out of budget allotment for ACG.
81. Fax, e-mail along with related internet charges and telephone bills, only for casual nature and not for regular payments.

PART - B : Annual Stationery Grant (ASG)

Ser Items No.

1. All types of stationery, folders, envelopes, writing material etc.
2. Printing of ledgers, formatted record keeping books, forms, memo pads, DO pads, cash columnar ledgers etc.

(Ref Para 6 of letter No B/0510/ SOP/ADG IT (Budget) dt 15 Jan 2001)

GUIDELINES ON ITEMS/SYSTEMS THAT CAN BE PROCURED

(This list is representative and not exhaustive)

1. Computer Systems

- (a) Turnkey projects to include:-
 - (i) Wide Area Networks with associated equipment.
 - (ii) LAN including servers, nodes, associated peripherals and software (System and Application).
 - (iii) Complete workstations/Stand alone PCs including peripherals. System and customized application software.
 - (iv) CAT lab facilities.
- (b) Stand alone PCs including peripherals and System/Commercial Off The Shelf Software.
- (c) Lap Top Computers/Note book computers.
- (d) Palm top computers or any other similar computers.

2- Access Networks, Media Connectivity Including Associated Hardware and Software.

- (a) VSAT Terminals
- (b) Leased Lines alongwith associated terminal eqpt.
- (c) Access Networks
- (d) Versa Mux, Digital Cross Connects, OLT, BW Managers etc.
- (e) Routing equipment like Routers, switches etc
- (f) Outdoor Plant like OFC/Copper Cabling and associated hardware.
- (g) XDSLs (HDSL/ADSL etc).
- (h) Primary and higher order multiplexers with suitable Interface cards as per need.
- (i) Modems/Radio Modems/any other type of modems in IT.
- (j) Structured Cabling.
- (k) Any radio based link for extn of data channels.

3. System Software and Application Software.

- (a) Operating systems for standalone PCs like Windows 95/Windows 98 etc.
- (b) Network operating systems like UNIX/Windows NT etc.
- (c) Network management software.
- (d) ERP software and solutions.
- (e) Commercial Off The Shelf Software and Suites such as :-
 - (i) Office Automation Software - like MS Office 2000, Lotus Notes etc
 - (ii) RDBMS/DBMS like DB2/ORACLE/SQL Server/Visual FoxPro etc
 - (iii) Antivirus software like McAfee, NAV, etc.
 - (iv) Computer based training Packages.
 - (v) Software for High End Applications - like AutoCAD, Scala, Animator Pro etc.
- (vi) Software development Tools and Computer Based Training Development Tools/ Packages like visual studio, author ware etc.

- (vii) Data Recovery software.
- (viii) Data encryption and security software.
- (ix) Diagnostic tools, QA tools and other software engineering tools.

4. Software Development and Technical Consultancy for IT Projects and IT Training.

- (a) Consultancy from civil vendors to carry out the following:-
 - (i) Feasibility Study
 - (ii) Information System plan etc.
 - (iii) Systems Study, Requirement Analysis, and System Design,
 - (iv) Solutions for Turnkey IT projects.
- (b) Customized software development.
- (c) Seminars, wksp, conference, symposiums, conventions.
- (d) Guest Lectures.
- (e) IT related training from ciyil institutions.

5. Computers Peripherals and Ancillaries.

- (a) Standby Power management equipment such as CVT, UPS, batteries for UPS, Spike Busters etc.
- (b) Computer Storage Devices and backup devices like external disk stations, hard disks, tape drives, zip drives, zaz drives, DAT drives, Microfilming equipment, etc.
- (c) Input Devices like Keyboards, Scanners, Touch Screen, Mouse, Joysticks, Trackballs, Digitizers, Light_pens etc.
- (d) Output Devices like all types of Plotters, Printers, such as dot matrix printers, inkjet printers, laser Printers, line printers etc.
- (e) Fax, Modems, Fax modems, Photocopiers etc.
- (f) CD changers, CD Drives, Juke Boxes, DVD ROM Drives, CD writers etc.
- (g) Projection Systems like Video Projection Systems, Visualizers, LCD Projectors, Overhead Projectors, LCD Panels etc
- (h) Multimedia Kits, Audio-Visual Kits, Mics, Speakers, DVD Drives, Digital Camera, Digital Video Camera etc.
- (i) Display systems like monitors, Anti-glare Screens-etc.
- (j) Printer sharer, video splitters etc.
- (k) Batteries for UPS.
- (l) Printer Heads.
- (m) All types of interface cards and memories such as RAM, video graphic cards, video grabber cards, controller cards etc.,
- (n) Networking equipment like switches, hubs, routers; Network interface cards, Mounting cord, Information outlets, surface mount box, jack panels, jack patch, Racks with accessories, conduits etc
- (o) Test and maintenance Equipment like multimeters, I C testers, vacuum cleaner etc.
- (p) Special computer furniture.

6. Computer Stationery and Consumables

- (a) Computer printer paper of various sizes and types.
- (b) Map litho paper etc for photocopying purposes.
- (c) Cleaning cloth, cleaning liquid, drive cleaning kits etc.
- (d) Magnetic Media such as Floppies, tapes, write-able CDs etc.
- (e) Magnetic Storage Devices. /
- (f) Printer ribbons, Cartridges etc for all types of printers.
- (g) Photocopier paper for photocopier and laser/inkjet printers,
- (h) Connectors like RJ 45, RJ 11 etc,
- (i) Cables for devices like printer, scanner, fax , UPS etc, Power Cables, LAN **UTP/OFC** Cables etc,
- (J) Plastic parts of equipment.
- (k) Batteries of UPS, lamps for projection systems etc.

Procurement of goods and services

I. PROCUREMENT OF GOODS

Rule 135. This chapter contains the general rules applicable to all Ministries or Departments, regarding procurement of goods required for use in the public service. Detailed instructions relating to procurement of goods may be issued by the procuring departments broadly in conformity with the general rules contained in this Chapter.

Rule 136. Definition of Goods.— The term 'goods' used in this chapter includes all articles, material, commodities, livestock, furniture, fixtures, raw material, spares, instruments, machinery, equipment, industrial plant, etc., purchased or otherwise acquired for the use of Government but excludes books, publications, periodicals, etc. for a library.

Rule 137. Fundamental principles of public buying.— Every authority delegated with the financial powers of procuring goods in public interest shall have the responsibility and accountability to bring efficiency, economy, transparency in matters relating to public procurement and for fair and equitable treatment of suppliers and promotion of competition in public procurement. The procedure to be followed in making public procurement must conform to the following yardsticks :—

(i) the specifications in terms of quality, type etc., as also quantity of goods to be procured, should be clearly spelt out keeping in view the specific needs of the procuring organizations. The specifications so worked out should meet the basic needs of the organization without including superfluous and non-essential features, which may result in unwarranted expenditure. Care should also be taken to avoid purchasing quantities in excess of requirement to avoid inventory carrying costs;

(ii) offers should be invited following a fair, transparent and reasonable procedure;

(iii) the procuring authority should be satisfied that the selected offer adequately meets the requirement in all respects;

(iv) the procuring authority should satisfy itself that the price of the selected offer is reasonable and consistent with the quality required;

(v) at each stage of procurement the concerned procuring **agency** must place on record, in precise terms, the considerations which weighed with it while taking the procurement decision.

Rule 138. Authorities competent to purchase goods.— An authority which is competent to incur contingent expenditure may sanction the purchase of goods required for use in public service in accordance with Schedule V Delegation of Financial Powers Rules, 1978, following the general procedure contained in the following rules.

Rule 139. Procurement of goods required on mobilization.— Procurement of goods required on mobilization and/or during the continuance of Military Operations shall be regulated by special rules and orders issued by the Government on this behalf from time to time.

Rule 140. Powers for procurement of goods.— The Ministries or departments have been delegated full powers to make their own arrangement for procurement of goods. In case however, a Ministry or Department does not have the required expertise, it may project its indent to the Central Organisation (e.g. DGS & D) with the approval of competent authority. The indent form to be utilized for this purpose will be as per the standard form evolved by the Central Purchase Organization.

Rule 141. Rate Contract.— The Central Purchase Organization (e.g. DGS & D) shall conclude rate contracts with the registered suppliers, for goods and items of standard types, which are identified as common user items and are needed on recurring basis by various Central Government Ministries or Departments. Definition of Registered suppliers is given in Rule 142 below. Central Purchase Organization will furnish and update all the relevant details of the rate

contracts in its website. **The Ministries or Departments shall follow those rate contracts to the maximum extent possible.**

Rule 142. Registration of Suppliers.— (i) With a view to establishing reliable sources for procurement of goods commonly required for Govt. use, the Central Purchase Organization (e.g. DGS&D) will prepare and maintain item-wise lists of eligible and capable suppliers. Such approved suppliers will be known as "Registered Suppliers". All Ministries or Departments may utilize these lists as and when necessary. Such registered suppliers are prima facie eligible for consideration for procurement of goods through Limited Tender Enquiry. They are also ordinarily exempted from furnishing bid security alongwith their bids. A Head of Department may also register suppliers of goods which are specifically required by that Department or Office.

(ii) Credentials, manufacturing capability, quality control systems, past performance, after-sales service, financial background, etc., of the supplier(s) should be carefully verified before registration.

(iii) The supplier(s) will be registered for a fixed period (between 1 to 3 years) depending on the nature of the goods. At the end of this period, the registered suppliers willing to continue with registration are to apply afresh for renewal of registration. New suppliers may also be considered for registration at any time, provided they fulfil all the required conditions.

(iv) Performance and conduct of every registered supplier is to be watched by the concerned Ministry or Department. The registered supplier(s) are liable to be removed from the list of approved suppliers if they fail to abide by the terms and conditions of the registration or fail to supply the goods on time or supply sub-standard goods or make any false declaration to any Government agency or for any ground which, in the opinion of the Government, is not in public interest.

Rule 143. Enlistment of Indian Agents.— As per the Compulsory Enlistment Scheme of the Department of Expenditure, Ministry of Finance, it is compulsory for Indian agents, who desire to quote directly on behalf of their foreign principals, to get themselves enlisted with the Central Purchase Organization (eg. DGS & D). However, such enlistment is not equivalent to registration of suppliers as mentioned under Rule 142 above.

Rule 144. Reserved Items.— The Central Government, through administrative instructions, has reserved all items of handspun and handwoven textiles (khadi goods) for exclusive purchase from Khadi Village Industries Commission (KVIC). It has also reserved all items of handloom textiles required by Central Government departments for exclusive purchase from KVIC and/or the notified handloom units of ACASH (Association of Corporations and Apex Societies of Handlooms). The Central Government has also reserved some items for purchase from registered Small Scale Industrial Units. The Central Departments or Ministries are to make their purchases for such reserved goods and items from such units as per the instructions issued by the Central Government in this regard.

Rule 145. Purchase of goods without quotation.— Purchase of goods up to the value of Rs. 15,000 (Rupees Fifteen Thousand) only on each occasion may be made without inviting quotations or bids on the basis of a certificate to be recorded by the competent authority in the following format:—

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

Rule 146. Purchase of goods by purchase committee.— Purchase of goods costing above Rs. 15,000 (Rupees Fifteen Thousand) only and up to Rs. 1,00,000 (Rupees One lakh) only on each occasion may be made on the recommendations of a duly constituted Local Purchase Committee consisting of three members of an appropriate level as decided by the Head of the Department. The committee will survey the market to ascertain the reasonableness of rate, quality and specifications and identify the appropriate supplier. Before recommending placement of the purchase order, the members of the committee will jointly record a certificate as under:—

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

Rule 147. (1) Purchase of goods directly under rate contract.— In case a Ministry or Department directly procures Central Purchase Organization(DGS&D) rate contracted goods from suppliers, the prices to be paid for such goods shall not exceed those stipulated in the rate contract and the other salient terms and conditions of the purchase should be in line with those specified in the rate contract. The Ministry or Department shall make its own arrangement for inspection and testing of such goods where required.

Rule 147. (2) The Central Purchase Organization (e.g. DGS & D)should host the specifications, prices and other salient details of different rate contracted items, appropriately updated, on the website for use by the procuring Ministry or Department.

Rule 148. A demand for goods should not be divided into small quantities to make piece meal purchases to avoid the necessity of obtaining the sanction of higher authority required with reference to the estimated value of the total demand.

Rule 149. Purchase of goods by obtaining bids.— Except in cases covered under Rules 145,146 and 147 (1), Ministries or Departments shall procure goods under the powers referred to in Rule 140 above by following the standard method of obtaining bids in:—

- (i) Advertised Tender Enquiry;
- (if) Limited Tender Enquiry;
- (iif) Single Tender Enquiry.

Rule 150. Advertised Tender Enquiry.— (i) Subject to exceptions incorporated under Rules 151 and 154, invitation to tenders by advertisement be used for procurement of goods of estimated value Rs. 25 lakh (Rupees Twenty Five Lakh) and above. Advertisement in such case should be given Indian Trade Journal (ITJ), published by the Director General of Commercial Intelligence and Statistics, Kolkata and at least in one national daily having wide circulation.

(ii) An organization having its own website should also publish advertised tender enquiries on the web site and provide a link with NIC website. It should also give its website address in the advertisements in ITJ and newspapers.

(iii) The organization should also post the complete bidding document in its website and permit prospective bidders to make use of the document downloaded from the website. If such a downloaded bidding document is priced, there should be clear instructions for the bidder to pay the amount by demand draft, etc., along with the bid.

(iv) Where the Ministry or Department feels that the goods of the required quality, specifications etc., may not be available in the country and it is necessary to also look for suitable competitive offers from abroad, the Ministry or Department may send copies of the tender notice to the Indian embassies abroad as well as to the foreign embassies in India. The selection of the embassies will depend on the possibility of availability of the required goods in such countries.

(v) Ordinarily, the minimum time to be allowed for submission of bids should be three weeks from the date of publication of the tender notice or availability of the bidding document for sale, whichever is later. Where the department also contemplates obtaining bids from abroad, the minimum period should be kept as four weeks for both domestic and foreign bidders.

Rule 151. Limited Tender Enquiry. — (i) This method may be adopted when estimated value of the goods to be procured is up to Rupees Twenty-five Lakhs. Copies of the bidding document should be sent directly by speed post / registered post / courier / e-mail to firms which are borne

on the list of registered suppliers for the goods in question as referred under Rule 142 above. **The number of supplier firms in Limited Tender Enquiry should be more than three.** Further, web-based publicity should be given for limited tenders. Efforts should be made to identify a higher number of approved suppliers to obtain more responsive bids on competitive basis.

(ii) Purchase through Limited Tender Enquiry may be adopted even where the estimated value of the procurement is more than Rupees twenty-five Lakhs, in the following circumstances:—

(a) The competent authority in the Ministry or Department certifies that the demand is urgent and any additional expenditure involved by not procuring through advertised tender enquiry is justified in view of urgency. The Ministry or Department should also put on record the nature of the urgency and reasons why the procurement could not be anticipated.

(b) There are sufficient reasons, to be recorded in writing by the competent authority, indicating that it will not be in public interest to procure the goods through advertised tender enquiry.

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

(iii) Sufficient time should be allowed for submission of bids in Limited Tender Enquiry cases.

Rule 152. Two bid system.— For purchasing high value plant, machinery etc., of a complex and technical nature, bids may be obtained in two parts as under:—

(a) Technical bid consisting of all technical details along with commercial terms and conditions; and

(b) Financial bid indicating item-wise price for the items mentioned in the technical bid.

The technical bid and the financial bid should be sealed by the bidder in separate covers duly superscribed and both these sealed covers are to be put in a bigger cover which should also be sealed and duly superscribed. The technical bids are to be opened by the purchasing Ministry or Department at the first instance and evaluated by a competent committee or authority. At the second stage, financial bids of only the technically acceptable offers should be opened for further evaluation and ranking before awarding the contract.

Rule 153. Late Bids.— In the case of advertised tender enquiry or limited tender enquiry, late bids (i.e. bids received after the specified date and time for receipt of bids) should not be considered.

Rule 154. Single Tender Enquiry.— Procurement from a single source may be resorted to in the following circumstances : —

(i) It is in the knowledge of the user department that only a particular firm is the manufacturer of the required goods.

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

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

NOTE,— Proprietary Article Certificate in the following form is to be provided by the Ministry / Department before procuring the goods from a single source under the provision of sub Rule 154(i) and 154 (iii) as applicable

- (i) The indented goods are manufactured by M/s.....
- (ii) No other make or model is acceptable for the following reasons:-
- (iii) Concurrence of finance wing to the proposal *vide* :-
- (iv) Approval of the competent *authority vide*:.....,
(Signature with date and designation of the Procuring Officer)'

Rule 155. Contents of Bidding Document.— All the terms, conditions, stipulations and information to be incorporated in the bidding document are to be shown in the appropriate chapters as below :—

- Chapter - 1 : Instructions to Bidders.
- Chapter - 2 : Conditions of Contract.
- Chapter- 3 : Schedule of Requirements.
- Chapter- 4 : Specifications and allied Technical Details.
- Chapter-5 : Price Schedule (to be utilized by the bidders for quoting their prices).
- Chapter -6 : Contract Form,
- Chapter – 7 Other Standard Forms, if any, to be utilized by the purchaser and the bidders.

