

*MANUAL FOR PROCUREMENT OF
PLANT & MACHINERY IN
ORDNANCE FACTORIES*

OFBPM-P&M 2013

Revised and Updated up to July, 2013

ORDNANCE FACTORY BOARD

AUG 2013



ORDNANCE FACTORY BOARD

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KOLKATA 700 001

(ENGG DIVISION)



भारतीय आयुध निर्माणियां, रक्षा मंत्रालय

Indian Ordnance Factories, Ministry of Defence

No: 350/Policy(P&M Manual)/E/M

Date: 28.08.2013

The Sr. General Manager/General Manager

All Ordnance & Ordnance Equipment Factories

The Principal Director/NADP , OFIOLs

Sub: OFBPM 2013 for procurement of P&M in Ordnance Factory Organisation

Board in its 6th Board Meeting held on 31.07.2013 has resolved to approve and implement the revised Manual for procurement of Plant & Machinery in Ordnance Factories.

The subject manual is enclosed herewith. This manual supersedes the version uploaded on Comnet on 05-08-2013.

The subject manual will be effective from **1st Oct, 2013**. Hence, reference of various terms & conditions may be drawn from the updated manual 2013 from the said effective date. Illustration/Explanation/Applicability of this manual should not be made to past cases. In true sense, the terms & conditions of the updated manual 2013 can only be applicable for the tenders issued on or after 1st Oct, 2013.

Encl: As above

(L Mohanty)

Dy. Director General/Engg

For Director General, Ordnance Factories

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Copy to:

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6. DDG/OFB New Delhi office
7. DDG/OFB Mumbai Office
8. All Regional Controller of Safety/RCSs
9. All Regional Director/RMCs & ODCs
10. Secretary/OFB
11. All CMO/PMO I/C, Ordnance Factory Hospitals
12. Controller of Finance & Accounts (Fys), 10A S.K. Bose Road Kolkata 700001
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20. Controller of Finance & Accounts (Fys) Ordnance Factory Medak
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FOREWORD

“Modernization of infrastructure of Ordnance factories” is key to improving the customers’ perception of our product quality, cost effectiveness & our capacity to deliver in time. Besides to maintain an edge as market leader in our field of activities, it is essential that plant & machinery purchase process is timely and adequate. This in turn requires unambiguous & transparent documented guidelines.

2. With the passage of time, changes in Policy & Procedures have taken place, rendering the manual of 2001 outdated. In order to make OFB P&M Manual contemporary, the necessity of review & up-dation of the existing manual was felt. A committee constituted under the Chairmanship of Shri D V Sonpipare, GM/OFNP has prepared a self contained manual of procedures intended for procurement of P&M in Ordnance Factories, in conformity to DPM-2009, DPP-2011 & GFR-2005 and relevant instructions issued by MoD, MoF, CVC & Min. of Shipping, etc time to time.

3. Though utmost care has been taken while updating the outdated manual of 2001, discrepancies noticed if any and suggestion for improvement can be brought to the notice of the E/M section for suitable incorporation.

4. I am sure that this manual will provide guidelines to deal with the subject in adequate manner ensuring accountability commensurate with responsibility at different decision making levels.

5. The subject manual will be effective from 1st Oct, 2013. Hence, reference of various terms & conditions may be drawn from the updated manual 2013 from the said effective date. Illustration/Explanation/Applicability of this manual should not be made to past cases. In true sense, the terms & conditions of the updated manual 2013 can only be applicable for the tenders issued on or after 1st Oct, 2013.

6. It is placed on record that commendable work has been done by the committee constituted for review and up-dation of P&M Manual 2001 in bringing out the “OFB Plant & Machinery Procurement Manual-2013”.

August 2013

Sd/-
(H S CHAUDHURY)
DGOF & CHAIRMAN

TABLE OF CONTENTS

Chapter	Subject	Page
1	Introduction	7
2	Basic Guidelines & Laws on Purchase	14
3	Formulation & Approval of Demands	22
4	Framing of Specification	30
5	Dealing with Suppliers	44
6	Tendering Procedures & e-Procurement	54
7	Earnest Money & Performance Security	70
8	Evaluation of Tender	74
9	Contract Management	86
10	Delivery, Transportation & Related Terms	91
11	Elements of Price & Terms of Payment	116
12	Inspection of Plant & Machinery	133
13	Receipt, Erection & Commissioning	146
14	Settlement of Dispute	157
15	Disposal of Plant & Machinery	164
16	Project Planning, Monitoring & Closure	169
17	DGS&D Rate Contract	183
18	Financial Appraisal of Investment	186
19	Guidelines for Training	192
20	CVC Guidelines	196

LIST OF APPENDICES

Appendix	Subject	Page
A	Steps in Procurement of P&M	200
B	Format for RR/NC Demand	201
C	Proformas for sending RR Proposals to OFB	209
D	Format for DPR	211
E	Instructions for Framing TE	213
F	TE Format	215
G	Specimen for Notice inviting EOI	253
H	Format for EMD Bank Guarantee	257
I	Formant for Performance Bank Guarantee	258
J	Format for Advance Bank Guarantee	260
K	Format for Warranty Bond	262
L	Format for Letter of Credit (Foreign Supplier)	264
M	Format for Letter of Credit (Indian Supplier)	266
N	Model Tender Terms for Payment (for Explosive Plant Projects through GTE)	268
O	Format for Pre Contract Integrity Pact	272
P	Format for Integrity Pact Bank Guarantee (IPBG)	279
Q	Format for Fy TEC / TPC Minutes	281
R	Model Amendment Letter for Extension of Delivery Period	283
S	Format for PAC/SKS Certificate	286
T	Cargo Particulars Intimation Form	287
U	Circulars of Ministry of Shipping	288
V	Format for Taking Over Certificate (TOC)	293
W	Format for Final Acceptance Certificate (FAC)	294
X	Format for Obtaining Permission for Foreign Nationals	295
Y	Formats for IRR calculation	296
Z	Format for Financial Closure of Project	304
AA	Format for ECS Mandate	306
AB	Format for Indemnity Bond	307

CHAPTER-1

INTRODUCTION

1.1 Preamble

- a. Investment in Plant & Machinery is a vital decision in any manufacturing organization. The same is equally applicable to the Indian Ordnance Factories. Indian Ordnance Factories, being the Nation's Fourth arm of Defence, has the primary objective of manufacturing and issuing the Indian Armed Forces with modern and sophisticated weapons, ammunitions, armoured vehicles, transport vehicles and equipment. Manufacture of Defence stores in Indian Ordnance Factories utilises a large number of P&M. Accordingly, these factories need Plant & Machineries in replacement of outlived ones as well as for capacity augmentation and modernisation.
- b. One pertinent challenge before the Organisation is to meet the changing requirement of the users, which necessarily entails induction of machines with State of the Art Technology for flexibility, higher productivity and enhanced quality. In the meantime, the industrial scenario in the country has undergone rapid changes with economic reforms and policy liberalisation. Import restrictions have also been removed to a large extent. Customs regulations have been modified. After the decentralization, Ordnance Factories are procuring the P&M, which were earlier made through DGS&D, except for common user items, which are continued to be procured through DGS&D Rate Contract.

1.2 The Present Manual:

- a. Keeping in view the foregoing and in order to ensure greater transparency in the procurement process, timely acquisition of P&M conforming to prescribed quality, broad-based competition and optimal utilization of funds allocated, it is essential to have a well defined procurement policy and guidelines in OFB. Accordingly, OFB published the guidelines in 2001 taking into account various policy decisions of the Government and instructions issued by the MoD from time to time. The Defence Procurement Procedure (DPP) 2006 and DPP 2011 permitted that Ordnance Factory Board (OFB) may continue to follow its own procedures for procurement. OFB has not brought out an updated manual since May 2001, as has been done by MoD in respect of the three Services for Capital acquisition. Therefore, as part of the review exercise and on the basis of experience gained in the procurement process, the existing procurement policy and guidelines are now being revised and updated to this 'Manual for Procurement of Plant & Machinery in Ordnance Factories – 2013'(OFBPM-P&M-2013).
- b. This Manual has been prepared in conformity with the General Financial Rules, 2005. The procedures in the manual of 2001 have been rewritten, keeping in view other Government manuals like the 'Manual on Policies and Procedures for Purchase of Goods' published by Ministry of Finance in 2006, DPM-2009, DPP-2011, instructions issued by the Government of

India and the Central Vigilance Commission from time to time. Concepts have been taken from the ICC publication “The ICC Model Contract for the Turnkey Supply of an Industrial Plant” and information available in internet on international competitive bidding.

1.3 Scope:

This Manual covers the procurement of ‘Plant and Machinery’ in Ordnance Factories. The term ‘Plant and Machinery’ (P&M) generally means the various capital goods i.e. machineries, equipments, furnaces, vehicles, chemical plants, metallurgical plants, air conditioners, air conditioning plants, cranes, electrical equipments, related services etc., acquired by Ordnance Factories or any unit of OFB for their use.

1.4 Terms and Definitions:

Standard terminologies relating to procurement and their meanings have been adopted in this Manual as under. In some cases, two or more widely used terminologies may bear the same meaning.

- (i) **Procurement:** Procurement refers to the entire gamut of activities involved in and the procedures to be adopted for acquiring goods and services.
- (ii) **Contract, Supply Order (SO):** An official document containing the acceptance of an offer and the details of consideration for the procurement of Goods and the various terms and conditions agreed to by the parties.
- (iii) **Goods:** As per the GFR, the term ‘goods’ generally means material, furniture, instrument, machine, equipment, industrial plant, etc purchased or otherwise acquired for use of Government, but excluding book and publication for a library. In this manual, its meaning is limited to plant and machinery as mentioned at section 1.3 above. The scope of supply in a contract may include other associated items/services/works like design, civil works, technical documents/manuals, training, erection and commissioning. The scope of supply may also be for repair/reconditioning of a plant or machinery.
- (iv) **Supplier, Seller, Vendor, Contractor:** An entity (including a consortium) which provides goods as per the contract or supply order.
- (v) **Purchaser, Buyer:** The Purchaser in the case of ordnance factories is the President of India acting through the authority, issuing the supply order or signing the contract.
- (vi) **Specification:** A statement which unambiguously describes the requirements for the goods to be procured, including the Acceptance Criteria and procedures to determine that the requirements have been met.
- (vii) **Original Equipment Manufacturer (OEM):** The firm manufacturing the specified goods, as distinguished from the stockists/distributors.
- (viii) **Bid, Offer, Quotation, Tender:** A document in the form of an offer to supply goods.