Rule 156. Maintenance Contract.— Depending on the cost and nature of the goods to be purchased, it may also be necessary to enter into maintenance contract(s) of suitable period either with the supplier of the goods or with any other competent firm, not necessarily the supplier of the subject goods. Such maintenance contracts are especially needed for sophisticated and costly equipment and machinery. It may however be kept in mind that the equipment or machinery is maintained free of charge by the supplier during its warranty period or such other extended periods as the contract terms may provide and the paid maintenance should commence only thereafter.

Rule 157. Bid Security.— (i) To safeguard against a bidder's withdrawing or altering its bid during the bid validity period in the case of advertised or limited tender enquiry, Bid Security (also known as Earnest Money) is to be obtained from the bidders except those who are registered with the Central Purchase Organization, National Small Industries Corporation (NSIC) or the concerned Ministry or Department. The bidders should be asked to furnish bid security along with their bids. Amount of bid security should ordinarily range between two per cent to five per cent of the estimated value of the goods to be procured. The exact amount of bid security, should be determined accordingly by the Ministry or Department and indicated in the bidding documents. The bid security may be accepted in the form of Account Payee Demand Draft, Fixed Deposit Receipt, Banker's Cheque or Bank Guarantee from any of the commercial banks in an acceptable form, safeguarding the purchaser's interest in all respects. The bid security is normally to remain valid for a period of forty-five days beyond the final bid validity period.

(ii) Bid securities of the unsuccessful bidders should be returned at the earliest after expiry of the final bid validity and latest on or before 30th day after the award of the contract.

Rule 158. Performance Security.— (i) To ensure due performance of the contract, Performance Security is to be obtained from the successful bidder awarded the contract. Performance Security is to be obtained from every successful bidder irrespective of its registration status, etc. Performance Security should be for an amount of five to ten per cent of the value of the contract. Performance Security may be furnished in the form of an Account payee Demand Draft, Fixed Deposit Receipt from a Commercial bank, Bank Guarantee from a Commercial bank in an acceptable form safeguarding the purchasers interest in all respects.

(ii) Performance Security should remain valid for a period of sixty days beyond the date of completion of all contractual obligations of the supplier including warranty obligations.

(iii) Bid security should be refunded to the successful bidder on receipt of Performance Security.

Rule 160. Transparency, competition, fairness and elimination of arbitrariness in the procurement process.— All Government purchases should be made in a transparent, competitive and fair manner, to secure best value for money. This will also enable the prospective bidders to formulate and send their competitive bids with confidence. Some of the measures for ensuring the above are as follows:—

(i) the text of the bidding document should be self-contained and comprehensive without any ambiguities. All essential information, which a bidder needs for sending responsive bid, should be clearly spelt out in the bidding document in simple language. The bidding document should contain, *inter alia*;—

(a) the criteria for eligibility and qualifications to be met by the bidders such as minimum level of experience, past performance, technical capability, manufacturing facilities and financial position etc.;

(b) eligibility criteria for goods indicating any legal restrictions or conditions about the origin of goods etc., which may be required to be met by the successful bidder;

(c) the procedure as well as date, time and place for sending the bids;

(d) date, time and place of opening of the bid;

(e) terms of delivery;

(f) special terms affecting performance, if any.

(ii) Suitable provision should be kept in the bidding document to enable a bidder to question the bidding conditions, bidding process and/ or rejection of its bid.

(iii) Suitable provision for settlement of disputes, if any, emanating from the resultant contract, should be kept in the bidding document.

(iv) The bidding document should indicate clearly that the resultant contract will be interpreted under Indian Laws.

(v) The bidders should be given reasonable time to send their bids.

(vi) The bids should be opened in public and authorized representatives of the bidders should be permitted to attend the bid opening.

(vii) The specifications of the required goods should be clearly stated without any ambiguity so that the prospective bidders can send meaningful bids. In order to attract sufficient number the specification should be broad based to the extent; Efforts should also be made to use standard specifications which are widely known to the industry.

(viii) *Pre-bid conference* : In case of turnkey contract(s) or contract(s) of special nature for procurement of sophisticated equipment, a suitable provision is to be kept in the bidding document for a pre-bid conference for clarifying issues and clearing doubts, if any, about the specifications and other allied technical details of the plant, equipment and machinery projected in the bidding document. The date, time and place of pre-bid conference should be indicated in the bidding document. This date should be sufficiently ahead of bid opening date.

(ix) Criteria for determining responsiveness of bids, criteria as well as factors to be taken into account for evaluating the bids on a common platform and the criteria for awarding the contract to the responsive lowest bidder should be clearly indicated in the bidding documents.

(x) Bids received should be evaluated in terms of the conditions already incorporated in the bidding documents; no new condition which was not incorporated in the bidding documents should be brought in for evaluation of the bids. Determination of a bid's responsiveness should be based on the contents of the bid itself without recourse to extrinsic evidence.

(xi) Bidders should not be permitted to alter or modify their bids after expiry of the deadline for receipt of bids.

(xii) Negotiation with bidders after bid opening must be discouraged. However, in exceptional circumstances where price negotiation against an *ad hoc* procurement is necessary due to some unavoidable circumstances, the same may be resorted to only with the lowest evaluated responsive bidder.

(xiii) In the rate contract system, where a number of firms are brought on rate contract for the same item, negotiation as well as counter offering of rates are permitted with the bidders in view and for this purpose special permission has been given to the Directorate General of Supplies and Disposals (DGS & D).

(xiv) Contract should ordinarily be awarded to the lowest bidder whose bid has been found to be responsive and who is eligible and qualified to perform the contract satisfactorily as per the terms and conditions incorporated in the corresponding bidding document. However, where the lowest acceptable bidder against *ad hoc* requirement is not in a position to supply the full quantity required, the remaining quantity, as far as possible, be ordered from the next higher responsive bidder at the rates offered by the lowest responsive bidder.

(xv) The name of the successful bidder awarded the contract should be mentioned in the Ministries or Departments notice board or bulletin or website.

Rule 161. Efficiency, Economy and Accountability in Public Procurement System.— Public procurement procedure is also to ensure efficiency, economy and accountability in the system. To achieve the same, the following keys areas should be addressed :—

(i) To reduce delay, appropriate time frame for each stage of procurement should be prescribed by the Ministry or Department. Such a time frame will also make the concerned purchase officials more alert.

(ii) To minimize the time needed for decision-making and placement of contract, every Ministry / Department, with the approval of the competent authority, may delegate, wherever necessary, appropriate purchasing powers to the lower functionaries.

(iii) The Ministries or Departments should ensure placement of contract within the original validity of the bids. Extension of bid validity must be discouraged and resorted to only in exceptional circumstances.

(iv) The Central Purchase Organization (e.g. DGS&D) should bring into the rate contract system more and more common user items which are frequently needed in bulk by various Central Government departments. The Central Purchase Organization (e.g. DGS&D) should also ensure that the rate contracts remain available without any break.

Rule 162. Buy-Back Offer.— 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.

**SUB: STANDARD OPERATING PROCEDURE (SOP) FOR
EXERCISING ENHANCED FINANCIAL POWERS.**

The following SOP will be adopted for exercising the enhanced financial powers delegated under Ministry of Defence letter No.3(7)/93/D(Works) dated 26.8.98 by the various executives of the services with the concurrence of the IFAs.

2. The Major Works Program/Annual Works Program as approved by the Ministry of Defence in consultation with Ministry of Defence(Finance) will be communicated to the Service Headquarters , lower formations and their IFAs including regional CsDA for implementation. The CFAs in services and their respective IFAs will ensure that only those works, which are included in MWP/AWP, are processed for issuing Administrative Approval.

3. The Services HQrs. with the approval of MOD & MOD (Fin) will also communicate the maximum financial ceiling upto which works within the approved MWP/AWP could be sanctioned by the various CFAs with the concurrence of their IFAs. They will also communicate total allotment of funds for new works which could be released and monitored by the Regional CsDA, CDA (Navy), CsDA (AF) and their lower IFAs.

4. On receipt of approved MWP/AWP CFAs will convene a Recce-cum-sitting-cum-costing boards for the works falling under their delegated powers.

5. The finalised Board Proceedings will be approved by the CFAs and forwarded to the Zonal Chief Engineer for preparing the approximate estimates.

6. Generally, there will be four main stages in a project for original work i.e. the acceptance of the necessity, Administrative approval, release of funds and technical sanction. However, in case of Army Projects, the acceptance of necessity and Administrative approval stages may be combined tog as the vetting of necessity, vetting of approximate estimates concurrence by IFA (Army) or CsDA (Army), as the case may be, ci done simultaneously. In case of Air Force and Naval Project: acceptance of necessity and Administrative approval will be done ir distinct stages as the vetting of approximate estimates is to be done b (Army) and CsDA(Army).

7. The acceptance of necessity and Admin Approval will be accorded by the CFAs with the concurrence of concerned IFAs on the basis of the detailed scope of work, rough cost indicated in the Board Proceedings and the approximate estimates prepared by the Zonal Chief Engineers scrutinized by the Command Chief Engineer/E-in-C's Branch, at HQrs.

Scrutiny of A.Es by the E-in-Cs Branch at HQrs will not be necessary for those works which are to be sanctioned by the CFAs lower than the COAS, CAS and CNS. The letter conveying the Admin Approval will indicate the Budget Head from which funds will be provided for the work. Copy of the Admin Approval will be sent to IFA, Command Regional CDA, concerned Engineering Authority and also the concerned CDA within whose accounting circle the work is being executed and who is responsible for approved works.

8. After the issue of Admin Approval by the CFAs within the existing as well as enhanced financial powers, funds required for the work during the first financial year will be got released from the Regional Command Controllers of Army, CDA (Navy), CDA (AF) & their lower IFAs as the case may be. In Commands, where there are more than one CsDA(Army), the Army CDA co-located with the command will be Command Regional CDA. In case of Eastern Command, CDA Patna will be Command Regional CDA.

9. The release of funds will be intimated by the Controllers mentioned above to the concerned CsDA who are responsible for payment of bills.

10. While the expenditure against allotment will continue to be watched by the concerned Administrative authorities as per provisions of Financial Regulations, the IFAs and Regional CsDA functioning as IFA will also monitor this aspect for which they will maintain a register keeping records of works approved and funds released for the same during the first financial year. This will be ensured neither the overall MPW/AWP ceiling fixed for each command/service HQrs exceeds nor the funds for these new works released during the first financial year are beyond the allocations made for new works.

11. After issue of Admin Approval and release of funds, technical sanction will be issued by the competent engineering authorities as per existing procedure.

12. The existing procedure for acceptance of tenders, conclusion of contracts, issue of amendment and deviation orders etc. as also appropriation of funds will remain unchanged.

13. The scrutiny of tender documents by audit or by the IF A prior to acceptance is not necessary.

14. The procedure in vogue for works ordered under para 10, 11 and 12 of Defence Works Procedure 1986 will also remain unchanged. This issues with the concurrence of Ministry of Defence (Fin/W-II) vide their U.O. No.1839/DFA(W) of 1998.

NO.3(7)/93/D/(Works)
Government of India
Ministry of Defence
New Delhi the 26 August 1998.

To

The Chief of Army Staff
The Chief of Air Staff
The Chief of Naval Staff

SUB: Amendment to Defence Works Procedure, 1986.

Sir,

I am directed to convey the sanction of the President for revision of the financial powers of various executives for acceptance of necessity and Administrative approval for works laid down in para 15 of the Defence Works Procedure, 1986 issued vide Government of India, Ministry of Defence letter No.95533/POL/CSS/E2WPC/687/DO II/D(W-I), dated 17.6.86 as indicated in Appendix A to this letter.

2.1 IF A(Army), IF A (Navy) and IF A (Air Force) at the service Headquarters will accord financial concurrence in cases where COAS, CNS, CAS are the Competent Financial Authorities respectively within the Major Works Programme/Annual Works Programme of the respective Services determined by MOD/MOD (Fin).

2.2 In case of formations below Army Headquarters and above the level of sub area, the financial concurrence within the Major Works Programme determined in MOD/MOD (Fin) will be accorded by CsDA (Army) functioning as IFAs within whose territorial jurisdiction the works fall. In the case of Sub Area/Bde the financial concurrence will be accorded by the Jt.CsDA (Army) as IFAs. The Station Commanders revised powers may be exercised without financial concurrence.

2.3 In the case of formation below Naval HQrs., and Air HQrs. and above the level of sub area equivalent Navy and Air Force formations, the financial concurrence will be accorded by CDA (Navy) and their IFAs and CDA (Air Force) and their IFAs as the case may be.

3. In respect of the powers exercised at the level of Service Headquarters, IFA (Army) within the Annual Works Programme determined by MOD/MOD (Fin) will be responsible for vetting AEs in respect of all the three Services. In all other cases CsDA (Army) and Jt.CsDA (Army) **under whose territorial jurisdiction the works fall will be responsible for the vetting of AEs** relating to works for all the three services.

4.1 In respect of works pertaining to Army, Regional CsDA(Army) will be responsible for the release of funds for the new Project/Scheme for construction within the approved MWP and financial ceilings already approved and fixed for the year by the Ministry of Defence with the concurrence of MOD (Fin). In commands where there are more than one CsDA (Army), the funds will be released by the Regional Command Controller within these ceilings.

4.2 CDA (Navy) and their lower IFAs and CDA (Air Force) and their lower IFAs will be responsible for release of funds for the works within the ceiling fixed for the year in respect of works pertaining to Navy and Air Force respectively.

4. Annexure B enclosed summaries the authorities responsible for according financial concurrence, vetting of AEs release of funds and monitoring expenditure.

5. The onus for watching the expenditure against the funds released will continue to vest in the Administrative authorities in accordance with the provision of Financial Regulations. However, IFA (Army), IFA (Navy) and IFA (Air Force) as well Regional CsDA (Army), CDA (Navy) and CsDA (Air Force) functioning as IFA will also monitor this aspect so as to ensure the financial ceiling determined for the new works are adhered to. CsDA functioning as IFAs will furnish monthly report about the release of works to their respective IFAs at Service HQrs.

6. The revised financial powers will be effective from 1.10.98.

7. This issues with the concurrence of the Defence (Finance/Works), vide their U.O No.1459/DFA/Works of 1998.

Yours faithfully,
Sd/-
(KABINDRA JOSHI)
DESK OFFICER

CVC GUIDELINES

General

14.1. The Central Vigilance Commission Ordinance 1998 empowers CVC to 'exercise superintendence over the vigilance administration of various Ministries of the Central Govt. or corporations established by or under any Central act, Govt. companies, societies and local authorities owned or controlled by that Govt.' The CVC have been working towards system improvements to encourage transparency and the culture of honesty. In order to achieve this objective, the CVC have issued a number of letters containing instructions and guidelines. All procurement agencies must disseminate these guidelines to all concerned so as to ensure compliance at all levels.

14.1.1 Greater transparency in administration in general and procurement in particular is essential to instill the confidence in the staff as well as those who deal with the department. In order to obviate corruption or unethical practices, every department should constitute their own vigilance section. An effective internal communication system should be put in place so as to freely disseminate instructions, orders and guidelines amongst the staff. Also, in order to sensitise the staff and the public, each organisation should prominently display anti corruption notice.

Purchase Manual

14.2 The cardinal principle of any public buying is to procure the materials/services of the specified quality, at the most competitive prices, and in a fair, just and transparent manner. In order to achieve this, it is essential to have uniform and well documented policy guidelines in the organisation so that this vital activity is executed in a well coordinated manner with the least time and cost over- runs. A purchase manual containing the detailed purchase procedures, guidelines and proper delegation of powers needs to be formulated in each department so that there is systematic and uniform approach in the decision making.

Provisioning

14.3 Provisioning is the basis for any purchase. Excessive provisioning without taking into consideration the important aspects like available stock, outstanding dues/supplies, past consumption pattern and the average life of the equipment/item etc. results in infructuous expenditure both in term of procurement cost and the inventory carrying cost. The projection and provisioning must be judicious and justified depending on various factors including usage pattern. One time purchase for project or capital equipment/spares should be properly justified taking into account the obsolescence factor, etc.

14.4 **Estimated Rates.** Estimated rates are often worked out in an ad-hoc, unprofessional and perfunctory manner, at times by extrapolating the price of the lowest capacity equipment or by applying a uniform yearly compounded escalation over the prices of similar equipment purchased few years ago. As estimated rate is a vital element in establishing the reasonableness of prices, it is important that the same is worked out in a realistic and objective manner on the basis of prevailing market rates, last purchase prices, economic indices for the raw material/labour, other input costs and assessment bases on intrinsic value of the item etc.

Tendering

14.5. Tendering is the most important activity in the procurement process and hence must be a transparent and effective system. Following CVC guidelines need to be followed in this regard:-

(a) **Mode of Tendering.** As per CVC guidelines, Global/Open and advertised Tendering are the preferred mode for inviting quotes. Whenever such a mode is selected, tender is to be advertised in at least two national news papers besides publishing in the ITJ and the web site of the department. In addition, Tender Notices are also to be sent to all registered vendors for that category of items by registered post. Where limited tendering becomes essential for reasons of urgency or the nature of the items, selection of registered vendors to whom Tender is to be sent should be based on clear logic duly recorded. Purchase on PAC and STE basis should be made with detailed justification in its support and with the approval of the CFA. **In all cases, a proper record of dispatch of tender enquiry must be kept by the purchase agency.**

(b) **Period to Quote.** It is essential that adequate time is given to the vendors to prepare the quote and submit the same in time. Normally, at least 4-6 weeks should be given in case of advertised tendering, 3-4 weeks in case of LTE and even in urgent cases, 7-10 days should be given for submitting the quote and in such cases, Tender Notice may be sent through faster means like FAX, etc.