- (ix) **Bidder, Tenderer:** An entity who intends to supply goods/services/works by submitting bid.
- (x) **Tender Enquiry (TE), Request for Tender (RFT), Invitation for Bids (IFB):** Initial step of contracting process in which suppliers are invited to submit offers for supply of specified goods.
- (xi) **Notice Inviting Bids, Notice Inviting Tenders (NIT), Tender Notice:** Advertisement containing brief information about the Tender Enquiry.
- (xii) **Bid Document, Tender Document, TE Document:** A detailed document issued by the purchaser containing technical specification, commercial terms & conditions and other requirements for potential Bidders to submit offers.
- (xiii) **Request For Proposal (RFP):** RFP is a solicitation for bids from potential suppliers with whom a creative relationship or partnership is being considered. RFP and TE are generally used synonymously, but typically TE looks for the best price and RFP looks for the best solution. RFP is used when the purchaser is looking for the best value solution to resolve a problem or to deliver a good or service, but is not exactly sure how to achieve it. TE is used when the purchaser knows exactly what goods or service he wants and is looking for the best price to deliver it. As per GFR, RFP is to be used for procurement of consultancy service and TE for other procurement.
- (xiv) **Limited Tender Enquiry (LTE):** Inviting bids from limited number of potential suppliers.
- (xv) **Open Tender Enquiry (OTE), National Competitive Bidding (NCB):** Inviting bids through open advertisement from potential Indian suppliers. In OTE, payment is made only in Indian Rupees.
- (xvi) **Global Tender Enquiry (GTE), International Competitive Bidding (ICB):** Inviting bids through open advertisement from potential global suppliers including Indian suppliers. In GTE, the supplies may be paid in Foreign Exchange (only for foreign firm) and/or Indian Rupees.
- (xvii) **Expression of Interest (EOI):** Where technical specification needs to be iterated more than once i.e. the specification of the desired plant or machinery is not clear, multi-stage tendering process is resorted to. EOI is the first stage of a multi-stage tender process, when potential suppliers are asked to register their interest for submitting tenders and provide information on their capability to do the work. This helps in identifying & short-listing the potential suppliers, capable of delivering the required goods. EOI may be done with or without a pre-qualification process. During EOI, suppliers can also be asked to give technical details of their machines/plants as well as budgetary price for the purpose of firming up tender specification.

- (xviii) **Request for Information (RFI):** Solicitation of information either through advertisement or through direct approach to potential suppliers to gain detailed understanding of supplier market i.e. the availability of potential suppliers, the level of interest from amongst suppliers and the range of solutions and technologies available. It is used to develop documentation for a future RFP or TE. RFI is same as EOI without pre-qualification. Through analysis of RFI responses, strategic options, lower cost alternatives and cost reduction opportunities may be identified.
- (xix) **Pre Bid Conference, Tender Briefing:** A forum or meeting held by the purchaser after issue of TE but sufficiently before the opening date of tenders, where purchaser briefs prospective bidders regarding the tender requirements and also provides clarification to their queries, if any. All clarifications to queries raised in this meeting are compiled and issued along with necessary amendment, if any, to tender clauses, as a corrigendum to TE, sufficiently in advance of tender opening date.
- (xx) **e-Tendering:** A secured internet based tendering system that provides the facility to electronically advertise EOI and TE, provides various notices, distributes EOI or TE documents, receives bids, opens bids, generates CST etc.
- (xxi) **Late Tender:** Tender received after the closing date and time specified for receipt of tender.
- (xxii) **Earnest Money Deposit, Bid Security:** Monetary guarantee furnished by a Bidder along with the bid as an expression of earnestness of participation and as safeguard against a bidder's withdrawing or altering his bid during the bid validity period.
 - (i) **Performance Security Deposit (PSD), Security Deposit (SD):** Monetary guarantee furnished by the successful bidder to the purchaser after award of contract for due performance of the contract including warranty obligations.
 - (ii) **Performance Bond, Performance Bank Guarantee:** Bank guarantee furnished by the supplier to the purchaser after award of contract as security for performance of contract including warranty obligations.
 - (iii) **Warranty Bond:** Bank guarantee furnished by the supplier to the purchaser after delivery of the goods as security for performance of warranty obligations as per the contract.

1.5 Abbreviations

The abbreviations used in the manual are as given below.

ABG	Advance Bank Guarantee	KVIC	Khadi & Village Industries Commission
AFF	M/s A F Ferguson & Co	LAO	Local Accounts Office
AOTR	Anticipated Out Turn Report	LC	Letter of Credit
ATE	Advertised Tender Enquiry	LD	Liquidated Damage
B/E	Bill of Entry	LFD	Last Free Date
BER	Beyond Economic Repair	LIBOR	London Inter Bank Offered Rate
BG	Bank Guarantee	LPR	Last Purchase Rate
BQ	Budgetary Quotation	LTE	Limited Tender Enquiry
B/L	Bill of Lading	MoD	Ministry of Defence
CBEC	Central Board of Excise & Customs	MOU	Memorandum of Understanding
CDE	Customs Duty Exemption	MRO	Military Receivable Order
CFA	Competent Financial Authority	MT	Motor Transport
CIF	Cost, Insurance and Freight	NC	New Capital
CIP	Carriage and Insurance Paid	NIT	Notice Inviting Tenders
CPSU	Central Public Sector Undertaking	NIET	Notice Inviting E-Tenders
CNC	Computerised Numeric Control	NIEOI	Notice Inviting Expression of Interest
CPM	Critical Path Method	NSIC	National Small Industries Corporation
CR	Condemnation Report	OEM	Original Equipment Manufacturer
CST	Comparative Statement of Tender	OTE	Open Tender Enquiry
CVC	Chief Vigilance Commission	P&M	Plant and Machinery
CW	Civil Works	PAC	Proprietary Article Certificate
DAP	Delivered At Place	PBG	Performance Bank Guarantee
DAVP	Directorate of Advertising & Visual Publicity	PDC	Probable Date of Completion
DD	Demand Draft	PDI	Pre Despatch Inspection
DEC	Duty Exemption Certificate	PEDB	Project Engineering Design Bureau
DGOF	Director General Ordnance Factories	PFC	Plan Finalization Committee
DGS&D	Directorate General of Supply & Disposal	PMB	Project Monitoring Board

DP	Delivery Period	POL	Petroleum, Oil and Lubricant
DPM	Defence Procurement Manual	PQ	Pre Qualification
DPP	Defence Procurement Procedure	PSD	Performance Security Deposit
DPR	Detailed Project Report	PSU	Public Sector Undertaking
DSC	Digital Signature Certificate	RC	Rate Contract
E/M	Engineering / Maintenance	RE	Rupee Exchange
ED	Excise Duty	RFI	Request for Information
EHQ	Embarkation Head Quarters	RFP	Request For Proposal
EMD	Earnest Money Deposit	RR	Renewal and Replacement
EOI	Expression of Interest	RST	Resultant Single Tender
FAC	Final Acceptance Certificate	SD	Security Deposit
FAS	Free Alongside Ship	SKS	Single Known Source
FE	Foreign Exchange	SMH	Standard Man-Hour
FOB	Free on Board	SO	Supply Order
FOH	Fixed Over-Head	SOC	Statement of Case
FOR	Free on Rail	SRO	Sale Release Order
FOTR	Final Out Turn Report	SSI	Small Scale Industry
GM	General Manager	STE	Single Tender Enquiry
GTE	Global Tender Enquiry	TE	Tender Enquiry
ICC	International Chamber of Commerce	TEC	Technical Evaluation committee
IEC	Importer Exporter Code	TIR	Technical Inspection Report
IMTMA	Indian Machine Tool Manufacturers' Association	TOC	Taking Over Certificate
INCO-TERMS	International Commercial Terms	TOD	Tender Opening Date
IP	Integrity Pact	TOT	Transfer of Technology
IPBG	Integrity Pact Bank Guarantee	TPC	Tender Purchase Committee
IRR	Internal Rate of Return	TSC	Technical Scrutiny Committee
ISO	International Standards Organization	VAT	Value Added Tax
ITJ	Indian Trade Journal	VOH	Variable Over-Head

1.6 Interpretation:

1.6.1 In the event of a doubt/dispute on interpretation of provisions of this Manual, the matter will be referred to OFB for decision. At OFB, the PEDB Division (E/M Section) shall issue all clarifications in consultation with the Finance Division. The concerned project handling sections shall also be consulted for matters pertaining to the projects. Branch Secretariat of Ministry of Law may also be consulted in matters involving legal implication.

1.6.2 In this Manual, the words 'shall', 'should', 'may' and 'can' are used to express provisions in accordance with their usage in ISO standards.

a) **'shall' indicates a requirement:** It is used to indicate requirements strictly to be followed in order to conform to the document and from which no deviation is permitted.

b) **'should' indicates a recommendation:** It is used to indicate that among several possibilities, one is recommended as particularly suitable, without mentioning or excluding others, or that a certain course of action is preferred but not necessarily required, or that in the negative form ('should not'), a certain possibility or course of action is deprecated but not prohibited.

c) **'may' indicates permission:** It is used to indicate a suggestion or a course of action permissible within the limits of the document.

d) **'can' indicates possibility and capability:** It is used for statements of possibility and capability, whether material, physical or casual.

1.7 Amendments:

Amendments to this Manual can be made with the approval of the O.F. Board in a Board meeting. At least once every year, Engineering Division(E/M section) of OFB shall update the Manual with all amendments till that time and upload the updated version of the Manual in the COMNET.

CHAPTER-2

BASIC GUIDELINES & LAWS ON PURCHASE

2.1 Guidelines for Public Procurement:

Article 299 of the Constitution is the apex of the legal framework governing public procurement. It stipulates that contracts legally binding on the Government shall be executed in writing by officers specifically authorized to do so. Indian Contract Act, 1872 and the Sale of Goods Act, 1930 are major legislations governing contracts of sale/ purchase of goods in general. There is no law exclusively governing public procurement of goods. However, comprehensive rules and directives in this regard are available in the GFR 2005, especially chapter 6; Delegation of Financial Powers Rules (DFPR); Government orders regarding price or purchase preference or other facilities to sellers in the Handloom Sector, Cottage and Small Scale Industries and to Central Public Sector Undertakings etc. and the guidelines issued by CVC to increase transparency and objectivity in public procurement. These provide the regulatory framework for the public procurement system.