(c) **Bid Document** The bid document being the most vital, it must be prepared with due care and all details of the requirement, specifications, date, time and place for tender opening, terms and conditions of contract including clauses like earnest money, delivery schedule, payment terms, performance /warrantee Bank guarantee, pre-dispatch inspection, arbitration, LD/penalty for delayed supplies and risk purchase etc. must be incorporated. In order to ensure equitable evaluation of bids, all factors relating to the evaluation criteria like payment terms, delivery period, performance Bank Guarantee, etc. having financial implication need to be specified in unambiguous terms in the tender document. These clauses need to be clearly stipulated so as to safeguard the interest of the Govt. and for evaluation of bids on equitable and fair basis and in a transparent manner. Warranty clause should provide for action to be taken by purchaser in case the seller does not rectify/replace the goods within time period specified in the contract. Option clause must mention that it will be exercised subject to there being no downward trend in prices.

(d) **Postponement of Tender Opening.** Whenever postponement of tender opening becomes necessary due to change in specification sufficient time and notice should be given to all vendors so as to give equal opportunity to all bidders and to maintain sanctity of tendering system. Opening of bids must be in the presence of firm's rep who wish to attend.

Purchase Policy

14.6 Govt. instructions on reservation of items and price preference to the SSI and the purchase preference to the PSUs as per the guidelines circulated by Department of Public Enterprises should be incorporated in the bid document. The ban on negotiation with other than L1 firm does not prohibit compliance with Govt. policy for purchase preference to the PSU. It is laid down that where the quoted prices of the PSU or Joint Venture with PSEs with a minimum value added content of over 20% by the latter, subject to purchase in excess of Rs. 5 crore, is within 10% of the lowest price, other things being equal, purchase preference would be granted to the PSU at the lowest acceptable price.

14.6.1 No conditional discounts should be considered while evaluating bids. However, all cost likely to be incurred by the Govt. on delivery of stores to the consignee, including exemptions granted should be loaded to arrive at the equitable ranking of bids. Whenever, L1 firm is not in a position to supply the full quantity as per tender, the quantity order may be distributed in such a manner that the purchase is done in a fair, transparent and equitable manner. **Post tender negotiations would be only with the L1 firm or in case of PAC or STE tendering.**

14.7 Reasonableness of Prices - Purchase decisions must be based on a careful analysis of the prices offered and after establishing the price analysis of the prices reasonableness in relation to the estimated rates, LPP, or the prevailing market rates, economic indices of raw materials/labour, input cost and intrinsic value of the item.

Advance Payment & Bank Guarantees

14.8. As per CVC guidelines, payment of mobilisation advance should be only in case of select works and that the advance should be interest bearing so that the contractor does not draw undue benefit. Such advance payment should be made only if expressly stated in the NIT Bid Documents indicating the amount and rate of interest and against a valid unconditional Bank guarantee of equivalent amount.

14.8.1 The effective date of contract should not be linked with either the date of receipt of advance payment or the date of receipt of the BG for advance payment without specifying the exact date for such a receipt as such a clause is detrimental to the interest of the Govt. Timely action for revalidation/ encashment of the BG should also be ensured as applicable to safeguard the interest of state. Reasonable amount of performance guarantee valid up to warranty period should be taken to ensure due performance of the contract. There should be a provision in the contract for adjustment of advance progressively even as the bills are cleared for payment.

Post Contract Management

14.9 Contract Amendment, After conclusion of the contract, any relaxation in the contract terms / conditions should be severely discouraged. However, in exceptional cases where the modification/amendments are considered to be absolutely essential, the same should be allowed only after taking into account the financial implications for the same.

14.10 Contract Monitoring. It is essential that all contracts are closely monitored and all follow up actions should be taken promptly. Delivery compliance including offering the stores for inspection in time should be monitored and timely expediter sent, where required. Delivery Period extension should be granted only on bonafide request and not in a routine and casual manner. In case of delay in supply of item, the LD, to the extent possible, should be recovered. Also, if the delay is attributed to the supplier, the LC amendment charges should be borne by the supplier.

14.10.1 There is a need to discipline the suppliers so that non performers could be weeded out and the suppliers which can be relied upon with consistent performance, in terms of quality and delivery schedule are encouraged.

14.11 CVC **website** for updates on CVC guidelines/instructions, www.cvc.nic.in should be accessed.

8. In case your firm is not willing to quote due to any reasons, your regret should be faxed well before the due date failing which your firm can be de-listed from vendor list.

9. Commercial offers will be opened only of those firms, whose Technical Offers have been found suitable after technical evaluation. The commercial Offer must be firm and valid for at least 4 months from the date of submission of offer.

10. The Commercial Offer will be opened by a Committee and if firm desires, may depute their representative, duly authorised in writing, to be present at the time of opening of tenders. Further negotiations will be made only with the lowest bidder (LI) as determined by the committee. The date, time and venue fixed for this purpose will be intimated separately after the Technical evaluations are completed.

Delivery Schedule :-

11. Within 90 to 180 days of signing of the contract as applicable, (this can be changed based on nature of item, urgency and the quantum of items tendered so as to give reasonable DP).

12. Contract can be cancelled unilaterally by the buyer in case items are not received within the contracted delivery period. Extension of contracted delivery period will be at the sole discretion of the Buyer, with applicability of LD clause.

13. Preference shall be given to those offer supplying within the prescribed delivery schedule, which shall be the essence of the contract **Liquidated Damages @ 0.5% per week** subject to a maximum of 5 % of the undelivered stores will be recovered in case of delay in delivery beyond the accepted delivery period as per SCOC.

Commercial Aspects

14. Prices must be quoted on F.O.R. Destination basis by road inclusive of Packing, Forwarding, Freight charges, Transit Insurance and any other charges as applicable. The consignee for the contract is _____.

15. Taxes & Levies. Details of Excise Duty, if any, is to be indicated. Exemption Certificate for Octroi, Custom Duty, Excise and form 'D' for admitting CST @ 4% will be provided if specified & applicable. FE content, if any, is to be indicated separately, for which Custom Duty Exemption certificate is required.

16. Performance Guarantee. By way of Bank Guarantee for a sum equals to 10% of the order value or Rs. 2,00,000/- whichever is less, is to be furnished within 30 days on receipt of confirmed order. Bank Guarantee should be valid upto warranty of stores.

17. Quality Assurance. After the contract is negotiated, the firm would be required to provide the Standard Acceptance Test Procedure (ATP). Inspecting Authority reserve the right to modify the ATP when necessary item would be accepted subject to evaluation and clearance by the Inspecting Authority. Firm would be required to provide all test facilities at OEM premises for acceptance and inspection by DQA. The details in this regard will be coordinated during the negotiation of contract. The item should be of latest manufacture conforming to the current production standard having 100% defined life at the time of delivery. Warranty should be minimum 12/18 months from the date of supply.

Evaluation Criteria

18. The broad guidelines for evaluation of offers will be as follows: -
- (a) Only those offers shall be evaluated which are found to be fulfilling all the eligibility and qualifying requirements of the tender, both technically and commercially.
 - (b) The Lowest 'Acceptable' tender shall be considered further for placement of Contract/Supply Order after complete clarification and price negotiations as applicable.
 - (c) Delivery within stipulated months of signing of contract shall be accepted. However, preference will be for shorter delivery period and loading will be done as per the prevailing rules.

Option Clause

19 The contract shall have an Option Clause, wherein the buyer can exercise an option to procure an additional 25% of the original contacted quantity in accordance with the same terms & conditions of the present contract. This shall be applicable within the currency of contract. The bidder is to confirm the acceptance of the same for inclusion in the contract. It will be entirely the discretion of the buyer to exercise this option or not.

Repeat Order Clause

20. The contract shall have a Repeat Order Clause, wherein the buyer can order upto 100% quantity of the items under the present contract within six months from the date of successful completion of this contract, cost, terms & conditions remaining the same. Request confirm acceptance of this clause. It will be entirely the discretion of buyer to place the repeat order or not.

21. Standard Conditions of Contract (SCOC). Firm shall be required accept our Standard Conditions of Contract. Copy of the same is enclosed. In addition standard clauses regarding agents/agency commission, penalty for use of undue influence, access to books of accounts, arbitration and laws would be incorporated in the contract. The copy of SCOC can be forwarded on request.

22. Payment Terms. 95% Payment against Inspection note, Proof of despatch, Duly supported by Xerox copy of Bank Guarantee and against Consignee's provisional receipt. Balance of 5% will be paid on receipt of items in good condition by consignees along with user's certificate of complete Installation and successful commissioning.

23. Placement of Order. The Purchase Order will be placed on successful conclusion of negotiations on LI firm.

24. This RFP is being issued with no financial commitment and purchaser reserves the right to change or vary any part thereof at any stage. Purchaser also reserves the right to withdraw the RFP should it be so necessary at any stage.

25. Please acknowledge receipt.

Thanking you,

Yours faithfully,

SCHEDULE OF REQUIREMENT WITH TECHNICAL DETAILS

Salient Points to be indicated

1. Type of item/description of stores.
2. Quantity required
3. Specifications /drawings as applicable
4. Technical details alongwith technical parameters.
5. Requirement of training/on job training.
6. Requirement of installation, Commissioning
7. Requirement of FATs, HATs and SATs.
8. Requirement of technical documentation.
9. Type of future assistance on completion of warranty.
10. Ultimate Consignee and requirement of pre-site/equipment inspection.

SCHEDULE -A-
TO

TENDER NO _____

| | |
|-------------------------------------|--|
| Date & Time to reach this office: | |
| Time and date of opening of tenders | |
| Validity of Tender required till | |

1. DETAILS OF ITEMS OFFERED

| SI No | Description | DOQ | Qty | Price in Indian Rupees* |
|-------|-------------|-----|-----|-------------------------|
| | | | | |
| | | | | |

*Unit price should be exclusive of all Government duties, Govt. Duties/taxes etc should be specified giving the current rate applicable.

2. PLEASE SPECIFY THE FOLLOWING :
(ALL COLUMNS ARE TO BE FILLED OTHERWISE THE OFFER IS LIABLE TO BE REJECTED)

| S NO | DETAILS | TO BE FILLED BY THE FIRM |
|------|--|--------------------------|
| 1. | Discount, if offered (Answer in YES /NO) | |
| | <u>Indicate the amount of discount</u> | |
| 2. | Is Excise duty extra? (Answer in YES /NO) | |
| | If Excise Duty is extra, indicate the extent /current rate of Excise duty leviable for item. | |
| | Surcharges on Excise duty | |
| 3. | Is Sales Tax extra? (Answer in YES /NO) | |
| | If Sales Tax is extra, indicate the rate against the Concessional Form. | |

| | | |
|--|---|--|
| 4. | Is Customs Duty Exemption Certificate (CDE) required? (Answer in YES /NO) IF CDE IS REQUIRED INDICATE AND ENCLOSE THE NOTIFICATION UNDER WHICH CDE CAN BE ISSUED. | |
| | If CDE is required indicate GIF value of stores to be imported. | |
| | If CDE is required indicate the Customs Duty payable. | |
| 5. | Is your company exempted from payment of Sales Tax and Excise Duty ? (Answer in Yes /NO) | |
| 6. | Any other duty / levy | |
| 7. | Details of EMD (if applicable) | |
| 8. | Acceptance of Performance Bank Guarantee on confirmation of order | |
| <p>Note: the tenderers are required to spell out the rates of Customs duty, Excise duty, sales tax, in unambiguous terms, otherwise their offers will be loaded with the maximum rates of duties and taxes for the purpose of comparison of prices. Tenderers should furnish details about the deviation, if any, from the tender specification failing which the Offer will be treated as incomplete. FOR OBTAINING/ DETAILS OF SPEC. /DRG, *** MAY BE CONTACTED DIRECTLY</p> | | |

1.Preference to the tenders quoting FIRM & FIXED rates may be given if their offer is found to be meeting all technical QRs.

2.Firms offering variable prices should give details of escalation formula, which should, however, avoid WAGE ESCALATION.

3.DELIVERY REQUIRED :

4.TERMS OF DELIVERY : FOR Destination.

5.CONSIGNEE :

6. INSPECTION AUTHORITY :

7. AGENT INSPECTION AUTHORITY :

8.INSPECTION OFFICER

No. 98/ORD/1
Central Vigilance Commission

Satarkta Bhawan, Block 'A'
GPO Complex, INA
New Delhi-110023
Dated the 5th Jul 2004

Office Order No.44/7/04

Subject: Improving Vigilance Administration: Increasing Transparency in Procurement/sale etc. - Use of website regarding.

The Central Vigilance Commission has issued a directive on the above subject vide its Order No. 98/ORD/1 dated 18th Dec 2003 making it mandatory to use web-site in all cases where open tender system is resorted to. These instructions have been further extended vide Office Order No. 10/2/04 dated 11.2.2003 to tenders of the PSUs and other Govt. organizations dealing with defence and national security related subjects have sought clarification on the following issue:

Issue : Items and Works, which are of sensitive nature from the point of view of national security.

It has been pointed out that in some cases the tender documents and specifications given therein are of highly sensitive nature and putting such information on the website can have national security implications or is not in the national interest.

Clarification: It needs to be clarified that instructions of the Commission are with regard to open tenders only where organizations are already giving advertisements in newspapers thus it is presumed procurement or works are not of secret nature. However if still CMD/CEO of a PSU or head of an Ordnance factory or head of a sensitive organization in Defence, Atomic Energy or Space sectors or the concerned administrative ministries are of the opinion that it will not be feasible to put detailed tender documents on the website keeping in view their sensitive nature from national security point of view or from the point of view of national interest, they may take the decision not to put those documents or even the tender notice on website. But in all such cases the decision must be taken at the level of CMD or head of a PSU, head of an ordnance factory and in other government organizations at a level to be decided by the concerned administrative ministry. The specific reasons for not putting an open tender on web-site should be recorded in the concerned file.

Sd/-
(Balwinder Singh)
Addl. Secretary

NO. 8/3/E.II(A)/2002
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF EXPENDITURE
E.II(A) BRANCH

.....

New Delhi, the 14 Jul 2004.

OFFICE MEMORANDUM

Subject: Task Force on Revision of Procurement Norms.

The undersigned is directed to refer to this Department's OM dated 08.10.2003 of even No. on the subject cited above informing all the Ministries/Departments regarding the constitution of the Task Force under the Chairmanship of then Additional Secretary of this Department for reviewing the existing provisions relating to procurement of stores /services constrained in General Financial Rules, DFPRs and in various Departmental manuals vis-avis the international procurement laws, World Bank's Country Procurement Assessment Report for India and the practices being followed by the other Govt./ international agencies. The Task Force was asked to make suitable recommendations for recommendations for revision of the existing norms to ensure greater transparency, competition, fairness and elimination of discretion in procurement of goods and services by Govt. after taking into account best international practices. A reference paper for consideration of the Task Force was also circulated to all Financial Advisers of Ministries/Departments, for their views/ comments.

2. The Task Force after detailed deliberations in various meetings and after consulting the Financial Advisers working in different Ministries has since submitted its final Report. One of the major recommendations of the Task Force with regard to ensuring greater transparency in Government procurement is that the Notice Inviting Tenders floated by Government Departments should be given wide publicity through appropriate notification and advertisement for brining the same to the knowledge of all the prospective bidders. Accordingly, all Government Departments are advised to:

- (a) Publish the Notice Inviting Tenders, in case of Open Tenders on their websites and also on main website of NIC.
- (b) NIC should make necessary arrangements to facilitate such publicity of the tenders on the websites of those Ministries, who are utilizing the services of NIC for maintenance of their websites.
- (c) Ministries/Departments who have outsourced this work to external agencies should ensure the publicity of such tenders on their website through these agencies.
- (d) NIC are further advised to ensure necessary hyper linking of the websites of various Ministries on publication of tender, for easy centralized access by the users.
- (e) Also in order to achieve the objective of elimination of discretion in Govt. procurement, it is necessary to facilitate information sharing and, therefore, all Ministries/Departments are advised to put up henceforth on their website a copy of their supply order for each procurement involving financial implications of more than Rs. 5 lakhs, which would be accessible to any other Department intending to make similar purchase.

3. All Ministries/ Departments and NIC are advised to take necessary action for compliance of the above instructions at the earliest but not later than 15.09.2004, under intimation to this Department.

Sdxxxx
(Rubina Ali)
Under Secretary

To
(i) Financial Advisers of all Ministries/Deptt.

(ii) NIC

FORMAT OF TEC REPORT

| Para of tender enquiry specifications | Specification of Machine Offered | Compliance of TE specification whether Yes or No | In case Non-compliance Deviation from T/E specification to be indicated in unambiguous terms |
|---------------------------------------|----------------------------------|--|--|
| 1 | 2 | 3 | 4 |

**Agreement Between The Government of the Republic of India Ministry of Defence
and (Name of the company) for (Name of Eqpt)**

**Contract No.
(No. of the Contract)**

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CONTRACT NO.(_____)

DATED (_____)

PREAMBLE

This contract is made on this day, the (date) day of (Month & Year) in New Delhi, between the President of India represented by the Joint Secretary and Acquisition Manager (Land Systems), Ministry of Defence, Govt. of India, South Block, New Delhi, hereinafter referred to as the Buyer (which terms unless excluded by the context, shall be deemed to include his successor in office) on one part, and M/s (name of the company with address) duly represented by _____, and incorporated under the laws of _____, having its registered office at, _____ (which terms unless expressly indicated by the context shall be deemed to include its successors and its assignee), hereinafter referred to as the "Seller" on the other part.

The BUYER agrees to buy and the SELLER agrees to sell the goods described in **Annexure-I** of this contract and in accordance with the terms and conditions of this CONTRACT.

AND WHERE AS the SELLER assures the BUYER that the BUYER has the full and unfettered right to have the supplies manufactured in India through a nominated agency and supply it to the BUYER,

It is hereby agreed and declared by and between the parties hereof: -

ARTICLE 1 **SCOPE OF CONTRACT**

The Seller undertakes to sell and deliver to the Buyer, and the Buyer undertakes to accept and pay for on the terms & conditions stipulated in this contract, the goods, quantity, unit price, and total value as specified in **Annexure-I** of the present contract.

ARTICLE 2 **EFFECTIVE DATE**

2.1 The Effective date of the Contract will be the date on which the last of the following conditions is complied with:-

- (a) Performance Bond is furnished by the SELLER in requisite format as at **Annexure-II** to this contract;
- (b) Export Licence for supply of stores has been obtained by the SELLER and a confirmation in writing sent to the Buyer within _____ days to the BUYER.
- (c) Receipt of Bank Guarantee for advance payment to be issued by SELLER
- (d) Receipt of the End User Certificate from the BUYER. The BUYER shall provide the End User Certificate within 30 days of signing of the contract.

ARTICLE 3 **ADVANCE BANK GUARANTEE**

3.1. An Advance Guarantee Bond will be issued in the form of a bank guarantee by (.....SELLER'S BANK.....) through an internationally recognised first class bank within 30 days of the signing of the contract in favour of Government of India, Ministry of Defence to be confirmed by State Bank of India/Bank of India/Bank of Baroda/Canara Bank equal to ___% of the total value of this contract i.e. for US \$ (in words US Dollars only).

3.2. The specimen of the Advance Guarantee Bond is mentioned in **Annexure-II** to this contract.

3.3. The Advance Guarantee Bond shall be considered open upon receipt by the BUYER'S bank.

3.4. The Advance Guarantee Bond shall be proportionately and automatically reduced until full extinction along with and prorate to the value of each delivery as evidenced by the corresponding copy of document proving delivery (Bill of Lading or Air Way Bill, as the case may be) and the invoices of goods/services supplied/provided.

ARTICLE 4 **PERFORMANCE BOND**

4.1. A Performance Bond will be issued in the form of a bank guarantee by (.....SELLER'S BANK.....) through an internationally recognised first class bank within 30 days of the signing of the contract in favour of Government of India, Ministry of Defence to be confirmed by State Bank of India/Bank of India/Bank of Baroda/Canara Bank equal to 5% (five percent) of the total value of this contract i.e. for US \$..... (in words US Dollars only).

- 4.2. A specimen of the Performance Bond is at Annexure-II to this contract.
- 4.3. The Performance Bond shall be considered open upon receipt by the SELLER bank.
- 4.4. The Performance Bond shall remain valid upto 90 days after the JRI and acceptance of last consignment in India. (In the event the supplies will be delivered in more than one consignment, the value of the Performance Bond shall be reduced until full extinction upon the completion of the JRI and acceptance of goods/services of each consignment, as such delivery shall be certified by the acceptance certificate to be issued by the BUYER after the JRI, in proportion to five percent (5%) of the value of the invoice. **(On request of SELLER).**
- 4.5. In case any claims or any other contract obligations are outstanding, the SELLER will extend the performance bond as asked by the BUYER till such time the SELLER settles all claims and completes all contract obligations.
- 4.6. The Performance Bond will be subject to encashment by the BUYER, in case, conditions regarding adherence to delivery schedule, settlement of claims and other provisions of the contract are not fulfilled by the SELLER.

**ARTICLE 5
PAYMENT TERMS**

- 5.1. The total value of the stores to be delivered according to this Contract amounts to US \$ (In words US Dollars only).
- 5.2. The payment will be made in free convertible US Dollars.
- 5.3. Advance Payment. _____% of total value of contract, that is to say USD _____, shall be paid within 30 days from date of receipt of under mentioned documents, whichever is later, through Bank Transfer:-
- a) Advance Guarantee Bond.
 - b) Commercial invoice for the advance amount with contract number indication (2 original and 4 copies).
- 5.4. The SELLER shall notify the readiness of goods 30 days prior to delivery of each consignment showing the quantity, nomenclature, unit price and total value of the consignment.
- 5.5. _____ % i.e. US\$..... (In words US Dollars only) of the value of each consignment shall be paid by an irrevocable, Letter of Credit with validity of 90 days, opened through State Bank of India, New Delhi with (NAME OF SELLER'S BANK & ACCOUNT) in favour of the SELLER. The terms and condition of the Letter of Credit shall be advised to (NAME OF SELLER'S BANK & ACCOUNT) by the State Bank of India by a cable and the period of 90 days shall be reckoned from the date on which such advise is sent.
- 5.6. The LCs shall be opened as follows:-
- (a) First LC amounting to _____ USD.
 - (b) Second LC amounting to _____ USD.
 - (c) Third LC amounting to _____ USD.
- 5.7. The BUYER will open the Letter of Credit for each consignment within 45 days from the following dates whichever is later: -
- (a) Date of receipt by BUYER of SELLER'S notification of the readiness of the consignment,
 - (b) Date of receipt by BUYER of performance bond from the SELLER of the consignment.
 - (c) Date of receipt by BUYER of warranty bond from the SELLER of the consignment.
- 5.8. In the event of delay in opening the Letter of Credit, the delivery date will automatically stand extended to that extent.
- 5.9. All expenses connected with establishment of the Letter of Credit in India will be borne by the BUYER and those outside India will be borne by the SELLER.

5.10. Where the extension of the validity of Letter of Credit is necessitated, the Bank charges for extension shall be borne by the party whose default causes such an extension.

5.11. The payment from the Letter of Credit for equipment, spares, STEs etc, _____ % of the invoice value will be made against presentation of the following documents toSELLER'S BANK.:-

- (a) SELLER'S commercial invoice in sextuplicate, showing the number of the Contract, quantity and Denomination of the Equipment delivered and the amount.
- (b) Full set of Originals "Clean on Board" Bills of Lading/Air way bill.
- (c) Packing List, six copies.
- (d) Certificate of Origin, duly stamped by the Seller's Chamber of Commerce.
- (e) Certificate of Conformity and Acceptance test report at the Pre Despatch Inspection signed by BUYER'S and the SELLER'S quality Assurance Department. In case BUYER'S reps do not attend the PDI, then certificate issued by the BUYER that it does not wish to attend the PDI and Inspection and acceptance certificate issued by the SELLER.
- (f) Certificate of current manufacture.
- (g) Insurance documents for 110% of the cost of consignment in case of CIF or CIP contracts,

5.12. No transshipment of goods is allowed and no part shipment is permitted.

5.13. Three copies of SELLER'S Invoices, shipping documents and the specifications will be sent by courier and fax by the SELLER to the BUYER (DDG PPO, Master General of Ordnance Branch, Army Headquarters, DHQ PO, New Delhi - 110 011, India, Fax: 379 3337) within 3 days after the equipment has been shipped.

5.14. Any demurrage charges incurred by the Port Consignee due to late submission/ incorrect submission of the shipping documents by the SELLER as per Article above would be borne by the SELLER.

5.15. All payments will be carried out with reference to the number of this contract.

5.16. Balance Payment. The balance payment for ___% value of each consignment shall be paid to the SELLER by Bank Transfer within 45 days of completion of Joint Receipt Inspection (JRI) and Acceptance of goods against presentation of following documents:-

- (a) Copies of invoices (three copies).
- (b) Copy of JRI and acceptance certificate issued by the BUYER.

5.17. Seller's banker address and account number: -

Account No.:
Sort code :
SWIFT Code :

ARTICLE 6 SPECIFICATION

6.1 The SELLER guarantees to meet the specifications as per **Annexure-IIIA**, the statement of work as per **Annexure-IIIB** and to incorporate the modifications to the existing design configuration to meet the specific requirement of the Indian Army as per **Annexure-IV** and modifications/requirements recommended after the confirmatory trials/MET, in the first off production model of (Year) to be supplied to the BUYER. All technical literature and drawing shall be amended as the modifications by the SELLER before supply to the BUYER.

6.2 The SELLER, in consultation with the BUYER, may carry out technical upgradation/alterations in the design, drawings and specifications due to change in manufacturing procedures, indigenisation or obsolescence. This will, however, not in any way adversely affect the end specifications of the equipment. 'Changes in technical details, drawings repair and maintenance techniques alongwith necessary SMTs/STEs/TJs as a result of upgradation/alterations will be provided to the buyer free of cost within (__) days of affecting such upgradation/alterations.¹

ARTICLE 7
QUALITY

The quality of the stores delivered according to this Contract shall correspond to the technical conditions and standards valid for the deliveries of the same stores for in SELLER'S Country or specifications enumerated as per Article 4 and shall also include therein modification to the stores suggested by the BUYER. Such modifications will be mutually agreed to. The SELLER confirms that the stores to be supplied under this Contract shall be new ie not manufactured before , and shall incorporate all the latest improvements and modifications thereto and spares of improved and modified equipment are backward integrated and interchangeable with same equipment supplied by the SELLER in the past if any. The SELLER shall supply an interchangeably certificate alongwith the changed part Nos.

ARTICLE 8
PRE DESPATCH INSPECTION (PDI)

8.1. The BUYER representatives will carry out Pre Despatch inspection (PDI) of the Equipment in order to check their compliance with specifications in accordance with its usual standard procedures. Upon successful completion such PDI, the SELLER and BUYER will issue and sign a Certificate of Conformity as per specimen at **Annexure-V** . The format given is not sacrosanct and may be altered as per requirement of the equipment.

8.2. The SELLER shall intimate the BUYER and DGQA (as per address given in Para 8.7) at least 45 days before the scheduled date of PDI. The time for visa formalities by the SELLER should not be inclusive in this notice. The BUYER will send his authorised Representatives to attend the PDI.

8.3. The list of BUYER'S representatives together with their particulars including name, title, date and place of birth, passport numbers including date of issue and date of expiry, address, etc. must be communicated by the BUYER at least (No of days) in advance to apply for the necessary authorisations and clearances to be granted.

8.4. The BUYER reserves the right not to attend the PDI or to request for a delay in the beginning of the PDI with a maximum of fifteen (15) days from the date fixed for such PDI in order to allow his Representatives to attend such tests, in which cases he shall inform in writing the SELLER within 15 days before the date of the beginning of the PDI. Should the BUYER request for such delay, then liquidated damages, if any, shall not apply. In case the BUYER has informed the SELLER within the period mentioned here-above that he cannot attend the PDI or in case the BUYER does not come at the postponed date requested by him for performance of the PDI as mentioned above, the SELLER shall be entitled to carry out said tests alone as scheduled. The Certificate of Conformity and the Acceptance Test Report will be signed by the SELLERS QA representative alone and such documents bearing the sole signature of the SELLER'S QA representative shall have the same value and effect as if they have been signed by both Parties. In case BUYER does not elect to attend the PDI, then the BUYER shall issue intimate the SELLER in writing as per specimen at **Annexure-VI** that it does not wish to attend the PDI.

8.5. The SELLER shall provide all reasonable facilities, access and assistance to the BUYER'S Representative for safety and convenience in the performance of their duties in SELLER'S Country.

8.6. All costs associated with the BUYER'S Representative stay in (Name of country), including travel expenses, boarding and lodging accommodation, daily expenses, shall be borne by the BUYER.

8.7. The SELLER shall provide Acceptance Test Procedure to the BUYER'S DGQA within one (1) month from this Contract signature at the following address:-
DGQA()
DHQ PO, New Delhi 110011... FAX No _____

ARTICLE 9
PACKING AND MARKING

9.1. The SELLER shall provide packing and preservation of the equipment and spares/goods contracted so as to ensure their safety against damage in the conditions of land, sea and air transportation, transshipment, storage and weather hazards during transportation, subject to proper cargo handling. The SELLER shall ensure that the stores are packed in containers, which are made sufficiently strong, and with seasoned wood. The packing cases should have hooks for lifting by crane/fork lift truck. Tags with proper marking shall be fastened to the special equipment, which cannot be packed.

9.2. 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.

9.3. Each spare, SMT, STE and accessory shall be packed in separate cartons. A label in English shall be pasted on the carton indicating the under mentioned details of the item contained in the carton. A tag in English with said information shall also be attached to six samples of the item. If quantity contracted is less than six then tag shall be affixed to complete quantity contracted of the item. The cartons shall then be packed in packing cases as required.

- (a) Part Number :
- (b) Nomenclature :
- (c) Contract annex number :
- (d) Annex serial number :
- (e) Quantity contracted :

9.4. 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.

9.5. The SELLER shall mark each package with indelible paint in the English language as follows:-

EXPORT

Contract No. _____
Consignee _____
Port / airport of destination _____
Ultimate consignee _____
SELLER _____
Package No. a/b _____
Gross/net weight: kg _____
Overall dimensions/volume : cm/cu m _____
The SELLER'S marking,
Where : a - Serial No. of package.
 b - total number of packages in this consignment.

9.6. If necessary, each package shall be marked with warning inscriptions:
<Top>, "Do not turn over", category of cargo etc.

9.7. Should any special equipment be returned to the SELLER by the BUYER, the latter shall provide normal packing, which protects the equipment and spares/goods from the damage of deterioration during transportation by land, air or sea. In this case the BUYER shall finalize the marking with the SELLER.

ARTICLE 10
DELIVERY

10.1. The delivery of the goods shall be affected in accordance as per the schedule laid down in **Annexure-III B ser 3.1.2** as per consignees mentioned hereinafter.

10.2. **Port Consignee.**

- (a) **Equipment.** Commandant (COD, Delhi Cantt / Commandant Embarkation HQ, Mumbai.
- (b) **Ammunition.** Commandant NAD Alwaye.

10.3. **Ultimate Consignee.**

- (a) **Equipment** Commandant (Name of Depot).
- (b) **Ammunition.** Commandant (Name of Depot).

10.4. The SELLER shall intimate to the BUYER by letter or fax, six weeks in advance, the anticipated date of delivery of each consignment. The information shall consist of quantities of the goods and all other details required in connection with the shipment of the consignment. A copy of similar intimation shall also be forwarded to: -

- (a) DDG/PPO, MGO Branch, Army Headquarters, New Delhi. Fax No.91-11-23793337.
- (b) D(MC), Government of India, Ministry of Defence, south Block, New Delhi, Fax No.91-11-23011455.
- (c) ADG WE, Army Headquarters, New Delhi, Fax No.91-11-23793274.
- (d) ADG EME (ESM), Directorate General of EME, Army Headquarters, New Delhi, FaxNo.91-11-23018461.
- (e) Dir OS (PP&C), OS Dte, AHQ, New Delhi - 110011.
- (f) Commandant COD ultimate Consignee Depot, Fax No.91-562-2261057.
- (g) Commandant Port Consignee, Fax No.91-11-25694739.
- (h) DGQA (), South Block, New Delhi Fax No.91 -11 -_____.

10.5. Invoices and other dispatch documents shall be prepared in favour of PCDA (Hqrs) G Block, New Delhi-11.

10.6. Two copies each of dispatch documents as listed in LC documents shall be forwarded by air Courier to the following addresses within 72 hours after the goods have been dispatched or earlier, if possible :-

- (a) *Port Consignee.*
- (b) DDG PPO, MGO Branch, Army Headquarters, New Delhi-110011.
- (c) Ultimate consignee.

10.7. The SELLER will also forward a copy of the Airway Bill and Commercial invoice by fax on the day of despatch to DDG PPO, MGO Branch, Army Headquarters, New Delhi, Fax No.91 -11-23793337.

ARTICLE 11

TRANSPORTATION

TRANSPORTATION (BY SEA-FOB)

11.1. The stores shall be delivered FOB..... (as per INCOTERMS 2000, or latest version).

11.2. The stores shall be delivered to the BUYER by Indian Ships only. Shipping arrangements will be made by the Shipping Officer, Ministry of Surface Transport, Chartering Wing, Transport Bhavan, Parliament Street, New Delhi-110011 (Telegraphic Address: TRANSPORT, NEW DELHI-1, Telex "VAHAN" In 31-61157 OR 31-61158, Phone 2371 9480, Fax 2371 8614) to whom adequate notice of not less than 8 weeks about the readiness of stores for shipment should be given by the SELLER under intimation to the BUYER for finalising the Shipping arrangements.