2.2 Fundamental Principles of Public Buying:

2.2.1 These principles are contained in Rule 137 of GFR, 2005. It is stipulated therein that 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. This will enable the prospective bidders to formulate competitive tenders with confidence. Thus, the cardinal principles to be followed are:

- (i) Efficiency
- (ii) Economy
- (iii) Transparency
- (iv) Fairness
- (v) Competition

2.2.2 The procedure to be followed in making public procurement must conform to the following yard-sticks:-

- (i) the specifications in terms of quality, type etc., as also quantity of goods to be procured, shall be clearly spelt out keeping in view the specific needs of the procuring organization. The specification so worked out shall meet the basic needs of the organisation without including superfluous and non-essential features, which may result in unwarranted expenditure. Care shall also be taken to avoid purchasing quantities in excess of requirement to avoid inventory carrying costs;
- (ii) offers shall be invited following a fair, transparent and reasonable procedure;
- (iii) the procuring authority shall be satisfied that the selected offer adequately meets the requirement in all respects;

- (iv) the procuring authority shall 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 authority must place on record, in precise terms, the considerations which weighed with it while taking the procurement decision.

2.3 Authority competent to purchase goods and his Purchase Powers:

- a. 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 of the Delegation of Financial Rules, 1978, following the general procedure contained in this Manual.
- b. A demand shall not be split into small quantities for the sole purpose of avoiding the necessity of taking approval of the higher authority required for sanctioning the purchase of the original demand.

2.4 Price preference for Small Scale units:

2.4.1 As per the extant rules, when acceptable offers are received from various categories of suppliers, including Large Scale Sector, Public Sector Undertakings and Small Scale Sector, the offer from the Small Scale Sector, which is registered with National Small Industries Corporation (NSIC) or with Directorate General of Supply and Disposal (DGS&D) is entitled for price preference upto 15% over the offer of Large Scale Sector and 5% over the offer of Public Sector Undertaking, provided the offers under consideration are otherwise clear for acceptance in all respects. (Example: The evaluated cost of the lowest acceptable offer, which is from a Large Scale Sector is Rs.100. The evaluated cost of an acceptable offer from a Small Scale Unit, which is registered with NSIC / DGS&D is Rs.115. This SSI is entitled to get the order at its quoted price).

2.4.2 The price preference admissible to the SSI unit is not mandatory. It is to be decided separately for each tender on merits of each case, in consultation with Finance and a mention to that effect should be made in the Notice Inviting Tenders (NIT)/Request for Proposal (RFP). The price preference is accorded to the deserving SSI units as an incentive to grow; but it shall not promote inflation, profiteering or misuse of SSI units as conduits. In case the SSI unit in view has established itself as a supplier of the required goods on competitive terms and enjoys advantage(s) over Large Scale Sector, no price preference need be considered. An SSI Unit will not get any price preference over another SSI Unit.

2.4.3 Price preference facility to SSI Units will, however, not apply to the procurement of the under mentioned goods:-

- (i) Medical and Electro-medical equipment
- (ii) Requirements of Defence, where inspection shall be carried out by the Defence Inspection Organization.
- (iii) Items where technical competence, capacity and manufacturing facilities are required to be verified before placement of order.

2.4.4 Before considering any price preference to Small Scale Sector, the latest directive in this regard may be checked for necessary action.

2.5 **Purchase Preference to Central Public Sector Undertakings:**

2.5.1 As per the extant government policy, the Central Public Sector Undertaking (CPSU) gets purchase preference upto 10% over the Large Scale Private Units (vide Department of Public Enterprises O.M. No DPE.13(12)/2003-Fin.Vol.II dated 18.7.2005). Example: Against an ad-hoc requirement, the evaluated cost of the lowest acceptable offer, which is from a Large Scale Sector is Rs.100. The evaluated cost of an acceptable offer from a CPSU is Rs.110. As per the extant policy, the CPSU will be offered the price of Rs.100 and if it accepts the same, order will be placed on it (CPSU) at that price (Rs.100).

2.5.2 Before considering any such purchase preference, the latest directive in this regard shall be checked for necessary action. Purchase Preference provision shall invariably be part of the Notice Inviting Tenders (NIT).

2.5.3 The extant government policy of allowing CPSU purchase preference upto 10% over the Large Scale Private stands lapsed w.e.f. 31.03.2008.

2.6 **General Principles of Contract:**

2.6.1 The elements and principles of contract law and the meaning and import of various legal terms used in connection with the contracts are available in the Indian Contract Act, 1872 read with the Sale of Goods Act, 1930. Contract may be defined as an agreement if made with free consent of parties competent to contract, for a lawful consideration and with a lawful object. During the tenure of the contract, every transaction is governed by the provisions of the contract and therefore it is necessary that the contract is framed with adequate care.

2.6.2 **Contract Definition:** The proposal or offer when accepted is a promise. A promise and every set of promises forming the consideration for each other is an agreement. An agreement if made with free consent of parties competent to contract for a lawful consideration and with a lawful object is a contract.

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

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

2.6.5 **What agreements are contracts:** An agreement is a contract enforceable by law when the following are satisfied. A defect affecting any of these renders a contract un-enforceable.

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

2.6.6 **Competency of Parties:** Under law, any person who has attained majority and is of sound mind or not debarred by law to which he is subject, may enter into contracts. It, therefore, follows that minor, insolvent person and person of unsound mind cannot enter into contracts.

2.6.7 Categories of persons and bodies who are parties to the contract may be broadly subdivided under the following heads: -

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

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

(c) **Contracts with Limited Companies:** Company is association of individuals registered under Companies Act in which the liability of the members comprising the association is limited to the extent of the shares held by them in such companies. The company, after its incorporation or registration, is an artificial legal person which has an existence quite distinct and separate from the members of shareholders comprising the same. A company is not empowered to enter into a contract for purposes, not covered by its memorandum of association. Any such agreement in excess of power entered into the company is void and cannot be enforced. Therefore, in cases of doubt, the company must be asked to produce its memorandum for verification or the position may be verified by an inspection of the memorandum from the office of the Registrar of Companies before entering into a contract. Normally, any one of the Directors of the company is empowered to present the company. Where bids are signed by person other than Directors or authorised Managing Agents, it may be necessary to examine if the person signing the tender is authorised by the company to enter into contracts on its behalf.

(d) **Corporation other than Limited Companies:** Association of individuals incorporated under statutes such as Trade Union Act, Cooperative Societies Act and Societies Registration Act is also artificial person in the eye of law and is entitled to enter into such contract as is authorised by their memorandum of association. If any contract has to be entered into with any one or such corporation or association, the capacity of such association to enter into contract shall be verified and also the authority of the person coming forward to represent the said Association.

2.6.8 **Consent of both Parties:**

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

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

2.6.9 **Free consent of both Parties:**

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

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

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

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

2.6.10 **Consideration :**

Consideration is something which is advantageous to the promisor or which is onerous or disadvantageous to the promisee. Inadequacy of consideration is not a ground avoiding the contract. But an act, forbearance or promise which is contemplation of law has no value is no consideration. Likewise, an act or a promise, which is illegal or impossible, has no value.

2.6.11 Lawfulness of object :

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

2.6.12 Communication of an Offer or Proposal :

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

2.6.13 Communication of Acceptance :

A date is invariably fixed in tender forms upto which bidders are open for acceptance. A proposal or offer stands revoked by the lapse of time prescribed in such offer for its acceptance. In case, it is not possible to decide a tender within the period of validity of the offer as originally made, the consent of the tenderer firm shall be obtained to keep the offer open for further period or periods. The communication of an acceptance is complete as against the proposer or offerer, where it is put in the course of transmission to him, so as to be out of the power of the acceptor, and it is complete as against the acceptor when it comes to the knowledge of the proposer or offerer.

The medium of communication in government contracts is generally by post and the acceptance is, therefore, complete as soon as it is posted. So that there might be no possibility of a dispute regarding the date of communication of acceptance, it shall be sent to the correct address by some authentic foolproof mode like registered post acknowledgement due, etc.

2.6.14 Acceptance to be identical with Proposal :

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

2.6.15 Withdrawal of an Offer or Proposal :

A bidding firm, who is the proposer, may withdraw its offer at any time before its acceptance, even though the firm might have offered to keep the offer open for a specified period. It is equally open to the tenderer to revise or modify his offer before its acceptance. Such withdrawal, revision or modification must reach the accepting authority before the date and time of opening

of tender. No legal obligations arise out of such withdrawal or revision or modification of the offer as a simple offer is without a consideration. Where, however, a tenderer agrees to keep his offer open for a specified period for a consideration, such offers cannot be withdrawn before the expiry of the specified date. This would be so where earnest money is deposited by the tenderer in consideration of his being supplied the subsidiary contract and withdrawal of offer by the tenderer before the specified period would entitle the purchaser to forfeit the earnest money.

2.6.16 Withdrawal of Acceptance:

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

2.6.17 Changes in terms of a concluded Contract:

No variation in the terms of a concluded contract can be made without the consent of the parties. While granting extensions or making any other variation, the consent of the contractor must be taken. While extensions shall be granted on an application of the contractor, the letter and spirit of the application shall be kept in view in fixing a time for delivery.

2.6.18 Discharge of Contracts:

A contract is discharged or the parties are normally freed from the obligation of a contract by due performance of the terms of the contract. A contract may also be discharged: -

- (a) **By mutual agreement:** If neither party has performed the contract, no consideration is required for the release. If a party has performed a part of the contract and has undergone expenses in arranging to fulfil the contract, it is necessary for the parties to agree to a reasonable value of the work done as consideration for the value.
- (b) **By breach:** In case, a party to a contract breaks some stipulation in the contract which goes to the root of transaction, or destroys the foundation of the contract or prevents substantial performance of the contract, it discharges the innocent party to proceed further with the performance and entitles him to a right of action for damages and to enforce the remedies for such breach as provided in the contract itself. A breach of contract may, however, be waived.
- (c) **By refusal of a party to perform:** On a promisor's refusal to perform the contract or repudiation thereof even before the arrival of the time for performance, the promisee may at his option treat the repudiation as an immediate breach putting an end to the contract for the future. In such a case, the promisee has a right of immediate action for damages.
- (d) **In a contract where there are reciprocal promises:** If one party to the contract prevents the other party from performing the contract, the contract may be put to an end at the instance of the party so prevented and the contract is thereby discharged.

2.6.19 Stamping of Contracts:

Under entry 5 of Schedule I of the Indian Stamp Act, an agreement or memorandum of agreement for or relating to the sale of goods or merchandise exclusively is exempt from payment of stamp duty. (NOTE or MEMORANDUM sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal is not so exempt from stamp duty.) The Stamp Act provides that no Stamp duty shall be chargeable in respect of any instrument executed by or on behalf of or in favour of the Government in cases where but for such exemption Government would be liable to pay the duty chargeable in respect of such instrument. (Cases in which Government would be liable are set out in Section 29 of the Act).

2.7 Authority for Execution of Contracts :

As per Clause 1 of Article 299 of the Constitution, the contracts and assurances of property made in the exercise of the executive power of the Union shall be executed on behalf of the President. The words “for and on behalf of the President of India” shall therefore follow the designation appended below the signature of the officer authorised in this behalf.

Note 1: The various classes of contracts and assurances of property, which may be executed by different authorities, are specified in the Notifications issued by the Ministry of Law from time to time.

Note 2: Powers of various authorities, the conditions under which such powers shall be exercised and the general procedure prescribed with regard to various classes of contracts and assurances of property are laid down in Rule 21 of the Delegation of Financial Powers Rules, 1978.

Note 3: In exercise of the powers conferred by Clause (1) of Article 299 of the Constitution, the President of India authorises the DGS&D officers to make contracts for services, supply or work on behalf of the Central Government. DGS&D is also authorised to make similar contracts on behalf of the State Governments where so authorised by the State Governments, and on behalf of Government sponsored companies or corporations or local bodies where so authorised by such companies or corporations or local bodies.

CHAPTER-3

FORMULATION & APPROVAL OF DEMANDS

3.1 Introduction:

- a. The procurement of P&M is aimed at creation of long term asset and hence, has to be meticulously planned and effectively implemented to achieve the objectives of time, cost and performance. Each investment proposal for procurement of Plant and Machinery shall be made by raising Demands on case to case basis except for Government sanctioned projects. Format of Demand is enclosed in the Appendices.
- b. Initiation of procurement action for any Plant and Machinery shall invariably be the outcome of ongoing review of requirement of new machines based on the perspective production load and existing machine capacity.
- c. All investment decisions should necessarily be based on a realistic assessment of production load vis-à-vis known demand from the user / services on a medium term (5 to 10 years) time scale.
- d. While planning the proposals, PERT Network/CPM Network or a Bar Chart, listing all the important milestones/activities involved with realistic time frame for each shall be arrived at. Once the competent authority approves the proposal, this becomes the basis for monitoring.

3.2 Capacity planning for P&M:

- a. The number and capacity of P&M shall be decided on the basis of requirement of the product/material to be produced/ processed, including rejection/wastage/ proof, for the end products and peak load expected in the medium term (5-10 years).
- b. Capacity is calculated considering the cycle time stipulations, wherever applicable, and taking into account machine efficiency of 80% and human efficiency of 80%, i.e. overall 64% efficiency.
- c. Normal working of machines is taken as two 8-hour shifts per day. Saturday is taken as 4 ³/₄ hrs. The total working hours of a machine per year is taken as 4414 hrs. Basis of calculation: $[365-52(\text{Sat})-52(\text{Sun})-16(\text{GH})] \times 2 \times 8 + 52 \times 2 \times 4.75 = 245 \times 2 \times 8 + 52 \times 2 \times 4.75 = 3920 + 494 = 4414$ hours.
- d. Example: Suppose the final capacity required for end product is 75 Million Rounds per year and 10% is taken as rejection/proof wastage. Then, the capacity required is $75/0.9 = 83.33$ Million/annum. Assuming that the machine produces 250 components/ minute i.e. 15,000 per hour, the production from one machine in a year = $15000 \times 4414 \times 0.8 \times 0.8 =$

42.374 Million. Therefore, the number of machines required will be $83.33/42.374 = 1.966$ i.e. 2 (two) Nos.

- e. Normal working of plants is taken as 22 days/month (one day weekly off and one day for cleaning/maintenance per week) and considering 2 months in a year for annual maintenance shutdown i.e. total 220 days per annum. Example: Suppose the quantity of product required is 500 MT/annum and about 10% is process wastage/rejection. Then, the plant capacity to be purchased shall be specified as $500/(0.9 \times 220 \times 0.8 \times 0.8) = 3.946$ MT/day i.e. 4 MT/day.
- f. Normally, plants are run continuously i.e. three shifts / day. Some explosive plants are not run in night shift for safety reasons; normal working for such plants may be taken as one 8-hour shift or two 8-hour shifts (as applicable) per day. Therefore, in addition to capacity/day, the number of shifts/day shall also be specified in the tender as applicable for the plant.
- g. Chemical process plants (e.g. Nitro-Glycerine or Sulphuric Acid Concentration plants) may be purchased even for suitably larger size because of following practical advantages:
 - i. Safety: In normal times, production can be achieved in a short time with less manpower. This allows safety in handling of explosive as workers need not hurry to finish work.
 - ii. Economy: Cost does not increase proportionately with increase in capacity. The 'thumb rule of 6/10' says that if capacity is increased by 'x' times, then the increase in cost is equal to $\text{POWER}(x, 0.6)$, i.e. 'x raised to the power 6/10'. For example, cost is 1.5 times for double capacity, cost is 1.9 times for triple capacity and cost is around 2.3 times if capacity is increased four times.

3.3 Projection of manpower for sanction in new projects:

The requirement of Direct IEs is calculated taking SMH output of 2691* hours per annum per person. Indirect IEs can be projected from Direct IEs by applying appropriate Direct:Indirect ratio.

* = $(52 \times 54 \times 0.85 - 144) \times 1.5 / 1.25$; considering 52 weeks/year, 54 hours/week, 15% absenteeism, paid holidays for 16 days (144 hours) and 50% piece work profit.

3.4 Heads of Procurement of Plant & Machineries:

- a. Procurement of Plant and Machineries in the Ordnance Factories are initiated under two heads viz. Renewal & Replacement (RR) and New Capital (NC). The Renewal Replacement Fund was created with effect from 1.4.1990 under Public Fund Account and introduced for financing the Renewal and Replacement programmes of Ordnance Factories. This is done by making a provision for depreciation in the accounts for the

purpose of replacement of fixed assets, when the need arises. This depreciation fund is then normally utilized for replacing the assets when the existing assets have served their useful life. Therefore, the machines under RR are required to renew and replace the old capacities of the factories, whereas, the Plant and Machineries under NC are meant for creating new capacities or augment them or improve productivity and quality of existing production lines. The procurement of Plant & Machinery under RR & NC heads is aimed at accelerating modernization of Ordnance Factories, so as to keep pace with the fast changing product mix and induction of new productive technologies.

- b. OFB/PFC normally approves RR Plans by First Quarter of the financial year. New Capital projections are based on the long-term project plan or for investments of isolated nature, the specific requirement of the factory etc. Format of RR/NC Demand is enclosed in the Appendices.

3.5 Depreciation norms:

Plant & Machineries procured in the factories are depreciated at specified rates to recover the investments made for their procurement using the Straight Line Method. In this method, depreciation is charged uniformly over the life of an asset. A machine may become due for replacement, when its residual book value becomes zero or when it is categorized as 'beyond economical repair', on the basis of assessment of machine condition and due recommendation of a Technical Committee. The life of a Plant and Machinery will also be determined by the consideration whether the machine is a Tool room machine or production machine for engineering or chemical/explosive process plant. Machine which is proposed for replacement based on expected completion of its life, it is prudent that the replacement action of such machines are initiated at least 3 years in advance, keeping in view the lead time required for procurement of P&M. Demand of such machine shall be vetted by LAO without insistence on B.E.R. certificate. On receipt of replacement, the machine for which replacement actions were taken is to be disposed off.

- a. The depreciation norms are prescribed below:
 - i. Plant & Machinery (life- 20 years) : Annual Depreciation @ 5% of the P&M cost.
 - ii. Tool Room machine : A machine unable to give the desired accuracy may be utilized in the Tool Room for lesser accuracy job or transferred to Production shop at the end of 10 years. Thereafter, replacement proposal may be processed against either under RR or NC, depending upon the location at the time of replacement.
 - iii. Considering rapid changes in technology and obsolescence of electronic system e.g. CNC control of Plant and Machinery, Electronic telephone exchange or similar electronic systems etc., such replacement may be considered after 7 years.
 - iv. Air Conditioners and Refrigerators : annual depreciation @ 10%

- v. Mobile crane : annual depreciation @ 20%.
- b. Replacement of MT vehicles : The following norms shall apply:
 - i. The vehicle will be due for replacement after a minimum mileage limit or minimum years of service, whichever is later.
 - ii. A Board of Officers, consisting of DGM/ JGM and representative of Local Accounts Office after thorough technical examination would decide whether a vehicle may be categorized as 'beyond economical repair' to consider for its replacement. A Technical Inspection Report (TIR) shall be made indicating the condition of engine, transmission, wheels, etc. Under unusual condition, a vehicle may also be put up for 'premature condemnation' after a thorough examination by a Technical Committee. In that case, the Technical Committee is required to make a Statement of Case with justification for premature condemnation and replacement duly approved by GM.
 - iii. The minimum vehicle mileage and years of service are stipulated as follows:

Sl	Type of Vehicle	Criteria
1	Staff Car, Explosive van, Ammunition truck, Jeep, 1/1.5 T truck van, Ambulance, Motor cycle	1,50,000 kms or 7 years whichever is later.
2	3/5 T Truck, 7/7.5 T Truck	1,80,000 kms or 7 years whichever is later.
3	Tractor, Dumper, Front & back end Loader, Trolley/Trailer, Fork Lifter, Battery Trucks, & all kinds of other material handling equipments	22,000 hrs or 7 years whichever is earlier
4	Fire Tender	5,000 hrs (stationary operation) or 10 years whichever is earlier

Note: 1) For road vehicles, every 15 miles is equivalent to one stationary operation hour and road vehicles without pump, 5,000 stationary hours would be equal to 75,000 miles round running.

2) MOD letter No. 336/D/E/M/17/US(Prod) dated 05.12.77 amended vide Corrigendum 2 no. 336/E/EM/1506/D(Projects) dated 09.07.80.

3) MHA letter No. 55/27/59-SB-II dated 07.07.80.

- c. Equipments like Binding machines, Plotters, Xerox machines, Mechanical/Electronic Stencil Cutters, Laminated machines, AutoCAD, Scanner, and Telephone instruments etc., are not Capital items and shall be procured under Revenue Grant as Office equipments.