11.3. The date of issue of the Bill of Lading shall be considered as the date of delivery.

11.4. No part shipment of goods is permitted. Trans-shipment of goods is not permitted.

OR

TRANSPORTATION (BY AIR-FCA)

11.1. The delivery of the goods shall be FCA_____ Airport (as per INCOTERMS 2000 or latest version).

11.1.2 The dispatch of goods shall be made by air to port consignee. The BUYER shall advise full details of its freight forwarder to the SELLER no later than 60 days prior to the delivery of the first consignment otherwise the SELLER may nominate the freight forwarder which shall be at the BUYER'S expense. Any delay in advising or delay by the freight forwarder shall be at the responsibility of the BUYER.

11.1.3. The date of issue of the Air Way Bill shall be considered as the date of delivery.

ARTICLE 12

AIRLIFT

Should the BUYER intend to airlift all or some of the stores the SELLER shall pack the stores accordingly on receipt of an intimation to that effect from the BUYER. Such deliveries will be agreed upon well in advance and paid for as may be mutually agreed.

ARTICLE 13

LIQUIDATED DAMAGES

13.1. 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 and MET as per schedule specified in this contract, the BUYER may, at his discretion withhold any payment until the completion of the contract. The BUYER may also deduct from the SELLER as agreed, liquidated damages to the sum of 0.5% of the contract price of the delayed/undelivered stores/services mentioned above for every week of delay or part of a week, subject to the maximum value of the Liquidated Damages being not higher than 5% of the total value of the contract.

ARTICLE 14

JOINT RECEIPT INSPECTION (JRI) IN INDIA

14.1 The Parties agree that the Joint Receipt Inspection (JRI) of delivered goods shall be conducted out on arrival in India at location to be nominated by BUYER. JRI shall be completed within **120 days (for armt/amn)/ 90 days (for other than armt/amn)** of arrival of good at Port Consignee. JRI will consist of:-

- (a) Quantitative checking to verify that the quantities of the delivered goods correspond to the quantities defined in this contract and the invoices.
- (b) Complete functional checking of the Equipment as per specifications in this contract and as per procedures and tests laid down by Indian DGQA, Functional checking of spares shall not be done.
- (c) Check Proof and firing shall be carried out for armament and ammunition, as per procedure and tests laid down by Indian DGQA.

14.2. JRI will be carried out by the BUYER'S Representative. The BUYER will invite the SELLER with a minimum fifteen (15) days prior notice to attend the JRI for the delivered goods. The SELLER reserves the right not to attend the JRI. The biodata of the SELLER'S Representative will be communicated fifteen (15) days prior to the despatch of goods to the BUYER for obtaining the necessary security clearance in accordance with the rules applicable in the BUYER'S country.

14.3. Upon completion of each JRI, JRI proceedings and Acceptance Certificate as per **Annexure 8**, will be signed by both Parties. In case the SELLER'S representative is not present then the JRI proceedings and Acceptance Certificate shall be signed by the BUYER'S representative only and same shall be binding on the SELLER. Copy of JRI proceedings and Acceptance Certificate shall be despatched to SELLER within 30 days of completion of JRI. In case of deficiencies in quantity and quality or defects, details of these shall be recorded in the JRI proceedings, Acceptance Certificate shall not be issued and claims raised as per Article on Claims in this contract. In case of claims, Acceptance Certificate shall be issued by BUYER'S representative after all claims raised during JRI are settled.

14.4. If the BUYER does not perform the JRI as per mentioned above for reasons exclusively attributable to him, then the JRI in India shall be deemed performed and the Equipment fully accepted.

ARTICLE 15
WARRANTY

15.1. The SELLER warrants that the goods supplied under this contract conform to technical specifications prescribed and shall perform according to the said technical specifications.

15.2. The SELLER warrants for a period of _____ months from the date of acceptance of stores by Joint Receipt Inspection or date of installation and commissioning whichever is later, that the goods/stores supplied under this contract and each component used in the manufacture there of shall be free from all types of defects/failures.

15.3. If within the period of warranty, the goods are reported by the BUYER to have failed to perform as per the specifications, the Seller shall either replace or rectify the same free of charge, maximum within 45 days of notification of such defect received by the SELLER, provided that the goods are used and maintained by the BUYER as per instructions contained in the Operating Manual. Warranty of the equipment would be extended by such duration of downtime. Record of the down time would be maintained by user in logbook. Spares required for warranty repairs shall be provided free of cost by SELLER. The SELLER also undertakes to diagnose, test, adjust, calibrate and repair/replace the goods/equipment arising due to accidents by neglect or misuse by the operator or damage due to transportation of the goods during the warranty period, at the cost mutually agreed to between the BUYER and the SELLER.

15.4. SELLER hereby warrants that necessary service and repair back up during the warranty period of the equipment shall be provided by the SELLER and he will ensure that the downtime is within 20 % of the warranty period.

15.5 SELLER shall associate technical personnel of maintenance agency and QA of BUYER during warranty repair and shall also provide the details of complete defects, reasons and remedial actions for defects.

15.6. If a particular equipment/goods fails frequently and/or, the cumulative down time exceeds 20% of the warranty period, the complete equipment shall be replaced free of cost by the SELLER within a stipulated period of 45 days of receipt of the notification from the BUYER duly modified/upgraded through design improvement in all equipment supplied / yet to be supplied and ESP supplied and yet to be supplied. Warranty of the replaced equipment would start from the date of acceptance after JRI by the buyer/date of installation and commissioning.

15.7. In case the complete delivery of Engineering Support Package is delayed beyond the period stipulated in this contract, then SELLER undertakes that the warranty period for the goods/stores shall be extended to that extent.

15.8 The SELLER will guarantee the shelf life of () years under the Indian tropical condition as given below, provided it is stored in original manufacturers packing :-

- | | | |
|---------------------------|---|--|
| (a) Minimum temperature | - | -40°C. |
| (b) Maximum temperature | - | +55°C, plus 1140 w/m square solar radiation equivalent plus 70°. |
| (c) Average Humidity (RH) | - | 65% |

15.9 For procurement of oils and lubricants the following will be included :-

- (a) The seller warrants that the special oils and lubricants required during the warranty period of the equipment shall be provided by the seller himself.
- (b) The penalty amounting to (%) of the value of the equipment shall be imposed on the seller in case the seller refuses or fails to meet the requirement of oils and lubricants during the warranty period of the equipment.
- (c) The seller shall make available the detailed specifications of all oils and lubricants required to be used in the equipment at the line of initial delivery of eqpt to facilitate identification and development of indigenous equivalents to be used after the expiry of the warranty period.

ARTICLE 16
WARRANTY BOND

16.1. A Warranty Bond will be issued in the form of a bank guarantee by (.....SELLER'S BANK.....) through an internationally recognised first class bank 30 days before delivery of first consignment in favour of Government of India, Ministry of Defence to be confirmed by State Bank of India/Bank of India/Bank of Baroda/Canara Bank equal to 5% (five percent) of the total value of this contract i.e. for US \$ (in words US Dollars only).

16.2. The specimen of the Warranty Bond is at **Annexure-11** to this contract.

16.3. The Warranty Bond shall be considered open upon receipt by the BUYER'S bank.

16.4. The Warranty Bond shall remain valid upto — months after the JRI and acceptance of last consignment in India. (In the event the supplies will be delivered in more than one consignment, the value of the Warranty Bond shall be reduced until full extinction two months after expiry of warranty of each consignment, in proportion to five percent (5%) of the value of the invoice of each consignment.) On request of SELLER

16.5. In case any claims or warranty obligations are outstanding, the SELLER will extend the warranty bond as asked by the BUYER till such time the SELLER settles all claims and completes all warranty obligations.

16.6. The warranty Bond will be subject to encashment by the BUYER, in case, conditions regarding warranty and settlement of claims in the contract are not fulfilled by the SELLER.

ARTICLE 17
CLAIMS

17.1 The claims may be presented either:-

- (a) On Quantity of the stores. In case it does not correspond to the quantity shown in the Packing List/Insufficiency in packing or,
- (b) On Quality of the stores. In case it does not correspond to the quality mentioned in this contract.

17.2 The quantity claims for deficiency of quantity shall be presented within 45 days of completion of JRI and acceptance of goods. The quantity claim shall be submitted to SELLER in the form at **Annexure-VII** (To be provided by MGO (PRO)) to this Contract.

17.3 The quality claims for defects or deficiencies in quality noticed during the JRI shall be presented within 45 days of completion of JRI and acceptance of goods. Quality claims shall be presented for defects or deficiencies in quality noticed during warranty period earliest but not later than 45 days after expiry of the guarantee period. The quality claims shall be submitted to SELLER in the form at **Annexure-VII** to this contract.

17.4 The description and quantity of the stores are to be furnished to the SELLER along with concrete reasons for making the claims. Copies of all the justifying documents shall be enclosed to the presented claim. The SELLER will settle the claims within 45 days from the date of the receipt of the claim at the SELLER'S office, subject to acceptance of the claim by the SELLER. In case no response is received during this period the claim will be deemed to have been accepted.

17.5 The SELLER shall collect the defective or rejected goods from the location nominated by the BUYER and deliver the repaired or replaced goods at the same location under SELLER'S arrangement.

17.6. Claims may also be settled by deduction of cost of goods under claim from bonds submitted by the SELLER or payment of claim amount by SELLER through demand draft drawn on Indian Bank, in favour of PCDA HQ, New Delhi, payable at New Delhi.

17.7. "The quality claims will be solely raised by the BUYER and without any certification/countersigning by SELLER'S representative stationed in India.

ARTICLE 18
TAXES AND DUTIES

18.1 All taxes, duties, levies and charges which are to be paid for the delivery of goods, including advance samples, shall be paid by the parties under the present contract in their respective countries.

ARTICLE 19
TERMINATION

19.1 The Buyer shall have the right to terminate this Contract in part or in full in any of the following cases :-

- (a) The delivery of the material is delayed for causes not attributable to Force Majeure for more than (*months*) after the scheduled date of delivery.
- (b) The SELLER is declared bankrupt or becomes insolvent.
- (c) The delivery of material is delayed due to causes for Force Majeure by more than (*months*).
- (d) The BUYER has noticed that the SELLER has utilised the services of any Indian/Foreign agent in getting this contract and paid any commission to such individual/company etc.
- (e) As per decision of Arbitration Tribunal (Article 21).

ARTICLE 20
LAW

20.1 The present Contract shall be considered and made in accordance to the laws of Republic of India.

This contract shall be governed by and interpreted in accordance with the laws of the Republic of India.

ARTICLE 21
ARBITRATION

21.1. All disputes or differences arising out of or in connection with the present Contract, including the one connected with the validity of the present Contract or any part thereof, shall be settled by bilateral discussions.

21.2. Any dispute, disagreement of question arising out of or relating to this Contract or relating to construction or performance (except as to any matter the decision or determination whereof is provided for by these conditions), which cannot be settled amicably, shall within sixty (60) days or such longer period as may be mutually agreed upon, from the date on which either party informs the other in writing by a notice that such dispute, disagreement or question exists, will be referred to the Arbitration Tribunal consisting of three arbitrators.

21.3 Within sixty {60 days of the receipt of the said Notice, one arbitrator shall be nominated in writing by SELLER and one arbitrator shall be nominated by BUYER.

21.4. The third arbitrator, who shall not be a citizen or domicile or of the country either of the parties or of any other country unacceptable to any of the parties shall be nominated of the parties within (90) days of the receipt of the notice mentioned above, failing which the third arbitrator may be nominated under the provisions of the Indian Arbitration and Conciliation Act, 1996, or by arbitration or dispute resolution institutions, such as Indian Council of Arbitration, ICADR, at request of either party but the said nomination would be after consultation with both the parties and shall preclude any citizen or domicile of any country as mentioned. The arbitrator nominated under this Clause shall not be regarded nor act as an umpire.

21.5. The Arbitration Tribunal shall have its seat in New Delhi or such other place in India as may be mutually agreed to between the parties.

21.6. The Arbitration Proceedings shall be conducted in India under the Indian Arbitration and Conciliation Act, 1996 and the award of such Arbitration Tribunal shall be enforceable in Indian Courts only.

21.7. The decision of the majority of the arbitrator shall be final and binding on the parties to this contract.

21.8. Each party shall bear its own cost of preparing and presenting its case. The cost of arbitration including the fees and expenses of the third arbitrator shall be shared equally by the Seller and the Buyer, unless otherwise awarded by the Arbitration Tribunal.

21.9 In the event of a vacancy caused in the office of the arbitrators, the party which nominated such arbitrator, shall be entitled to nominate another in his place and the arbitration proceedings shall continue from the stage they were left by the retiring arbitrator.

21.10. In the event of one of the parties failing to nominate its arbitrator within 60 days as above or if any of the parties does not nominate another arbitrator within 60 days of the place of arbitrator failing vacant, then the other party shall be entitled after due notice of at least 30 days to request the Indian Council of Arbitration, ICADR, to nominate another arbitrator as above.

21.11. If the place of the third arbitrator falls vacant, his substitute shall be nominated according to the provisions herein above stipulated.

21.12. The parties shall continue to perform their respective obligations under this contract during the pendency of the arbitration proceedings except in so far as such obligations are the subject matter of the said arbitration proceedings.

ARTICLE 22

PENALTY FOR USE OF UNDUE INFLUENCE

22.1. The SELLER undertakes that he has not given, offered or promised to give, directly or indirectly any gift, consideration, reward, commission, fees brokerage or inducement to any person in service of the BUYER or otherwise in procuring the Contracts or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the Contract or any other Contract with the Government for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other Contract with the Government. Any breach of the aforesaid undertaking by the SELLER or any one employed by him or acting on his behalf (whether with or without the knowledge of the SELLER) or the commission of any offers by the SELLER or anyone employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act, 1947 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.

22.2. 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 favor 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.

ARTICLE 23

AGENTS/AGENCY COMMISSION

23.1 The SELLER confirms and declares to the BUYER that the seller is the original manufacturer of the stores referred to in this contract and has not engaged any individual or firm, whether Indian or foreign whatsoever, to intercede, facilitate or in any way to recommend to the Government of India or any of its functionaries, whether officially or unofficially, to the award of the contract to the SELLER; nor has any amount been paid, promised or intended to be paid to any such individual or firm in respect of any such intercession, facilitation or recommendation. The SELLER agrees that if it is established at any time to the satisfaction of the BUYER that the present declaration is in any way incorrect or if at a later stage it is discovered by the Buyer that the SELLER has engaged any such individual/firm, and paid or intended to pay any amount, gift, reward, fees, commission or consideration to such person, party, firm or institution, whether before or after the signing of this contract, the SELLER will be liable to refund that amount to the BUYER. The Seller will also be debarred from entering into any supply Contract with the Government of India for a minimum period of five years. The BUYER will also have a right to consider cancellation of the Contract either wholly or in part,

without any entitlement or compensation to the SELLER who shall in such event be liable to refund all payments made by the BUYER in terms of the Contract alongwith interest at the rate of 2% per annum above LIBOR rate. The BUYER will also have the right to recover any such amount from any contracts concluded earlier with the Government of India.

ARTICLE 24
FORCE MAJEURE

24.1 Should any force majeure circumstances arise, each of the contracting party shall be excused for the non-fulfillment or for the delayed fulfillment of any of its contractual obligations, if the affected party within (days) of its occurrence informs in a written form the other party.

24.2 Force majeure shall mean fires, floods, natural disasters or other acts, that are unanticipated or unforeseeable, and not brought about at the instance of, the party claiming to be affected by such event , or which, if anticipated or foreseeable, could not be avoided or provided for, and which has caused the non-performance or delay in performance, such as war, turmoil, strikes, sabotage, explosions, quarantine restriction beyond the control of either party.

24.3 A party claiming Force Majeure shall exercise reasonable diligence to seek to overcome the Force Majeure event and to mitigate the effects thereof on the performance of its obligations under this contract.

ARTICLE 25
NON DISCLOSURE OF CONTRACT DOCUMENTS

25.1 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.

ARTICLE 26
NOTICES

26.1 Any notice required or permitted by this contract shall be in written in English language and may be delivered personally or may be sent by FAX, TELEX, Cable or registered pre paid airmail, addressed to the last known address of the party to whom it is sent.

ARTICLE 27
TRANSFER AND SUB-LETTING

27.1 The SELLER has no right to give, bargain, sell, assign or sublet or otherwise dispose of the Contract or any part thereof, as well as to give or to let a third party take benefit or advantage of the present Contract or any part thereof.

ARTICLE 28
PATENTS AND OTHER INDUSTRIAL PROPERTY RIGHTS

28.1 The prices stated in the present Contract shall be deemed to include all amounts payable for the use of patents, copyrights, registered charges, trade marks and payments for any other industrial property rights.

28.2 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, SMTs/STEs, technical literature and training aggregates irrespective of the fact of infringement of the supplies, irrespective of the fact of infringement of any or all the rights mentioned above.

**ARTICLE 29
AMENDMENTS**

29.1 No provision of this contract shall be changed or modified in any way (including this provision) either in whole or in part except by an instrument in writing made after the date of this contract and signed on behalf of both parties and which expressly states to amend this contract.

**ARTICLE 30
PRODUCT SUPPORT**

30.1 The SELLER agrees to provide Product Support for the stores, assemblies/subassemblies, fitment items and consumables, SMTs/STEs subcontracted from other agencies/manufacturer by the seller for a maximum period of (years) including (years) of warranty period after the delivery of (name of equipment). The Seller agrees to undertake MAINTENANCE CONTRACT for a maximum period of (months), extendable till the complete Engineering Support Package is provided by the SELLER, at a time, at terms and conditions mutually agreed between the Supplier and the Indian manufacturer.