3.6 Perspective Planning:

In accordance with the Five Year Plan period, each factory shall formulate its Perspective Plan for the next five years, on the basis of projections from users, in respect of end product factories, and on the basis of Inter- Factory Demands, in respect of component manufacturing factories. The Perspective Plan of the factory shall be in agreement with the Perspective Plan of respective group of factories of OFB and in accordance with the guidelines issued by OFB from time to time.

3.7 RR Plan and PFC approval:

(a) Based on Perspective Plan and need for modernization, each factory shall prepare its annual Renewal and Replacement (RR) Plan as per the prescribed format. Plan Finalization Committee (PFC) of Factory shall scrutinize the RR Plan, before forwarding its recommendation to OFB. It shall consist of RR Demands for each P&M, along with related documents. The same will be examined by the Plan Finalization Committee (PFC) of OFB headed by the Concerned Operating Member/ Addl. DGOF in association with DDG/Engg., DDG/Operating Division and Controller of Finance/Addl. Controller of Finance. PFC/OFB will examine the recommendations of PFC/Factory and accord approval of RR demands.

(b) The P&M demanded under RR need not be on exact like-to-like basis and shall have modern improved features and/or modified capacity to suit future requirements. The following points should be kept in view, while finalizing the RR plan :

- (i) List of P&M available with the factory, their original cost and procurement year.
 - (ii) Philosophy/concepts relating to investment for replacement.
 - (iii) Introduction of latest technology through RR scheme due to change in product mix
 - (iv) Sustained and futuristic requirement of users
 - (v) Outsourcing and cost benefit analysis
 - (vi) Up-gradation of technology
 - (vii) Improvement in productivity and quality
 - (viii) Saving in material and manpower cost
 - (ix) Flexibility
- (c) Each demand under RR plan to be submitted to OFB for approval shall be accompanied by the following documents/information :
- (i) Budgetary quotation from potential suppliers/Last paid rate(not older than two years) of similar/comparable machines procured by any ordnance factory.
 - (ii) Details of items to be produced, with annual capacity.
 - (iii) Time cycle for each component/end product after discussions with machine tool supplier.
 - (iv) Based on outturn quantity and time cycle, number of such machines required.
 - (v) Condemnation reports (CR) declaring machines 'Beyond Economical Repair(BER)'.
 - (vi) Factory's TPC recommendation giving mode of tendering and prospective list of suppliers.
 - (vii) Demand in the prescribed format duly vetted by LAO.
 - (viii) Cost benefit analysis, if cost of machine exceeds Rs.50 Lakh.

- (ix) Specification drawn out after market survey should be enclosed in the RR demand at the PFC stage. Tendered Specification shall not be at variance with PFC approved specification.
- (d) The factory shall submit the Annual Replacement Plan in Proforma A, B, C & D. (given in the Appendices.)
 - (i) Proforma A: It shall consist of realistic assessment of previous approved plans stating inter-alia the cash flow materialised as well as cash flow envisaged in the subsequent years.
 - (ii) Proforma B: It shall contain P&Ms for replacement, with description, registration numbers and estimated cost. It shall contain only those machines, which have been recommended as BER by Technical Board of Examination and approved by GM.
 - (iii) Proforma C: Additional information in support of P&Ms projected in proforma B.
 - (iv) Proforma D: Budget allotment vis-a-vis utilization pattern for last three years against RR grant.

Note: After approval by PFC/OFB, changes by factories are not acceptable.

- (e) Against approved RR plan of factory, GM is authorised for purchase of P&M within their delegated financial powers. For purchase of machines (approved by PFC/OFB) beyond the delegated powers of GM, factory will float Tender Enquiry and forward its TEC recommendation to OFB. Based on TEC/OFB's approval, factory will open the price bids and forward its TPC recommendation to OFB for approval of OFB/MOD, as the case may be.
- (f) Certain sanctioned projects are supported by RR funds; because a part or whole of the Plant & Machinery against the project is proposed to be procured in replacement of the existing plant & machinery. Such RR demands will not require the approval of PFC even though the fund provision through budget will be made centrally year-wise.
- (g) All high value spares of specific Plant & Machinery beyond the amount of Rs. 25 lakhs, procured against LP may be capitalized in the same financial year and booked against the present book value of the plant & machines.

3.8 Procurement of P&M under New Capital:

- a. Plant and Machineries under NC are procured under the following conditions-
 - (a) Against sanctioned project
 - (b) Normal NC to meet requirement towards –
 - (i) Creation of additional capacity to cater for sustained increase in production load
 - (ii) Creation of balancing capacities for new store

- (iii) Meeting shortfall in the existing capacity
- (iv) Meeting of statutory obligations,
- (v) Improvement in existing production line in terms of Productivity, Reliability or Product Quality,
- (vi) Capacity augmentation for revised authorization, etc.

b. Since procurement under normal NC will enhance the capital assets, a thorough assessment of existing capacity shall be made before such proposals are mooted. Justification for such demands shall be supported by Statement of Case, clarifying the necessity and inescapability of the equipment/Plant & Machinery in terms of increase in productivity, enhancement of existing capacity due to increase in output demand, improvement of quality in the existing process etc.

c. All NC demands in the prescribed format (enclosed in the Appendices) duly vetted by LAO will be forwarded to OFB, keeping in view the points as mentioned for initiation of demands against Renewal & Replacement. Such NC demands shall also have enclosures of documents as mentioned under Renewal & Replacement procedure (except condemnation report) for clearance of Operating Division from necessity angle and concurrence of Finance Division from expenditure angle, prior to obtaining of approval of Member/Operating Division. On receipt of OFB approval, factory shall follow the procedure in para 3.7 (e) above.

3.9 Financial appraisal of Capital Investment:

- a. A capital investment proposal will require financial appraisal which would involve the following sequence of steps:-
- (i) Estimation of the initial capital investment and the timing of cash out flow.
 - (ii) Estimation of the production level at the time of full production.
 - (iii) Estimation of future cash out-flows considering various production factors.
 - (iv) Estimation of future in-flows based on the estimated volume of production & prices, etc.
 - (v) Working out the net in-flows.
 - (vi) Proposal Evaluation, based on accepted financial evaluation techniques like IRR etc.
- b. Procedure for financial appraisal is dealt in a separate chapter of this manual.

3.10 Projectisation of high value procurements:

Proposals for capital investment valuing Rs 50 Cr or above shall ideally be done as projects. Even if it is not practicable to prepare a detailed Project Report for such individual RR Proposals, these shall incorporate realistic estimated costs (with full details of all cost elements) and PDCs with activity milestones, based on which OFB shall accord the sanction. OFB shall monitor such approved projects. OFB shall examine the case of cost overrun beyond 10% of the

original sanctioned cost and time overrun beyond two years, for the reason leading to such circumstances.

3.11 Reconditioning of P & M:

For reconditioning /refurbishing of old Plant and Machinery, the demand may be prepared in line with the existing RR procurement norms, which may be forwarded for approval of PFC/OFB. The following procedure should be followed in this regard:

- a. While BQ is obtained, the concerned firm shall be asked to provide the realistic enhanced life of the machines after reconditioning.
- b. Any re-conditioning proposal shall be substantiated by the confirmation that the proposed re-condition shall enhance the life of the proposed machine by minimum 8 years.
- c. Factory shall assess the cost of reconditioning and shall ascertain that it does not exceed 40% of the present cost of the new machines of similar nature.
- d. While the demand is prepared, factory shall make detailed specification for reconditioning along with realistic estimated cost supported by budgetary quotation from OEM/reputed firms dealing with reconditioning.
- e. Justification for reconditioning shall be recorded.
- f. After reconditioning, the cost of reconditioning shall be added in the residual book value of the machine and enhanced life of the machines shall be reassessed and recorded in the machine ledger. Depreciation will be calculated afresh on the new book value arrived at.

CHAPTER 4

FRAMING OF SPECIFICATION

4.1 **Introduction:** One of the most critical activities in the procurement of P&M is framing of specification. Correct specification enables timely finalisation of procurement case. The specification aims at meeting the actual and essential needs of the user because “over-specification” will unnecessarily increase the cost and may stifle competition. The specifications shall be broad based for wider competition.

4.2 **Basic Guidelines:**

- a. Specifications should aim at:
 - i. State of the art technology
 - ii. efficiency in consumption of materials,
 - iii. optimum fuel/power consumption,
 - iv. use of environmental-friendly materials,
 - v. reduced noise and emission levels,
 - vi. low maintenance cost etc.
 - vii. Lean equipment
 - viii. Meeting the applicable mandatory and statutory regulations,
- b. Wherever Indian Standards exists for the required machines, the same shall be adopted. Preference shall be given to procure the machines, which carry BIS (Bureau of Indian Standards) mark.
- c. For special purpose machines, deviations from Indian Standards are allowed and additional parameters may be stipulated for better performance. In addition, special requirements may be specified for packing, marking, inspection etc. as are specially required for the particular end use.
- d. In cases, where Indian Standards do not exist or, alternatively, decision has been taken to source from the foreign markets also, International Standards (like ISO, EN, ANSI, etc.) may be adopted. Where no widely known standards exist, the specifications shall be drawn in a broad-based manner to obtain competitive bids from different sources.
- e. Except for proprietary purchase from a selected single source, the specification must not contain any brand name, make or catalogue number of a particular manufacturer only and if the same is unavoidable due to some compelling reasons, it should be followed by the words “or equivalent”.
- f. All dimensions incorporated in the specification shall be indicated in SI (metric) units. If due to some unavoidable reasons, dimensions in FPS units are to be mentioned, the corresponding equivalents in the metric system must also be indicated. (Ref: DGOF Letter No 326/E/M dt 18.01.1956)

- g. The specification and the technical details shall be expressed in unambiguous terms. Wherever necessary, the specification shall be supplemented with drawings for additional clarity etc. This shall inter-alia indicate the various inputs and required outputs, design criteria, cycle time, efficiency, accuracy, quality aspects, trial duration, guarantees, warranties etc.
- h. In place of specific values, suitable range shall be specified for design related parameters like size, power consumption for main and auxiliary motors, pressure, spindle power, spindle speed, etc.

4.3 How to frame Specification:

- a. User section in consultation with the related maintenance sections will frame technical specification, duly approved by Group Officer/Controlling Officer of User section. Engg. Office shall frame the general, commercial & other terms and conditions.
- b. In case of Special/Critical/Chemical and Metallurgical process Plants of high value, factory is required to constitute a multifunctional Technical Committee comprising officials of user, maintenance and safety sections for finalisation of specification.
- c. The design criteria of big turnkey plant shall be specified to take into account the necessity for in-built redundancy depending on criticality of operation, so that normal production is not affected due to major breakdowns or serious accidents (like explosion in case of ammunition/ explosive plants). For example, it may be specified that: The design of the plant should be such that (i) there is 50% redundancy in any operation having only a single equipment, i.e. capacity output per day shall be achieved in that operation in less than 12 hours, and (ii) there is 33% redundancy in operations having more than one equipment, i.e. capacity output per day shall be achieved in such operations in less than 16 hours. Otherwise, the number of connected standby machines for each stage or one standby line for the critical stages of the plant may be specified.
- d. The capacity of vessels for storage of input, intermediate and output materials shall be sufficient so as to enable production, even if there is interruption in receipt/issue of materials for one month.
- e. Statutory requirements like pollution control limits and safety restrictions shall be part of technical specifications. They shall be mentioned explicitly to avoid any confusion or controversy later.
- f. In order to formulate a **broad based specification** to generate adequate competition, the factory shall first prepare brief general specification indicating the nomenclature, capacity including any in-built redundancy & standby required, inputs to be used, utilities available in factory, special requirements (on productivity, quality, effluent treatment / pollution control, safety, automation, etc) and seek budgetary quotation (BQ) from prospective suppliers.
- g. Thereafter, on the basis of budgetary offers obtained and/or exhaustive interactions held with the prospective suppliers, factory shall firm up detailed specification and approximate estimated cost.

- h. The draft specification may be shared with prospective suppliers for feedback and necessary correction, before raising of demand for the machine.
- i. In some cases where factory does not have adequate knowledge about the technology/process e.g. for new machine or big complex plant, factory shall first float advertisements for Expression of Interest (EOI) or Request for Information (RFI) to get information about the capability of prospective suppliers and their machine /plant and also to shortlist suppliers on the basis of pre-qualification criteria. On the basis of information received about the latest machines or plants available in the market, the specifications shall be finalized. TE shall be issued to the shortlisted vendors.
- j. If required, team of officers may be deputed to foreign countries to ascertain likely suppliers and the availability of modern technology machines or plants.
- k. While formulating the specifications, it is necessary to indicate clearly what are the Standard or Essential items and the Total Scope of Supply. This will facilitate equitable competition and also the decision making process at the time of evaluation.

4.4 When to make a specification:

Specification along with the cost estimate shall be worked out at the time of initiation of demand. Factory may make minor changes, if required, in the tender specification provided it has no major financial implication. Any case involving major changes in specification shall require fresh approval of PFC/OFB or demand sanctioning authority.

4.5 Outlines of a Specification:

[Ref: (1) OFB Letters No 350/E/M dt 30-3-85, 6-8-86 & 3-12-86, and
(2) D.O. No 350/CNC/E/M dt 25-9-87/12-10-87.]

Keeping the above requirements in view, the following parameters are required to be clearly defined, while framing specification for P&M:

- (i) Clear technical requirements:
 - (a) Broad based criteria, mentioning the points where no deviation is permitted, with asterisk.
 - (b) Specifications shall mention the end product requirement taking into account the flexibility required for future options, especially for tooled up machines.
- (ii) The bidder shall be asked to indicate the approximate cycle time for the end product to assess the rated output of the machine.
- (iii) Responsibilities of both the purchaser and the seller shall be defined.
- (iv) Availability of water, air, steam, power, other services and their quality shall be indicated in the tender specification. If any specified quality of above items is not meeting the requirement of the bidders, bidders shall include the necessary accessories along with the machine.
- (v) Battery limits: This will include supply of water at the inlet to the machine at a specified point, steam supply at a pre-specified point, power at a point required – normally at the control panel, vent/exhaust piping, supply of air of required quality at a predefined point.

- (vi) Documentation: List of all Documents to be provided by the supplier along with the quotation, and also with the supply of machine, shall be specified.
- (vii) Pre-despatch Inspection criteria must be laid down in the tender specification.
 - (a) Criteria of acceptance, such as machine geometrical accuracy, process capability, component accuracy and rated output etc. need to be defined. For purpose of accuracy, repeatability and process capability, relevant national/international standard e.g. NMTBA standard or Japanese standard (JAC) required for the product shall be indicated. Process capability shall not be over-specified; normally, it shall be 67% of drawing tolerance for different parameters.
 - (b) Trials of machine including supply of trial components and their positioning etc shall be stipulated in terms of quantity, quality (dimensions, hardness and finish condition) and time frame.
 - (c) Requirements of stage inspection of machine during assembly at the firm's premises, if any, may be specified.
 - (d) Requirements of training for purpose of maintenance during final assembly, if any, may be specified.
- (viii) For tooled up machine, cost of tooling constitutes substantial investment of recurring nature. Therefore, the bidder shall be asked to specify tool life in terms of machining of number of components and approx. tool cost per component. Tool requirement during trials and tool drawings may be asked for.
- (ix) Erection responsibility and site conditions shall be spelt out. In case, erection is consignee's responsibility, it is preferable to ask for foundation drawings within predefined period after the placement of S.O..
- (x) Packaging instructions for despatch shall be laid down.
- (xi) If felt necessary, the supplier's responsibility for the supply of tools and tackles during erection and commissioning may be specified.
- (xii) Commissioning & Acceptance Trial: Acceptance criteria indicating period for trial, quality and quantity of output, machine efficiency and how and when these tests would be carried out shall be clearly indicated. The factors which will be considered for practical demonstration of the machine efficiency shall be clearly specified.
- (xiii) Commissioning responsibilities shall be spelt out.
- (xiv) Responsibility for the supply of spares, cutting tools and consumables during commissioning shall be spelt out.
- (xv) Deployment of Workmen: Their qualification and number, needed for acceptance tests, under the supervision of the contractor, may be decided in advance.
- (xvi) Working hours and security restrictions etc are to be clearly indicated.
- (xvii) Spare parts requirements for the plant under purchase may be mentioned.
- (xviii) Specialised training requirements for the purchaser's personnel shall be outlined.

4.6 Specimen Terms for Technical Specifications:

Following are some specimen general terms that may be made part of technical specifications as per factory's requirement. (*Circulated vide OFB letter No 122/DP/E/M dt 12th July 2000.*)

a. SCOPE OF CONTRACT:

(a) Scope of contract shall be:

- (i) Supply of equipment as specified, with spares as desired.
- (ii) Erection and commissioning of the equipment as specified.
- (iii) Detailed documentation and training of personnel, in operation and maintenance of the equipment as specified.
- (b) To fulfill the contract terms the vendor will have to subject the equipment to tests and extend warranty/after sales service as specified.
- (c) To ensure completeness of the equipment the vendor shall include in his scope of supply all auxiliary items like pipings, interconnecting cables, initial filling of oils and lubricants and such other items which will be necessary for running of the machine for 3 months but are not included in this specification.

b. TECHNICAL DETAILS OF THE P&M/EQUIPMENT (to be stipulated by Factory):

- i. Technical parameters/accuracies of the P&M/equipment.
- ii. Capabilities of the P&M/equipment required.
- iii. Description of process/Drawings of job to be performed on the P&M/equipment.
- iv. Special design features required by the user.
- v. Accessories and tooling-up required.
- vi. Maintenance/Diagnostic facilities.

c. DESIGN PARAMETERS FOR DURABILITY AND ACCURACY.

- i. The P&M/equipment required shall be designed for continuous heavy-duty operations.
- ii. The P&M/equipment shall be designed for high precision work. Design features should be such as to sustain the accuracy over long period (at least 10 years) of continuous working.
- iii. The design shall incorporate adequate factors of safety as per applicable codes of practice and regulations.

- iv. The vendor while quoting for an P&M/equipment shall ensure that the typical applications projected for tooling-up does not fall in the extreme end of range of application of the machines from considerations of accuracy, power, transmission, tool thrust etc. There shall be sufficient reserve for future applications with more demand on these factors.
- v. All electrical motors, power contactors shall be rated higher than duty requirements. Motors shall be of totally enclosed fan cooled with class B or E type insulation and shall have a nominal voltage rating of 415 V. Motors above 0.5 HP shall have 3 phase design.
- vi. All above ground cables in the least shall be PVC insulated and PVC sheathed, all underground cabling shall be PC sheathed, single wire armoured and overall PVC sheathed. All control cables shall be of minimum 2.5 mm² section copper conductor. All power cables shall be suitable for 100% additional current over reputed cable manufactures rating recommendations at 40°C to compensate for derating due to various factors prevailing in site.
- vii. All electrical motors upto 7.5 HP shall be provided with direct on line starters. Beyond 7.5 HP, reduced voltage starter to limit the starting current to 1.73 times the full load current, shall be provided. For L.T. Motors beyond 300 HP, the starting current shall be limited to 1.2 times the said current.
- viii. Motors beyond 400 HP shall be designed only on H.T. on 6.6 KV/11 KV. Confirmation on this is to be obtained from the purchaser.
- ix. Two earth terminals shall be provided on machine. All the equipments shall be rigidly connected to or carrying 3-phase supply, readily identifiable with red-paint mark. On single phase equipment, one earth terminal may be provided.
- x. In the hydraulic system of the machine, arrangement shall be provided for natural or refrigerated cooling of the hydraulic fluid to maintain the desired temperature. The oil temperature shall not exceed 25⁰ C above for 24 hours of running. If required, cooler shall be provided. Water cooler shall be provided. However water coolant heat exchangers shall not be used.
- xi. All solenoid operated valves shall be operated by hand for maintenance checks.
- xii. Hydraulic equipment and piping shall be accessible and mounted in such a position that adjustment or maintenance to mechanical and electrical equipment is possible.
- xiii. Suitable means shall be provided to remove suction strainers without draining the hydraulic tank.
- xiv. Piping shall be so arranged that pressure may be tested at accessible built in checking position which shall be indicated on circuit diagram.

d. CNC SYSTEM:

The system offered shall be a commercially proven latest model of reputed manufacturer. Supplier shall take into consideration offering of additional features required if any, required for the control system to obtain optimum utilization.

System shall work continuously for 22 hours giving satisfactory performance in working conditions indicated elsewhere in these specifications.

System shall be a microprocessor CNC with continuous path control with integrated programmable controller, for the specified machine, drives, resolution, tool changing system for different tool configuration, pallet changes, various compensations, special setting devices etc.

Control logic shall be distributed multi microprocessor system of latest commercially proven version.

System shall be a modular construction of software-each function as a discrete module assembled as a complete software.

All operator manual control shall be through PC interface for total interlock.

System shall have built in air conditioner or heat exchanger, which shall be floor mounted or side mounted type, not top mounting type. The system without any of the above alternative is not acceptable.