30.2 In the event of any obsolescence during the above mentioned period of product support in respect of any component or sub-system, mutual consultation between the SELLER and BUYER/Indian manufacturer will be undertaken to arrive at an acceptable solution including additional cost, if any.

30.3 Any improvement/modification/upgradation being undertaken by (M/s name of company) on (name of equipment) or their sub suppliers will be communicated by the SELLER to the BUYER and, if required by the BUYER, these will be carried out by the Seller at BUYER'S cost.

30.4 The SELLER agrees to provide an Engineering Support Package as specified in Article 34 as modified after confirmatory MET. The SELLER agrees to undertake the repair and maintenance of the equipment, SMTs/STEs test set up, assemblies/sub assemblies and stores supplied under this contract for a period of five years as maintenance contract specified at para 30.1 above or provision of complete ESP to the BUYER viz EME which ever is later, as per terms and conditions mutually agreed between the SELLER and the BUYER.

**ARTICLE 31
TRAINING**

31.1 The SELLER shall provide the following training to the personnel of the BUYER free of charge :

(a) Operator Training:

- (i) (Duration) at OEM'S premises for a maximum of () officers.
- (ii) () days per group in India, to a maximum of () personnel in groups of () each.

(b) Repair and Maintenance Course.

- (i) Field Repair/Maint. (weeks) at OEM'S premises for (composition of the team to be specified).
- (ii) Base Repair/Maint. (weeks) at OEM, premises for (composition of the team to be specified).
- (c) The seller will provide training to the QA reps of the buyer for () days on various aspects of quality assurance of equipment.
- (d) The syllabus of training as above will be decided within — months of MET by the BUYER and shall meet the needs of repair and maintenance of the complete equipment, SMTs/STEs, test set up, assemblies/sub assemblies as per the existing repair concept of Indian Army as covered under Article 32.

31.2 The training for the first group of operators and users will be organised and conducted so that its termination does not go beyond (days) of the scheduled delivery of the first equipment. Training of second group of operator and users will be conducted within () months thereafter. Repair and maintenance course will be conducted within () months of signing of the contract and before expiry of warranty.

ARTICLE 32

OPTION CLAUSE/TOLERANCE CLAUSE

32.1 The BUYER shall have the right to place separate order on the SELLER on or before _____ - (_____ year from the date of this contract) for the main equipment, spares, facilities or services as per the cost, terms and conditions set out in this contract. The price of the system, spares etc shall remain same till _____ year from the effective date of the contract. Beyond this, cost will be escalated through application of the mutually agreed escalation formula.

ARTICLE 33

BUYER FURNISHED EQUIPMENT (BFE)

33.1 The following equipment will be provided by the BUYER at his own expense:

(a)

(b)

(NAME OF THE EQUIPMENTS TO BE PROVIDED BY THE BUYER ALONGWITH THE MAIN EQUIPMENT)

This provision is in addition to the provisions set forth in Annexure III B (Statement of Work)

ARTICLE 34

ENGINEERING SUPPORT PACKAGE

34.1. Repair Philosophy. The Engineering Support Philosophy shall conform to repair philosophy as follows :-

(a) **Field Repairs.** Envisages diagnosis and repair assemblies/PCBs/Modules (called rotables) and discreet components not forming part of these rotables.

(b) **Component Level Repair.** This level of repair envisages diagnosis and repairs of notables as defined at subpara (a) above.

(c) **Base overhaul.** This level of repair defines stripping and rebuilding of equipment in a Base workshop.

34.2 Accompanied Accessories/User Replaceable Parts/ Expendables

Accompanied accessories/ User Replaceable Parts/ Expendables as per the list, which will be prepared by the BUYER **within — months** of completion of operator and operator trainer training, for the amount specified at **Ser No — of Annexure I.** The list of items required to be supplied will be taken from **Appendix-A to Annexure-IX** duly incorporating Adequacy Clause (Article 34.7 below refers).

34.3. Spares. Spares requirement for carrying out maintenance and repair up to component level will be provided by the SELLER as per the list, which will be prepared by the BUYER within **—month** of completion of MET, **within the amount** specified at **Ser No — of Annexure I.** The list of spares required to be supplied will be taken from **Appendix-A to Annexure-IX** duly incorporating Adequacy Clause (Article 32.8 below refers).

34.4. Special Maintenance Tools, Special Test Equipments and Test Jigs

(SMT/STE/TJs) SMT/STE/TJ requirement for carrying out maintenance and repair up to () level of repair will be provided by the SELLER as per the list, which will be prepared by the BUYER within **— month** of completion of MET, **within the amount** specified at **Ser No - of Annexure-I.** The list of equipment required to be supplied will be taken from **Appendix A to Annexure IX** duly incorporating Adequacy Clause (Article 32.8 below refers).

34.5. Training. Training of operators, operator trainers, and maintenance personnel will be carried out as per details given in **Appendix-B to AnnexureVII** at _____ in English Language. The syllabus given at **Appendix-B** will be refined by the SELLER in consultation with the BUYER at the time of MET. The SELLER confirms to the BUYER that the maintenance training will be imparted to the satisfaction of the BUYER and SELLER ensures that the training content and period will be extended so as to impart working proficiency up to () level repairs. All training requirements such as training aids, projection system, complete eqpt with accessories /optionals, technical literature, spares, test eqpt/test set up, charts etc will be catered for by the seller.

34.6. Technical Literature.The SELLER shall provide --- sets of Technical Literature as per the format given in JSS 0251-01 (copy of JSS 0251-01 already handed over to the SELLER). Inadequacy/voids in Technical Literature identified during the Maintenance Evaluation Trials will be rectified by the SELLER at the time of delivery of Technical Literature to the satisfaction of maintenance agency of the Buyer.

34.7 Maintenance Evaluation Trials (MET). BUYER will depute within () months After Receipt of Order (ARO), a team of () personnel to SELLER'S country for (*duration*) to conduct a maintainability evaluation (MET) for (*Name of the EqQ*) at SELLER'S premises. SELLER will provide all necessary assistance to carryout MET. In case the MET is to be conducted in the BUYERS premises, all infrastructure should be ready by (*duration to be mentioned*). The team will study applicability of SMTs/STE/Test jigs, spares and adequacy of technical literature and documentation provided under this Contract. If, as a result of the above mentioned evaluation, BUYER decides to augment its spare parts or STE quantities, BUYER will then exercise the additional order through the provisions of Article 30 (Options Clause). BUYER may also adjust the quantities of spare parts SMTs/STEs/Test jigs provided that the total price of the spare parts ISMTs/STEs/Test jigs listed is not changed and provided also that the adjustment is made not later than (*months*) after the conduct of the MET evaluation in (*name of the country*) and before the delivery schedules of spare parts/SMTs/STEs/Test jigs stipulated in the contract.

34.8. Maintenance Evaluation Trials (MET). (Users handbook, operators manual,ISPL, check proof details, fixtures required for Acceptance Test/check proof, technical specifications, etc). Sepcimen of documents required is attached at Annexure-XII.The details of items and inputs required for MET are given in **Appendix-C to Annexure-XI** of the contract. The Seller shall allow stripping/ opening of the equipment during MET. The sellers technical representative(s) who is/are competent to clarify all the issues pertaining to maintenance and repair up to ()level shall be present during the complete duration of MET. Inadequacies in items/inputs, if any, brought out during MET must be rectified and would be presented for re-evaluation by the seller along with the JRI.

34.9 Adequacy Clause. The SELLER confirms to the BUYER that the range and depth of Accompanied Accessories/ User Replaceable Parts/ Expendables, Spares and SMT/STE/TJ given in **Appendix-A of Annexure-IX** of this contract are complete and exhaustive for use and carrying out repairs up to () level for the equipment procured under this contract by the BUYER. Any additional items, spares, tools and equipment up to the lowest level needed for use, maintenance and repair will be supplied by the SELLER at mutually agreed prices with in 60 days of receipt of notification from the BUYER for the period specified in Article 25 (PRODUCT SUPPORT). The SELLER also confirms to the BUYER that the overall cost of one set of complete list of spares and parts used to make one functional (Equipment ___) as per the specifications given at **Annexure-III (Technical Specifications)** along with accompanied accessories as per **Annexure-IX** as per the cost given in **Appendix-A of Annexure-IX** will not exceed the cost of the equipment as given in Appendix B. The SELLER also confirms that, if two different prices have been given for the same/ similar item in **Appendix-A to Annexure-IX**, then the lower price quoted will prevail. In case, the quoted accessories has several items viz Sampling Accessory Kit and add up price of these items is higher than the quoted price of the accessory then the price will be lowered/adjusted proportionately for the items.

35. Testimonial and signature clause: The authorised representative of the Seller should be shown to have been so authorised by the Resolution of the Board of Directors of the Company of the Seller or duly authorised by the Memorandum/Articles of Association of the Company along with supporting documents for the same,

LEGAL ADDRESSES OF THE CONTRACTING PARTIES

1. Judicial addresses of both contracting parties:

SELLER

BUYER:

GOVERNMENT OF INDIA
MINISTRY OF DEFENCE (MC)
SOUTH BLOCK
NEW DELHI-110011
REPUBLIC OF INDIA

With Copy to:-
DDG PPO
MGO Br, AHQ
DHQPO-110011
New Delhi

Fax No. 011-23793337

Annexure I to Contract No. Dated

SCHEDULE OF PRICES & DELIVERIES

| No | Denomination of Stores | Qty | Unit Price (US Dollars) | Total Value (US Dollars) | Remarks |
|----|------------------------|-----|-------------------------|--------------------------|---------|
| 1. | Direct Import | | | | |
| 2. | ESP | | | | |
| 3. | Training Package | | | | |

To Contract No.

Dated

ADVANCE GUARANTEE/PERFORMANCE WARRANTY BOND

Ministry of Defence,
Government of India
NEW DELHI

Dear Sir,

Whereas you have entered into a contract No. _____ dated _____ (hereinafter referred to as the said Contract) with M/s _____, for supply of goods as per Annexure 1 of the said contract and whereas the Seller has undertaken to produce a bank guarantee for (%) of total Contract value amounting to _____ to secure its obligations to the President of India. We, hereby expressly, irrevocably and unreservedly undertake and guarantee as principal obligors on behalf of the Seller that, in the event that the President of India declares to us that the goods have not been supplied according to the Contractual obligations under the aforementioned contract, we will pay you, on demand and without demur, any sum up to a maximum of _____. Your written demand shall be conclusive evidence to us that such repayment is due under the terms of the said contract. We undertake to effect payment upon receipt of such written demand.

2. We shall not be discharged or released from this undertaking and guarantee by any arrangements, variations made between you and the Seller, indulgence to the Seller by you, or by any alterations in the obligations of the Seller or by any forbearance whether as to payment, time performance or otherwise.

3. In no case shall the amount of this guarantee be increased.

4. This guarantee shall remain valid for months from the date of JRI acceptance of test consignment in India or until all the store, spares and documentation have been supplied according to the contractual obligations under the said contract.

6. Unless a demand or claim under this guarantee is made on us in writing or on before the aforesaid expiry date as provided in the above referred contract or unless this guarantee is extended by us, all your rights under this guarantee shall be forfeited and we shall be discharged from the liabilities hereunder.

7. This guarantee shall be a continuing guarantee and shall not be discharged by and change in the constitution of the Bank or in the constitution of M/s _____

Annexure - III A

To Contract No.

Dated

TECHNICAL SPECIFICATION

All Tech parameters listed in terms of size, weight, performance, operating environment, power, utility life storage shelf life etc, both in terms of essential and desirable levels as applicable to the eqpt.

(The Technical parameters of the equipment being contracted also to be included)

To Contract No.

Dated

STATEMENT OF WORK (SOW)

1. General.

2. Abbreviations / Definations.

3. Equipment Materials And Services

The Seller shall deliver the goods and perform services as following:

3.1 Deliverable Items and Schedule :

3.1.1 Deliverable Items:

3.1.2 Delivery Schedule

| Ser No | <u>Quantity</u> | <u>Month (ARO)</u> |
|--------|-----------------|--------------------|
|--------|-----------------|--------------------|

3.2 Modifications to be incorporated in (Name of Eqot).

3.3 Buyer Furnished Data and Equipment.

4. Integrated Logistic Support (ILSK)

4.1 The maintenance of the (Name of Eqpt) shall be carried out at Field and Base Level by Buyer's personnel after receiving Maintenance Documentation, CBTs Training, Special Test Equipment (STE) and test set up and Spare Parts.

4.2 The ILS package will support the following maintenance tasks:
(All tasks to be listed)

4.2.1 Field

4.2.2 Base/Component Level.

4.3 **Training & Documentation. (All details of try to be incorporated)**

4.3.1 Field Maintenance Training and Documentation.

| No | <u>Description</u> | <u>No of Pers</u> | <u>Duration</u> | <u>Month (ARO)</u> | Remarks |
|----|--------------------|-------------------|-----------------|--------------------|---------|
|----|--------------------|-------------------|-----------------|--------------------|---------|

4.3.2 Base Maintenance Training and Documentation.

| No | <u>Description</u> | <u>No of Pers</u> | <u>Duration</u> | <u>Month (ARO)</u> | Remarks |
|----|--------------------|-------------------|-----------------|--------------------|---------|
|----|--------------------|-------------------|-----------------|--------------------|---------|

4.4 Special Test Equipment and Test Setup

4.4.1 For Field Maintenance Test Equipment.

4.4.2 For Base/Component Level Maintenance

| No | <u>Description</u> | <u>Qty</u> | <u>Month (ARO)</u> | Remarks |
|----|--------------------|------------|--------------------|---------|
|----|--------------------|------------|--------------------|---------|

BUYER FURNISHED TEST EQUIPMENT

| No | <u>Description</u> | <u>Qty</u> | <u>Month (ARO)</u> | Remarks |
|----|--------------------|------------|--------------------|---------|
|----|--------------------|------------|--------------------|---------|

To Contract No.

Dated

MODIFICATIONS TO BE INCORPORATED AS PER REQUIREMENTS OF INDIAN ARMY

(To be elaborated depending on the modification existing if any with the OEM or modifications required for suiting the buyers Requirement)

CERTIFICATE OF CONFORMITY

Date :

No:

Product Name :

Product No :

Lot No :

Quantity :

Contract No :

Packaging List No :

THIS IS TO CERTIFY THAT THE ABOVE MENTIONED PRODUCT HAVE SUCCESSFULLY PASSED ALL THE ACCEPTANCE TESTS IN ACCORDANCE WITH THE RELEVANT SPECIFICATIONS AND DRAWINGS.

() () ()

() () ()

SPECIMEN

Tele:

Government of India
Ministry of Defence
Deptt of Def & Supplies
Det of Quality Assurance (Armt)

DHQ PO, New Delhi-110011

No

Jun 04

To

CONTRACT NO DT FOR PROCUREMENT OF.....

1. Reference your fax no dated
2. It has been decided not to depute PDI team for pre dispatch inspection of the subject store at firm's premises.
3. In view of above, you are requested to dispatch the 2nd consignment (350 nos) under your warranty/guarantee, along with your lot acceptance certificate. On receipt of the consignment in India, the equipments will be subject to acceptance inspection. Acceptance or otherwise will be accorded accordingly.

()

Copy to :-

1. MoD/D (MC).
2. MGO/PPO-4.
3. ADG/WE-4.
4. MoD/D(GS-IV).
5. ARM-9.

QUANTITY CLAIM

to the Contract No
dated

CLAIM PROTOCOL NO

Laid down
For inter/tare storage

Commission, consisting of Chairman and
Members having examined the state of
the delivered equipment ascertained as follows:-

1. The equipment was delivered by M/s against Bill
of Lading No of in the quantity of one collie
with the Marking Case No

2. The obtained equipment is delivered under Contract No
Item Sri No Cost

3. The state of packing and seals on goods packages, correspondence of the gross
weight and the weight indicated in the way bills (packing lists) Nos of the collies are to be
pointed out Condition of the collie
.....Gross weight of the collie
..... Net weight of the collie

4. While unpacking the goods packages, the following discrepancy between the shipping
documents (packing lists as the packed equipment was discovered/separately for the each
package

5. Conclusion of the commission
.....
.....

6. The following documents confirming the justification of the complaint are attached to
the report (Packing list, photos of the damaged sports and
others)
.....
.....

Chairman
Members

Place and date of issue

QUALITY CLAIM

to the Contract No

dated

CLAIM PROTOCOL NO

Laid down on

Concerning (Name of the claimed equipment)

Commission Members

Chairman

The Commission has acquainted with the claimed equipment and made the following decision:-

1. Serial No.....

(equipment)

Production by the Made by the manufacturer.....

(date of manufacture)

No of running hours With guarantee period of.....

(completed)

(years, months)

From the beginning of operation, the product has been operating for..... hours.

2. Indicate operation conditions of the equipment

(State type of fuel and oil used during operation of the equipment)

3. Description of the defect.....

(the date and circumstances under which the defect was ascertained, short description of the probable causes and probable consequences of the defect)

4. List of units (or their parts)

(defective equipment will remain in that organization store-room when it has been operating till arrival of the SELLER'S instruction)

5. Conclusion of the Commission

(on investigation the commission decided that the claimed equipment is not serviceable and that it must be subject to repair or must be replaced with a new equipment. The kind of repair and place where the repair should be carried out are to be stated).

The following parts are required for the repair of the equipment (or its parts)

The defect occurred within the guarantee period from the reason as follows.....

The costs of the repair of the equipment or its parts

The defect occurred within the guarantee period from the reason as follows

..... The costs of the repair will be debited to (..... manufacturer/owner.....)

To settle the claim, the SELLER has to replace the equipment and dispatch the unit and other parts, indicate the parts and where the repair should be carried out (manufacturer's side), the manner of reimbursement of costs connected with the repair of the equipment, etc.

Supplementary data:

The equipment was handed over in accordance with the No on (date)

The following documents are enclosed to this claim protocol to support the justification of the claim (photos, samples, results of analysis, packing sheets, etc.)

Signature of the commission members

PRICES, QUANTITIES AND DELIVERY SCHEDULE OF EQPT

| No | Item | Quantity | Readv for Shipment | Unit Price USDS | Total Price USD \$ |
|----|--|---|------------------------|--------------------|--------------------|
| 1. | EQPT _____ as per Appendix A along with accessories given at Note 1 below | 221 Nos | As per Note 2 below | | |
| 2 | Cost of Additional Accompanied Accessories, User Replaceable Parts and Expendables | As per Article 32.1 | As per Note 2(d) below | As per Annexure B1 | |
| 3. | Spares and SMT/STEATJ | As per Article 32.2 and 32.3 | As per Note 2(d) below | | |
| 4. | Training as per the syllabus given at Annexure B2 | 4 and 24 working days for operator & maintenance personnel respectively | As per Note 3 below | | |
| 5. | Technical Literature | As per Note 4 below | As per Note 2(d) below | - | |
| | | | TOTAL | | |

Notes:

1. Description of Equipment. Equipment _____ System and the following accessories:-

| <u>Part No</u> | <u>Item</u> | <u>Quantity</u> |
|-----------------------|--------------------------------|------------------------|
| (a) | 943013 Battery | 02 Nos |
| (b) | 943700 Manual in English | 01 |
| (c) | 540006 Phillips Screwdriver #1 | 01 |

2. Delivery Schedule. Delivery Schedule (to be read in conjunction with Article 5 Delivery and Transportation) to be completed as under:-

- (a) First consignment of — Nos Equipment _____ within — weeks from the effective date of the contract (Article 3 refers) alongwith contracted ESP package viz spares, SMTs/STEs/TJs and technical literature.
- (b) Second consignment of — Nos EQPT _____ within — weeks from the effective date of the contract (Article 3 refers).
- (c) Third consignment of — EQPT _____ within — weeks from the effective date of the contract (Article 3 refers).
- (d) Fourth and last consignment of — EQPT _____, and Additional Accompanied Accessories/ User Replaceable Parts/ Expendables, Spares, SMT/STE/TJ and Technical Literature within — **weeks** from the effective date of the contract (Article 3 refers) and 32.7 refers.

3. **Training.** Training for operators and maintenance personnel will be carried out at — — in English Language as per the following schedule:-

| <u>Strength</u> | <u>Duration</u> | <u>Schedule</u> |
|---|-----------------|---|
| Operator Training - personnel | --days | Along with JRI of the first consignment i,e after completion of JRI. |
| Trainer Training -personnel | -days | Along with JRI of the first consignment. |
| (c) Maintenance Personnel- personnel (Field level) | - days | Along with JRI of the first consignment. |
| (d) Maintenance Personnel - personnel (Component level) | -- days | Within 4 weeks of the receipt of the last consignment of eqpt and additional items. |

4. **Technical Literature.** The following technical literature in English language along with three sets of CDs containing complete technical literature, over and above being given with the equipment at Ser No 1 above, will be supplied with the last consignment duly incorporating modifications intimated by the BUYER after completion of MET :-

- (a) User Hand Book / Operator Manual - -- sets.
- (b) Technical Manual Part I and II - --sets each.

Part I : To include technical desription specification of the equipment and its major assemblies principle of operation, circuit diagrams, drawings, illustration ect.

Part II : To include inspection and maintenance tasks schedule, inspection standard/procedures,fault diagnosis and use of STEs.)

- (c) Technical Manual Part III and IV - -- sets each.

Part III : To include procedure for disassembly/assembly of the equipment. Test procedures, specifications, repair of modules/major assemblies, component level repair of PCBs, test set ups calibration of test eqpt/gauges and safety precautions.

Part IV : Part list with drawing reference, Illustrate Spare Part List(ISPL) and list of SMTs, STEs & Test setups .)

- (d) Complete Equipment Schedule (TOTE)-- --Sets
(To include schedule of equipment, its accessories, fast moving spares, tools, expendables and cleaning material provided along with each equipment.)

Appendix-A to Annexure-IX**COMPLETE LIST OF ACCOMPANIED ACCESSORIES/ USER REPLACEABLE PARTS/
EXPENDABLES, SPARES AND SMTs/STE/TJ FOR EQPT****1. SUB-ASSEMBLIES FOR EQPT**

| Sl. No. | Sl. No. of Offer | Part No. | Nomenclature | Schematic ref. | No. per eqpt | Unit cost in USD\$ | Total cost in USD\$ | Remarks |
|---------|------------------|----------|-----------------|----------------|--------------|--------------------|---------------------|---------|
| 1 | 1 | 220124 | Sensor NO2 | S1 | 1 | | | |
| 2 | 2 | 943253 | Sensor Membrane | | 1 | | | |
| | | | Total | | | | | |

2. Accessories alongwith the equipment

| Sl. No. | Sl. No. of Offer | Part No. | Nomenclature | Schematic ref. | No. per eqpt | Unit cost in USD\$ | Total cost in USD\$ | Remarks |
|---------|------------------|----------|-------------------|----------------|--------------|--------------------|---------------------|---------|
| 1 | 4 | 943013 | Battery cartriges | | 2 | | | |
| | | | | | | | | |
| | | | Total | | | | | |

3. Optional Items

| Sl. No | Sl. No. of Offer | Part No. | Nomenclature | Schematic ref. | No. per eqpt | Unit cost in USD\$ | Total cost in USD\$ | Remarks |
|--------|------------------|----------|-----------------------|----------------|--------------|--------------------|---------------------|---------|
| 1 | 16 | 943021 | External battery pack | | 1 | | | |
| | | | | | | | | |
| | | | | | | | | |

| Sl No | Sl. No.of Offer | Part No. | Nomenclature | Sche matic ref. | No. per eqpt | Unit cost in USD\$ | Total Cost in USD\$ | Remarks |
|-------|-----------------|----------|--------------|-----------------|--------------|--------------------|---------------------|---------|
| | | | Total | | | | | |

4. Spares

| Sl. No | Sl. No.of Offer | Part No. | Nomenclature | Sche matic ref. | No. per eqpt | Unit cost in USDS | Total costin USD\$ | Remarks |
|--------|-----------------|----------|--------------|-----------------|--------------|-------------------|--------------------|---------|
| 1 | 12 | 943046 | RS232 Cable | | 1 | | | |
| | | | Total | | | | | |

5.Additional items required for completeness of spares, and consumables

| Sl No | Sl. No.of Offer | Part No. | Nomenclature | Sche matic ref. | No. per eqpt | Unit cost in USD\$ | Total costin USDS | Remarks |
|-------|-----------------|----------|---------------|-----------------|--------------|--------------------|-------------------|---------|
| 1 | | 943018 | Audio Ear Set | | 1 | | | spare |
| | | | Total | | | | | |

5. List of SMT/STE/Test Jigs

6.

| Sl. No. | Sl. No. of Offer | Part No. | Nomenclature | No. per eqpt | Unit cost in USD \$ | Total cost in USD \$ | Remarks |
|---------|------------------|----------|--------------|--------------|---------------------|----------------------|--|
| 1 | | TJ 3000 | Test Jig EVD | 1 | | | Component Level Checks Manufacture Supplied |
| | | | Total | | | | |

Note. The SELLER confirms for authenticity, completeness correctness of the data given in this annexure.

TRAINING

1. Operator Course. This course is designed to give the student the necessary knowledge to operate an Equipment __ effectively. It also covers unit maintenance procedures and procedures for unit level repair and replacement of parts.

| Time | Course | Description | Materials |
|------|----------|---|--|
| -hrs | | This course covers the theory, operation and proper sampling techniques. It will include hands on and visual presentations. | Slide Show, User Guide |
| -hrs | | This course allows the student to do practical exercises with an Equipment __. | User Guide, Equipment __ unit, Practical outline |
| -hr | | This time allows the student to ask any questions they have and review for the test. | User Guide, Equipment __ unit |
| -hr | Operator | The student takes the certification test. | User Guide, Test paper |

2. Trainer Course. This course is designed to give the student an understanding of the Equipment __ as well as first line maintenance techniques that will the student to keep the (Equipment) __ working properly. In addition to that there will be a course on training others how to use the (Equipment) __ by stressing the important issues using the (Equipment) __. Following the course there will be a certification test which will then allow the student to train other users on the (Equipment) __.

| Time | Course | Description | Materials |
|-------|------------|---|---|
| --hrs | | This course covers the theory, operation and proper sampling techniques. It will include hands on and visual presentations. It will also include first line maintenance techniques used in the field. | Slide Show, Supervisor Guide |
| --hrs | | This course allows the student to do practical exercises with an (Equipment) __. | Supervisor Guide, (Equipment) __unit, Practical outline |
| --hrs | | This course cover the important issues in training other users on the (Equipment) __. | Trainer Guide, (Equipment) __unit |
| --hrs | | This course allows the students to practice training other users on the (Equipment) __ under supervision. | Trainer Guide, Slide Show, (Equipment) __ unit |
| --hr | Supervisor | The student takes the certification test. | Supervisor Guide, Test paper |
| | Test | | Trainer Guide |

3. Field Repair level Maintenance Training: This course is designed to give the student an understanding of the (Equipment) __ as well as first line maintenance techniques that will the student to keep the (Equipment) __ working properly. Then the course will discuss the Mechanical/Automotive/Electronic/Armament portion of the (Equipment) __. A break down of all components as well as the calibration procedure is taught. The student will then take apart and rebuild an (Equipment) __ going over various points. Following the classes there will be a certification test which will allow the student to then do any repairs needed on the (Equipment)_____.

| Time | Course | Description | Materials |
|-----------|--------|---|---|
| — hrs | | This course covers the theory, operation and proper sampling techniques. It will include hands on and visual presentations. It will also include first line maintenance techniques used in the field. | Slide Show, Supervisor Guide |
| -- hrs | | This course allows the student to do practical exercises with an (Equipment) __. | Supervisor Guide, (Equipment) __unit, Practical outline |
| <u>56</u> | | | |
| -- hrs | | This course covers all the electronics in the (Equipment) __. A look at all the PCBs in the unit and the procedure of analyzing samples. | Technical Guide, (Equipment)_unit |
| -- hrs | | This course discusses the troubleshooting techniques used for repairing an (Equipment) __. | Technical Guide, (Equipment)_unit |
| -- hrs | | This course cover the proper procedure in calibrating and (Equipment) __. | Technical Guide, (Equipment)_unit |

4. Component level Maintenance Training. This course is designed to train students to undertake component level repair of all assemblies, subassemblies, modules, PCBs ect.

5. Base Repair Maintenance Training. The syllabus for base repair maintenance training will be finalised during MET as per the requirement of the BUYER.

6. Technical Know How. The SELLER shall provide the complete know how on the technology used , repair and maintenance of the equipment and shall not withhold such information during the conduct of the training. Maint philosophy will be discussed and suggested norms for major maintenance tasks will be provided by the SELLER.

MET

1. This is carried with a view to facilitate provisioning of effective engineering support for life cycle of the equipment. This would involve stripping of the equipment and carrying out recommended tests and adjustments and establishing adequacy of maintenance spares, tools, test equipment and technical literature. To facilitate this process, the SELLER is required to provide the following in addition to one complete set of the equipment apart from the quantity being procured vide this contract. :-

(a) Technical Literature

- (i) User Handbook/Operators Manual.
- (ii) Design Specifications.
- (iii) Technical Manuals
 - (aa) Part- 1. Technical description, specifications, functioning of various systems.
 - (ab) Part-II. Inspection/Maintenance tasks, repair procedures, materials used, fault diagnosis and use of Special Maintenance Tools (SMTs) /Special Test Equipment (STEs).
 - (ac) Part-III. Procedure assembly/disassembly, repair up to component level safety precautions.
 - (ad) Part - IV. Part list with drawing reference and list of SMTs/STEs Test Bench.
- (iv) Manufacturers Recommended List of Spares (MRLS) **with schematic references and part numbers for all the items.**
- (v) Illustrated Spare Part List (ISPL).
- (vi) Technical Manual on SMT/STE with drawing reference.
- (vii) Complete Equipment (TOTE) & carried spares.

(b) One set of Gauges.

(c) One set of complete SMTs/STEs/TJs and Test set up.

(d) Servicing Schedule and condemnation limits.

(e) Permissive Repair Schedule for repairs possible at various levels with available infrastructure.

(f) Packing specification/ instructions.

(g) Any additional information suggested by the OEM such as infrastructure/facilities/Buyer furnished items for use and maintenance/repair of eqpt.

2. The vendor technical representative shall be present during complete duration of MET. On completion of MET, the SELLER can take back all the items produced for evaluation and maintenance training.

LETTER OF CREDIT

Form of Doc Credit (40A) : Irrevocable/revocable/revolving/confirming.
 Doc Credit Number (20) :
 Expiry (31D) : Date : 12 months after issuance of
 Documentary credit.
 Applicant bank (51) :

 Beneficiary(59) :

 Amount (32B) : Currency :
 Amount :
 Max Credit Amount (39B) : No Exceeding
 Available with/By (41) : By payment.
 Partial Shipments (43P) : Allowed/Not Allowed.
 Transshipment (43T) : Not allowed/allowed.
 Loading in Charge (44A) :
 (Port of Loading).
 For Transport to (44B) :
 (Port of Discharge).
 Shipment Period (44D) :
 Descript of Goods (45A) :
 Documents Required (46A) : + Signed commercial invoice in six copies.
 + Two copies of original clean on board bills of lading made out to order and endorsed in
 blank, showing applicant as notify party and marked : Freight payable at destination.
 + Packing list in six copies.
 + Certificate of origin issued by a chamber of commerce.
 + Lot acceptance certificate signed by the seller's and the Buyer's quality assurance
 representatives or alternatively the seller's quality assurance representative and armscor or
 the directorate product system support of the south African national defence force.

Additional Cond (4GA) : + Telegraphic reimbursement is allowed. + This
 credit will automatically revolve cumulatively on an annual basis as indicated below, and will
 accordingly be automatically extended upon transmission of a notice to this effect by means
 of an authenticated telex/swift message from the beneficiary's bank to the issuing bank not
 later than 15 days prior to the expiry of the relevant validity period.

| Stage | Amount | Validity Period |
|-------|--------|-----------------|
| | | |

+ Maximum utilization under the credit will be
 + Confirmation charges for the letter of credit are for the beneficiaries account.
 +Late Shipment is acceptable.
 Details of Charges (71B) : All charges outside India are for beneficiary
 account.
 Presentation Period (48) : Within 21 days after shipment date.
 Confirmation (49) : Confirm.
 Reimbursing Bank (53) :
 + Documents must be forwarded to us by courier in one lot.
 + We hereby engage that payments made under and in compliance with all the terms and
 conditions of this credit will be duly honoured by us upon presentation of the stipulated
 documents.
 + Paying bank may claim reimbursement telegraphically from the reimbursing bank for value
 3 days after their authenticated telex/swift advice to the issuing bank of any conform drawing
 presented under this credit.
 (57) :
 (72) :

No.2(5)/2000/D(Supply-II)
GOI, MOD, Deptt. Of Defence Prod. & Supplies
New Delhi, the 05th Nov 2004

OFFICE MEMORANDUM

Subject : Guidelines for levying liquidated Damages for delayed supplies against contracts placed by Supplies Division of the Department of Defence Production..

Consequent upon issue of OM No. 3(4)/2000/D(S-II) dated 07 Jun 2004 which inter-alia provides that the deduction on account of LD may be made which should not exceed 5% of the value of the supply order, it has been decided with the approval of RM that the following guidelines will be adopted in future for levy of LD/token LD.

| CONDITION | RULE POSITION |
|--|--|
| (i) Delay in supplies resulted in monetary loss actual/demonstrable and firms were fully responsible for the delay. | Full LD leviable as calculated in terms of the stipulations of para 12(8) (a) of the general conditions included in schedule 'B' to the supply order which should not exceed 5% of the value of the Supply order, in terms of departmental instructions contained in order No. 3 (4)/2000/D(S-II) dated 03 Jan 2003. |
| (ii) Delay in supplies resulted in monetary loss actual/demonstrable but the firm was responsible only for part of the delay and remaining part of the delay was beyond its control. | Full LD, for the period for which contractor is responsible for the delay subject to LD not exceeding 5% of the value of the Supply order. In terms of departmental instructions contained in order No. 3(4)/2000/D(S-II) dated 03 Jan 2003. |
| (iii) Delay in supplies resulted in monetary loss actual/demonstrable and entire delay was due to circumstance <u>beyond the control of the supplier(s)</u> _____ | LD may be waived full. |
| (iv) Monetary loss actual/demonstrable cannot be certified but inconvenience has been caused. | Token LD equal to 10% of full LD calculated in terms of (i) above. |
| (v) Monetary Loss actual/demonstrable cannot be certified and no inconvenience has been caused. | LD may be waived fully. |

2. LD will be calculated on the basis of total value of the stores including elements of statutory duties and taxes viz., sales tax, customs duty, excise duty etc as indicated in the Supply Order.