Control cabinet should be dust proof.

All electrical and electronic components should be tropicalised.

The control system offered shall be suitably situated for convenient operation and can be:

Free standing cabinet.

Machine mounted cabinet.

Desirable primary control system tapping of transformer shall be single phase 240V-230V-220-200V.

The supplier shall also quote for a frequency stabilizer with digital frequency display with all connections and interfaces.

CRT diagnostic display shall be provided to pin point the defect in machine function as well as the system function in specific sequences. (This shall not form the regular diagnostic system offered alongwith the control).

Spindle drive and feed drives shall be from reputed manufacturers only.

If the equipment is required to be housed in an air conditioned room or any control panel has to be kept in an air conditioned room, the same shall be brought out in the offer against the TE.

Pertaining to above, the supplier shall furnish details of air conditioning load, temperature, relative humidity, size of enclosure etc..

Any requirements for spot lighting on the equipment shall form part of the supply.

As soon as any of the control panels is opened, the light inside the panel must get switched on automatically.

If special lighting is required, the same shall be indicated in the offer giving details of illumination level etc.

e. LUBRICATION SYSTEM

As far as possible lubrication system to deliver lubricating oil to all parts of the machine requiring lubrication shall be automatic alongwith the following arrangement.

Lubrication system should automatically switch on with switching on of the machine.

Machine should start only if the system has adequate lubricant pressure.

If pressure drops during operation, a warning light signal shall operate. If this signal is unattended for a short spell of time, the machine shall stop automatically.

Lubrication system should be total with coverage to all points needing lubrication. There shall be rigorous filtering media to remove all traces of metallic or other dust and making the recirculating oil completely fit for use.

Wherever manual lubrication is retained as inescapable, a lubrication chart fixed on the machine body shall clearly indicate the same. These charts shall furnish the following information about lubrication.

- (1) Points of application.
- (2) Service intervals.
- (3) Type of lubricants.
- (4) Quantity per filling.
- (5) Viscosity.
- (6) Important cautions if any.

f. ENVIRONMENTAL/STATUTORY AND SITE CONDITIONS

(Factory may modify the figures to suit its location.)

(a) TROPICALISATION.

The equipment shall be suitable for installation at a place where the climatic conditions change as follows: -

	SUMMER	WINTER	MONSOON
MAX. TEMP.	50°C	24°C	40°C
MIN. TEMP.	30°C	0° C	25° C
R.HUMIDITY	18%	50%	98%

In addition to above, the atmosphere in summer is very dusty.

(b) All the functions of the equipment, its hydraulic system, electrical system and control system, shall be tropicalised to work trouble free and with full efficiency under above conditions, continuously for 20 hours a day.

(c) The equipment design shall take care of increase in temperature over ambient due to heat generated by the equipment offered.

(d) Performance tests will cover working in the above environment as detailed separately.

g. PROTECTION

- i. Necessary suitable safety and interlocking devices shall be incorporated in the equipment to prevent any accident or damage to the individual components/assembly of the equipment, personnel and materials arising out of abnormal working conditions, leakage of high pressure fluid, electrical contact, high temperature, explosion etc.
- ii. Guards shall be provided around the moving parts and in front of the working area for protection of the operator. The guards shall run on rollers so that the working area is readily accessible. The guards shall be of double skin construction with viewing window (s), made from reinforced glass.
- iii. All electrical and electronic equipments shall be housed in totally sealed enclosures/panels.
- iv. All electrical panels shall have interlocking devices to ensure that panels doors can be opened only after switching off the incoming supply.
- v. All incoming and outgoing cables from the control panel shall be connected to the control through dust proof openings fitted with glands/ferrules to prevent ingress of dust and insects.
- vi. All equipments/parts shall be suitably protected against damages due to corrosion, rusting etc., in the prevailing condition at site.
- vii. The basic equipments shall be finally painted in Apple Green colour as per shade No. 281 of IS: 5 - 1978 for ready mixed paint.
- viii. The electrical equipments shall be painted as follows: -
 - 415 volts AC machines/Panels - Brilliant Green (Shade No.221 of IS : 5-1978).
 - 240 volts AC equipments - Light Orange (Shade No 557 of IS : 5-1978).
 - 110 volts AC equipments - Light Admiralty Gray (Shade No. 697 of IS: 5-1978).
- ix. The electronic/CNC control system and peripherals can be supplied in the standards colour of the manufacturer.

h. POWER SUPPLY

- The power supply available in the site is $415 \pm 10\%$, 50 Hz., AC 3 phase, transient high voltages are expected.

- If the voltage fluctuation as above is considered harmful for any part of the system, the vendor shall provide a suitable motor generator set or isolation transformer for transient free stable supply.
- For any other voltage requirement, the vendor shall install inbuilt transformers in the control panel.
- Where the total connected load exceeds 400 KVA, the supply would be normally HT (11 KV OR 6.6 KVA as available with voltage variation of $\pm 9\%$). It will be made available at a single point through a suitable H.T. cable with AC conductors. Further distribution including H.T. Breaker, ACB panels etc. will form part of vendor's supply. Vendor may refer to the particular technical modifications for details.

i. WATER SUPPLY

- Normally water is available upto maximum 6 meters head.
- Maximum temperature of water : 35°C .
- A typical analysis of water available is given below:

(a) PH Value	: 7.2
(b) Turbidity as si^2 mg/l	: 1.9
(c) Total Hardness as CaCO_3 mg/l	: 70.0
(d) Total Dissolved Solids mg/l	: 280
(e) Total Alkalinity as CaCO_3 mg/l	: 280
(f) Sulphate as SO_4 mg/l	: -
(g) Chlorides as CL mg/l	: 11.2
(h) Magnesium as Mg^{++} mg/l	: 4.86

j. COMPRESSED AIR

- Compressed air is available upto a maximum pressure of 5 Kg/cm^2 .
- Some amount of oil, moisture and dirt will be present in the air supply.
- Any requirements of water Filter /oil trap or drier shall be part of the offer.
- Specific quantity requirement of compressed air shall be brought out in the offer.
- Wherever air at very high pressure is required, such compressors shall form part of supply.

k. STEAM

- Steam, if required, shall normally be provided from captive electric Boiler with pressure normally upto 3.4 Kg/cm^2 .
- Confirmation on supply of captive boiler shall be obtained from the Technical specifications.

l. AIR CONDITIONING

- For Ventilation and cooling of control panels, built-in-air conditioners shall be provided wherever necessary, for proper functioning of the P&M.
- If the P&M is required to be housed in an air-conditioned room or any control panel has to be kept in an air-conditioned room, the same shall be brought out in the offer against the tender enquiry.

m. ILLUMINATION

- Pertaining to above, the vendor shall furnish details of air-conditioning load, temperature, relative humidity, size of enclosure etc..
- Any requirement for spot lighting on the P&M shall form part of the supply.
- Special lighting, if required, shall be indicated in the offer, giving details of illumination level etc.

n. POLLUTION

- International norms prescribed for pollution level of any effluents from the equipment as well as noise/air pollution shall be strictly adhered to.
- Any purification and other gadgets to meet international norms shall form part of the supply. The discharge/effluent analysis shall be informed to the purchaser.
- The pollution level prescribed for discharge water shall be obtained from local authorities.

o. DOCUMENTATION

- The entire documentation shall be in English.
- The P&M supplier shall supply all documents(soft & hard copies) in quadruplicate and reproducible negative of circuit diagrams.
- The schedule of supply of documents shall be as under: -
 - (i) 2 Sets of all documents to reach the purchaser at least 3 months prior to the training of purchaser's personnel or 2 months prior to the delivery of the P&M, whichever is earlier.
 - (ii) Dimensioned drawing for foundation/erection shall reach the customer at least 2 months prior to the delivery of the P&M or as separately asked for by purchaser.
 - (iii) 2 sets of all documents including erection drawings along with the equipment package.
- The list of documents required to be supplied by the vendor for maintenance/operation is given in para 4.6. The vendor shall supply all information/documentation asked for by the purchaser, which in the opinion of purchaser are necessary for erection, commissioning, operation and maintenance of the equipment. Withholding of information may make the offer liable for rejection.

- The nature of documents to be supplied for electronic maintenance shall be of such details so as to enable chip level maintenance in all PCB's by the purchaser's personnel. Documentation suitable for mere card level maintenance is unacceptable.
- Component identification in the component list/specifications shall be in terms of International Generic Numbers in addition to manufacturer's part No. Components of proprietary nature however shall be so indicated.
- The purchaser after scrutiny of the documents duly received and on finding the documents as adequate will issue a certificate to that effect within six weeks of receipt of the documents. This certificate will be a pre-requisite for release of pre-delivery inspection certificate.
- In the event of the documents found not up to the mark on receipt/ examination by the works engineers, the contract will be terminated without any compensation to the vendor. This will however be without any prejudice to the rights of the purchaser for compensation owing to failure of the vendor to perform.
- LIST OF DOCUMENTS TO BE SUPPLIED:- Unless otherwise agreed, the following documents shall be supplied.
 - (1) List of P.C. Board.
 - (2) Circuit diagrams for all P.C. Boards.
 - (3) Detailed description of working of all P.C. Boards.
 - (4) Components list/components specification.
 - (5) Inter connection details of P.C. Board.
 - (6) Maintenance manuals (Mechanical, Electrical and Electronics).
 - (7) Cable assembly details for all the cables including connector details.
 - (8) Electrical wiring diagram.
 - (9) Circuit diagrams and working of power supplies inside the control system.
 - (10) Circuit diagrams and detailed working of spindle drive and feed drive.
 - (11) Test points and signal wave form.
 - (12) Trouble shooting techniques.
 - (13) Detailed maintenance manual and maintenance instructions on all peripherals like CRT, paper tape reader, tape punch etc.
 - (14) Detailed interface details including the machine magnetic documents.
 - (15) Programmable machine interface details.
 - (16) Detailed description of the measuring systems used.
 - (17) Diagnostics manual with instructions to use in different diagnostic tests.
 - (18) Programming manual.