3. This OM supercedes the existing orders bearing No. 4(1 1)/85/D(Supply-II) dated 20.09.85 and 23.11.87 on the subject.

4. This issue with the concurrence of IF (DS) vide their Dy No. 1028/IF/DS/04 dated 12 Oct 2004.

Sd/-
(RK Jain)
Director (Supply-11)

Force Majeure

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

2 In such circumstances the time stipulated for the performance of an obligation under the present contract is extended correspondingly for the period of time of action of these circumstances and their consequences.

3. The party for which it becomes impossible to meet obligations under this contract due to Force Majeure conditions, is to notify in written form the other party of the beginning and cessation of the above circumstances immediately, but in any case not later than 10 (Ten) days from the moment of their beginning.

4. 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.

5. 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.

ARBITRATION

1. All disputes or difference arising out of or in connection with the present contract, including the ones connected with the validity if the present Contract or any part there of shall be settled by bilateral discussions.
2. Any dispute, disagreement of question arising out of or relating to this Contract or relating to construction or performance (except as to any matter the decision or determination whereof is provided for by these conditions), which cannot be settled amicable, shall within sixty (60) days or such longer period as may be mutually agreed upon, from the date on which either party informs the other in writing by a notice that such dispute, disagreement or question exists, will be referred to the Arbitration Tribunal consisting of three arbitrators.
3. Within sixty (60) days of the receipt of the said Notice, CONTRACTOR shall nominate one arbitrator in writing and CUSTOMER shall nominate one arbitrator.
4. The third arbitrator, who shall not be a citizen or domicile or of the country either of the parties or of any other country unacceptable to any of the parties shall be nominated of the parties within (90) days of the receipt of the notice mentioned above. Failing which the third arbitrator may be nominated by the President of International Chamber of Commerce, Paris, at request of either party but the said nomination would after consultation with both the parties and shall preclude any clause shall not act as an umpire.
5. The ARBITRATOR Tribunal shall have its seat in New Delhi or such other place in India as may be mutually agreed to between the parties.
6. The Arbitrator proceeding shall be conducted in India under the Indian Arbitration and Conciliation Act. 1996 and the award of such Arbitration Tribunal Shall be enforceable in Indian Courts only.
7. The decision of the majority of the arbitrator shall be final and binding on the parties to this contract.
8. Each party shall bear its own cost of preparing and presenting its case. The cost of arbitration including the fees and expenses of the third arbitrator shall be equally by the Seller and Buyer.
9. In the event of vacancy caused in the office of the arbitrators, the party, which nominated such arbitrators, shall be entitled to nominate another in his place and the arbitration proceedings shall continue from the stage they were left by the retiring arbitrator.
10. In the event of one of the parties failing to nominate its arbitrator with in 60 days as above if any of the parties does not nominate another arbitrator with in 60 days in the place of the arbitrator falling vacant, then the other party shall be entitled after due notice of a t least 30 days to request the resident of the international chamber of commerce to nominate another arbitrator as above.
11. If the place of the third arbitrator falls vacant his substitute shall be nominated according to the provisions herein above stipulated.
12. The parties shall continue to perform their respective obligations under this contract during the pendency of the arbitration proceedings except in so far as such obligations are the subject matter of the said arbitration proceedings.

Appx II- Part I

Army Schedule I (Referred to in Rule 59 F.R Part I)

Powers to sanction expenditure on any of the objects enumerated in in Rule 58(A)

**Authority: G.O.I, MoD letter No. A/89591/FP-1/693/2002/D(GS-I)
dated 22.4.2002**

(The grants covered under this schedule are: **I & M Grant, Annual Contingent Grant**)

| Sl No | Competent Financial Authority (C.F.A) | Financial Limit (In Rupees) | | Remarks |
|-------|---|----------------------------------|------------------------------------|---------|
| | | Without consultation | With consultation of IFA/CDA | |
| 1 | GOC Area | 40,000/- | 2,00,000/- | |
| 2 | Commandant DSSC | 50,000/- | 2,50,000/- | |
| 3 | Commandant Cat 'A' Estt commanded by (For e.g O.T.A Chennai) Lt Genl Maj Genl | 40,000/- 30,000/- | 2,00,000/- 1,00,000/- | |
| 4 | Trg Centres/Records commanded by (For e.g MRC Wellington DSC Kannur) Brig Col | 25,000/- 20,000/- | 75,000/- 60,000/- | |
| 5 | Commandants Mily Hospitals. commanded by (For e.g M.H Chennai, M.H Trivandrum etc.) Maj Genl Brig Col/Lt Col | 30,000/- 25,000/- 10,000/- | 1,00,000/- 75,000/- 30,000/- | |
| 6 | Commandant Embarkation HQrs | 15,000/- | --- | |
| 7 | Recruiting Offices commanded by Col Lt Col | 10,000/- 5,000/- | --- --- | |

Rule 59 F.R Part I : Financial powers of different authorities subordinate to the Govt of India in respect of the objects of expenditure enumerated in Rule 58 and other matters are laid down in Appendix II to Vol II of these Regulations.

The financial powers in respect of MES expenditure and grant of pensions are laid down in MES Regulations and Pension Regulations respectively.

Appx II- Part I

Army Schedule XII (A)

Powers for purchase of stores (Referred in Rule 147 of F.R Part I)

**Authority: G.O.I, MoD letter No. A/89591/FP-1/693/2002/D(GS-I)
dated 22.4.2002**

(All Local purchase of Central Purchase items are covered under this schedule)

| Sl No | Competent Financial Authority (C.F.A) | Financial Limit (In Rupees) | | Remarks |
|-------|---|-----------------------------|------------------------------|---------|
| | | Without consultation | With consultation of IFA/CDA | |
| 1 | MG ASC Pune | - | 5,00,000/- | |
| 2 | DDST Area Chennai | - | 2,00,000/- | |
| 3 | Commandant Supply Depot ASC Chennai (Col) | - | 1,00,000/- | |
| 4 | Other Sup Depots (Trivandrum, Wellington etc) (Lt Col) | - | 25,000/- | |

Rule 147 F.R Part I: An officer's financial powers in the matter of the purchase of stores ordinarily extend to the limit to which he is empowered to enter into contracts, but in the case of (i) special purchases made from abroad under clause VII of the rules contained in Rule 130 and (ii) local purchase of stores, the limits upto which power to purchase any one article or any number of similar articles purchased at one time, extends, are laid down in Schedule XII of Appendix II-Part I-Army of these regulations.

The financial powers of MES officers in respect of local purchase of stores are laid down in the Regulations for the MES.

Notes:- (i) Articles of different sizes or specifications will be treated as different articles provided they do not serve the same purpose, and

(ii) Articles of different makes and pattern serving the same purpose should be treated as similar articles.

Appx II- Part I

Army Schedule XII (C)

Powers for purchase of stores (Referred in Rule 147 of F.R Part I)

**Authority: G.O.I, MoD letter No. A/89591/FP-1/693/2002/D(GS-I)
dated 22.4.2002**

(All Local purchase of Misc items and equipments required by lower formations which are not within the purview of Central Purchase Organisation)

| Sl No | Competent Financial Authority (C.F.A) | Financial Limit (In Rupees) | | Remarks |
|-------|---------------------------------------|-----------------------------|------------------------------|---------|
| | | Without consultation | With consultation of IFA/CDA | |
| 1 | Commandant Ordnance Depot Avadi | 50,000/- | 1,00,000/- | |

Rule 147 F.R Part I: An officer's financial powers in the matter of the purchase of stores ordinarily extend to the limit to which he is empowered to enter into contracts, but in the case of (i) special purchases made from abroad under clause VII of the rules contained in Rule 130 and (ii) local purchase of stores, the limits upto which power to purchase any one article or any number of similar articles purchased at one time, extends, are extends, are laid down in Schedule XII of Appendix II-Part I-Army of these regulations.

The financial powers of MES officers in respect of local purchase of stores are laid down in the Regulations for the MES.

Notes:- (i) Articles of different sizes or specifications will be treated as different articles provided they do not serve the same purpose, and

(ii) Articles of different makes and pattern serving the same purpose should be treated as similar articles.

Appx II- Part I

Army Schedule XIII (B) Civil Hired Transport.

Powers to sanction contracts and/or to execute contracts, deeds etc on behalf of President.

**Authority: G.O.I, MoD letter No. A/89591/FP-1/693/2002/D(GS-I)
dated 22.4.2002**

| Nature of contract/instrument | Competent Authority. | Period | Value of the contract (Rs. In lakhs) |
|--|---|---------|---------------------------------------|
| Transport Services: Conclusion of Civil Hired Transport | Station Commander (Say Trichy, Coimbatore) | 1 year | 10/- |
| -do- | GOC ATNK & K Area, Chennai | 1 year | 25/- |
| -do- | GOC-in-C SC Pune | 3 years | 50/- |

Note: The M.E.S authorities may in consultation with the DDST/DADST of Area/Independent Sub Area also make their own arrangements for the transportation of machinery and articles which requires special stacking.

Schedule XXII
Other Miscellaneous Financial Powers.
(Civil Hired Transport)

| Object on which expenditure can be sanctioned | C.F.A | Financial Limits (In Rupees) | |
|---|-------------------------------------|-------------------------------------|----------------------------------|
| | | Without consultation of I.F.A/C.D.A | In consultation with I.F.A/C.D.A |
| Hiring of Civil Transport | GOC-in-C SC Pune | 5 Lakhs | 50 Lakhs |
| | GOC ATNK & K Area Chennai | 3 Lakhs | 10 Lakhs |
| | Commandant Embarkation HQrs Chennai | 50,000/- | 1 Lakh |

Notes:

- (i) CHT should be taken only as one of the more expeditious methods of transport other than cheapest mode.
- (ii) These powers are to be exercised once periodic contract on six monthly/yearly basis has been concluded in consultation with respective I.F.A.
- (iii) For stations not included in the periodic contract, C.F.A to exercise powers in consultation with respective I.F.A.

Appx II- Part I

Army Schedule XIV (C) (others) (Tailoring Contract)

Powers in regard to any negotiated or Single Tender Contract

**Authority: G.O.I, MoD letter No. A/89591/FP-1/693/2002/D(GS-I)
dated 22.4.2002**

| Sl No | Competent Financial Authority (C.F.A) | Financial Limit (In Rupees) | | Remarks |
|-------|---------------------------------------|-----------------------------|------------------------------|---|
| | | Without consultation | With consultation of IFA/CDA | |
| 1 | Commandant O.T.A Chennai | - | 10 lakhs | Contract for period not exceeding three years for tailoring, washing cadets mess linen etc. |

Appx II- Part I

Army Schedule XVIII

Powers of acceptance of necessity, administrative approval and demolition of buildings under paras 15,15-A of Defence Works Procedure 1986

Authority: G.O.I, MoD letter No. A/89591/FP-1/693/2002/D(GS-I) dated 22.4.2002

| Sl No | Competent Financial Authority (C.F.A) | Rs in lakhs | | | |
|-------|---------------------------------------|---|---------------|--|---------------|
| | | To be exercised without I.F.A's concurrence | | To be exercised with I.F.A's concurrence | |
| | | Authorised Works | Special Works | Authorised Works | Special Works |
| 1 | GOC-in-C SC Pune | 75 | 7 | 300 | 20 |
| 2 | GOC ATNK & K Area Chennai | 22 | 0.75 | 100 | 5 |

Notes:

1. The financial powers vested in officers can also be exercised by their locum tenens when the incumbents are on leave.
2. In determining the C.F.A in a case where the project includes both authorised and special items of work, the criterion shall **not** be the financial powers for the authorised items of work alone. In such case, therefore if the estimated cost of the total of the special items of work exceeds the financial powers of the C.F.A for those items the Administrative Approval shall be issued by the C.F.A under whose powers the special items of work fall
3. The financial powers delegated to Station Commanders will be exercised by all Station Commanders irrespective of whether they are appointed under Rule 20(a) or Rule 20(b) of the Regulations for the Army.
4. There will be no separate stage of release after the issue of Administrative Approval. C.F.A will make initial allotment of funds to enable M.E.S to commence planning/execution of works.

GUARANTEES & CO-ACCEPTANCES

Revised Model Form of Bank Guarantee Bond
(Vide paragraph 2.8)

GUARANTEE BOND

1. In consideration of the President of India (hereinafter called "the Government") having agreed to exempt _____ (hereinafter called 'the said Contractor(s)') from the demand, under the terms and conditions of an Agreement dated _____ made between _____ and _____ for _____ (hereinafter called "the said Agreement"), of security deposit for the due fulfilment by the said Contractor(s) of the terms and conditions contained in the said Agreement, on production of a bank Guarantee for Rs. _____ (Rupees _____ Only) We, _____ (hereinafter referred (indicate the name of the bank) to as the "Bank") at the request of _____ [Contractor(s)] do hereby undertake to pay to the Government an amount not exceeding Rs. _____ against any loss or damage caused to or suffered or would be caused to or suffered by the Government by reason of any breach by the said Contractor(s) of any of the terms or conditions contained In the said Agreement.

2. We _____ (Indicate the name of the bank) do hereby undertake to pay the amounts due and payable under this guarantee without any demur, merely on a demand from the Government stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the Government by reason of breach by the said contractor(s) of any of the terms or conditions contained in the said Agreement or by reason of the contractor(s)' failure to perform the said Agreement. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs. _____.

3. We undertake to pay to the Government any money so demanded notwithstanding any dispute or disputes raised by the contractor(s)/supplier(s) in any suit or proceeding pending before any Court or Tribunal relating thereto our liability under this present being absolute and unequivocal.

The payment so made by us under this bond shall be a valid discharge of our liability for payment thereunder and the contractor(s)/supplier(s) shall have no claim against us for making such payment.

4. We, _____ (indicate the name of bank) further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Agreement and that it shall continue to be enforceable till all the dues of the Government under or by virtue of the said Agreement have been fully paid and its claims satisfied or discharged or till _____ Office/ _____ Department/Ministry of _____ certifies that the terms and conditions of the said Agreement have been fully and properly carried out by the said contractor(s) and accordingly discharges this guarantee. Unless a demand or claim under (his guarantee Is made on us In writiny on or before the ____ l ____ f _____ we shall be discharged from all liability under this guarantee thereafter

5. We, _____ (indicate the name of the Bank) further agree with the Government that the Government shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extend time of performance by the said contractor(s) from time to time or to postpone for any time or from time to time any of the powers exercisable by the Government against the said contractor(s) and to forbear or enforce any of the terms and conditions relating to the said agreement and we shall not be relieved from our liability by reasons or any such variation, or extension being granted to the said contractor(s) or for any forbearance, act or omission on the part of the Government or any indulgence by the Government to the said contractor(s) or by any such matter or thing whatsoever which under the law relating to sureties would but for this provision, have effect of so relieving us.

6. This guarantee will not be discharged due to the change in the constitution of the Bank or the contractors(s)/supplier(s).

7. We, _____ (indicate the name of the Bank) lastly undertake to revoke this guarantee during its currency except with the previous consent of the Government in writing.

8. _____ Dated, the _____ day of _____ for _____ (indicate the name of the Bank)

To Contract No.

Dated

**ADVANCE GUARANTEE/PERFORMANCE
WARRANTY BOND**

Ministry of Defence,
Government of India
NEW DELHI

Dear Sir,

Whereas you have entered into a contract No.____ dated____ (hereinafter referred to as the said Contract) with M/s_____, for supply of goods as per Annexure 1 of the said contract and whereas the Seller has undertaken to produce a bank guarantee for(%) of total Contract value amounting to _____ to secure its obligations to the President of India. We, hereby expressly, irrevocably and unreservedly undertake and guarantee as principal obligors on behalf of the Seller that, in the event that the President of India declares to us that the goods have not been supplied according to the Contractual obligations under the aforementioned contract, we will pay you, on demand and without demur, any sum up to a maximum of _____. Your written demand shall be conclusive evidence to us that such repayment is due under the terms of the said contract. We undertake to effect payment upon receipt of such written demand.

2. We shall not be discharged or released from this undertaking and guarantee by any arrangements, variations made between you and the Seller, indulgence to the Seller by you, or by any alterations in the obligations of the Seller or by any forbearance whether as to payment, time performance or otherwise.

3. In no case shall the amount of this guarantee be increased.

4. This guarantee shall remain valid for months from the date of JRI acceptance of test consignment in India or until all the store, spares and documentation have been supplied according to the contractual obligations under the said contract.

5. Unless a demand or claim under this guarantee is made on us in writing on or before the aforesaid expiry date as provided in the above referred contract or unless this guarantee is extended by us, all your rights under this guarantee shall be forfeited and we shall be discharged from the liabilities hereunder.

6. This guarantee shall be a continuing guarantee and shall not be discharged by change in the constitution of the Bank or In the constitution of M/s_____