- (19) Operation manual.
- (20) Installation/commissioning procedures/documents.
- (21) Hydraulic system details/manual.
- (22) Refrigeration system details/manuals.
- (23) Lubrication charts.
- (24) Spare parts manuals.
- (25) Certificates.
- (26) Specification of all types of greases, oils, lubricants etc., required to be used in the equipment indicating International/Indian source of supply of these items.
- (27) Manufacturing drawing and material specification of all Tooling items.
- (28) Instructions on care & storage of equipment prior to taking over by vendor for erection.

p. **TRAINING OF PERSONNEL**

- It will be necessary to impart training to six persons belonging to the Purchaser's organization in the disciplines of :-
 - i. Programming and operation.
 - ii. Electrical and electronic maintenance.
 - iii. Fluidics and Mechanical maintenance.
- The duration of such training shall be, as agreed to by purchaser, at the machine manufacturer's works followed by at the control system manufacturer's works for four weeks each.
- The vendor shall arrange this training at no additional charge. However, the Purchaser shall bear the boarding, lodging and travelling expenses of the persons sent for training.
- In addition, during erection and commissioning of the P&M at Purchaser's works, P&M supplier shall impart training to Purchaser's personnel in operation and maintenance of the equipment, on site.

4.7 Development of indigenous substitute of POL used:

A stipulation shall be made in the contract that P&M supplier inform the purchaser about full details and specification of all POL items and suggest likely Indian substitutes or special features of the POL used.

4.8 Procurement of Furnace:

To achieve the objective of obtaining the best results and erection of furnaces in the minimum time, furnace will be procured on the following basis:

- (a) The supply of furnace, irrespective of capacity or category of the furnace, shall be on turn-key basis. The idea is to have supply and erection done through the single agency only to avoid dual responsibility. The furnace supplier shall undertake the work relating to erection and commissioning including any civil works on foundation etc..
- (b) Factory shall confirm that facilities like space needed to erect and utility like oil, air, water, power etc. required at the time of erection had already been arranged at site and will be available before the receipt of the material at site. This will ensure that erection is taken up immediately and the firms get their full payment after handing over and do not ask for a cut-off date for final payment.

(Ref: OFB letter No. 125/E/M/P-24 dated 06.11.1982)

CHAPTER – 5

DEALING WITH SUPPLIERS

5.1 Eligible and Qualified Supplier

5.1.1 Contract shall be placed on a supplier who is eligible to receive the contract, and is also capable, i.e. qualified in all respects to 'deliver the plant/machine'. The supplier is required to fulfill and follow all applicable rules, regulations and conditions to transact business with the Government. The supplier shall be technically competent and financially sound to deliver the required P&M. Hence, the supplier shall fulfill the following two basic criteria to receive a government contract :

- i. Eligibility Criteria
- ii. Qualification Criteria

5.1.2 The supplier with whom government transactions have been banned or suspended due to any reason including corrupt and fraudulent practices adopted by them will not be eligible to receive government contract.

5.1.3 A consultant, engaged to prepare a project report, is not eligible to quote against the tender enquiry subsequently floated for purchase of P&M for that project.

5.2 Categories for Suppliers

The different categories of suppliers are:

- (a) Manufacturers, who supply indigenous items.
- (b) Agents/ Distributors of such manufacturers, who desire to market their production only through their agents.
- (c) Foreign manufacturer with / without their accredited agents in India.
- (d) Stockiest of imported spares or other specified items.
- (e) Supplier of imported goods having regular arrangement with foreign manufacturers.
- (f) Consortium of foreign and Indian firms, especially for turn-key contracts.

5.3 Eligibility Criteria

- 5.3.1 A supplier, situated in India or abroad, who is in the business of manufacturing, stocking or marketing of the specified P&M, shall be eligible for participating in the tender enquiries.
- 5.3.2 Supplier, against whom punitive action has been taken, shall not be eligible for quoting for a period of two years or as prescribed.
- 5.3.3 Supplier, whose stake holders have any interest in deregistered / banned supplier shall also be ineligible for quoting.

5.4 Qualification of Suppliers

5.4.1 Qualification criteria: The qualification criteria are generally part of the tender documents along with detailed technical and commercial specifications for evaluating responsiveness of tenders. They comprise of both technical and financial parameters. Some documents asked from suppliers to examine the qualification criteria are given below:

- i. Past performance during a certain period (number of years) that will indicate manufacturing/supplying capability
- ii. Certificate from statutory auditor regarding turnover during last three years or value of projects executed during last 5 years to assess financial capability.
- iii. Copies of documents like audited 'Balance sheets' and 'Profit & Loss Accounts reports' for last three years to show sound financial condition of the company.

5.4.2 Pre-qualification: For cases involving high cost and of complex integrated special nature of Chemical/Metallurgical Process plant which are not frequently procured by Ordnance Factories, the pre-qualification evaluation through Request for Information (RFI) or EOI on Open/Global level is recommended. The pre-qualification of vendors means initial screening and short-listing of suppliers before issue of formal tender documents, through certain technical and financial criteria. This enables identification of financially sound suppliers with proven performance of supplying specific plant & machinery with latest technology and proven design. This also enables the purchaser to issue TE containing sensitive documents to only selected firms. A Committee of Officers consisting of Finance Member shall finalise the pre-qualification criteria with detailed justification. The relevant level of TPC will decide the final short listing of the vendors for issue of Tender Enquiry consequent upon pre-qualification Global/Open Tender Enquiry.

5.5 Identification & Enrolment of Suppliers:

- (i) Vendors are generally identified through available data of likely/past suppliers, information in internet, advertisements and publishing of EOI.
- (ii) Vendors are enrolled in the e-procurement portal. Vendors need to have valid Class III digital signature certificate (DSC) from a licensed certifying agency in India. In addition to providing company information like name, address, email address, CEO/Proprietor, turnover for last 3 years, etc, vendors are required to submit following documents for enrolment.
 - a. Balance Sheet (Last 3 years)
 - b. PAN Card
 - c. List of Machines & Vintages
 - d. Manufacturing Facilities & Locations

5.6 **Debarring and Blacklisting of Firms**

- a. A factory may debar a firm from participating in its tenders for a period of two years. However, this debarring will be valid for the particular factory only. For this purpose, a show cause notice is given to the firm indicating actions proposed and the grounds thereof and on receipt of the reply, appropriate order is passed.
- b. For blacklisting the firm from doing any business with other sister factories, the General Manager of the concerned factory will approach E/M Division of OFB with complete justification. OFB, in turn, shall take suitable decision on black listing/debarring of the firm from doing business pan-organisation. A firm is liable to be blacklisted for following reasons :
 - i makes any false declaration to Government/purchaser.
 - ii supplies goods of inferior quality or uninspected goods.
 - iii renders services (including after sales services and maintenance services) of inferior quality than the contracted ones.
 - iv fails to execute a contract or fails to execute it satisfactorily.
 - v is declared bankrupt or insolvent.
 - vi adopts unethical business practices, not acceptable to the government, e.g. engages in cartel formation or quoting pool rates leading to “Appreciable Adverse Effect on Competition” (AAEC) as identified under the Competition Act, 2002 or deliberately attempts to pass inferior goods or short quantities or attempts to influence authorities who are engaged in decision making.
 - vii any other ground which, in the opinion of the purchaser, is not in public interest.

5.7 **Banning & Suspension of Business Dealings with the Contractors**

- a. Business dealings with a firm may be ordered to be suspended or banned, in public interest by the Head of Unit, based on the information available with them or under direction from OFB/MoD.
- b. Grounds for Suspension of Business Dealings with Firms

Suspension of business dealings may be ordered where pending full enquiry into the allegation, it is considered not desirable that business with the firm should continue. Such an order may be passed: -

 - i. If the firm is suspected to have doubtful loyalty to India.
 - ii. If the Central Bureau of Investigation or any other investigating agency recommends such a course in respect of a case under investigation and
 - iii. If a prima- facie case is made out that the firm is guilty of an offence involving moral turpitude in relation to business dealings which, if established, would result in business dealings with it being banned.

5.8 Grounds for Banning of Business Dealings

The grounds on which banning may be ordered are: -

- i. If security considerations including question of loyalty to the State so warrant.
- ii. If the proprietor of the firm, its employee, partner or representative is convicted by a court of law following prosecution for offences involving moral turpitude in relation to the business dealings.
- iii. If there is strong justification for believing that the proprietor or employee or representative of the firm has been guilty of malpractice such as bribery, corruption, fraud, substitution of tenders, interpolation, mis-representation, evasion or habitual default in payment of any tax levied by law; etc.
- iv. If the firm continuously refuses to return government dues without showing adequate cause and the Government is satisfied that this is not due to reasonable dispute which would attract proceeding in arbitration or court of law, and
- v. If the firm employs a government servant, who has been dismissed or removed on account of corruption or employs a non-official convicted for an offence involving corruption or abetment of such an offence, in a position where he could corrupt government servants.

5.9 Engagement of Indian collaborator by foreign suppliers:

(a) For machines of imported nature, Indian bidders are permitted to offer against Indian Rupee payment only. If foreign plant supplier insists that purchases can be made through their Indian counterpart/collaborator (not agent), purchase can be made against Indian Rupee payment, but the tenderer shall arrange the import clearance and the Indian collaborator shall arrange inspection/training in India and provide after sales service.

(b) For machines of imported nature, where Indian subsidiary/India office is submitting the bid on behalf of OEM and where the PDI is possible only in OEM premises, bids shall be in foreign currency, the order shall be placed on Foreign OEM directly and payment shall be to OEM directly. The firm will provide specific confirmation that quoted price does not include payment of Agency Commission to any third party.

Against such offer, if statutory requirement demands clearance from concerned Government, the Tenderer shall confirm in their offer that they shall arrange export licence in that respect.

(c) For machines of imported nature involving payment in foreign exchange shall be quoted by foreign manufacturer directly, without associating their Indian agents, on FOB price basis. The firm will provide specific confirmation that quoted price does not include payment of Agency Commission to any third party.

Against such offer, if statutory requirement demands clearance from concerned Government, the Tenderer shall confirm in their offer that they shall arrange export licence in that respect.

(d) In case, OEM of foreign origin quotes against tender with Indian Collaborator/Partner, OEM shall be the prime bidder, being the technology provider. The sole responsibility of execution of contract and after sales service/technical support of its P&M shall be with OEM. OEM shall furnish the copy of the collaboration agreement or MOU between the OEM and its Indian Partner/Collaborator. The MOU must have provisions defining the following:

- (i) Technical design & process guarantee responsibility of OEM and Indian partner.
- (ii) Distribution of work / responsibility between OEM and Indian partner for the scope of supplies specified in the TE.
- (iii) Responsibility of after sales service/technical support

Supply & service from Indian partner shall be quoted in INR and payment shall be made after confirmation from the prime bidder.

It shall be incorporated in the Contract that the supplier shall confirm that prices quoted by them does not include payment of any Agency commission to any third party whatsoever.

5.10 Penal provisions

Penal provisions shall be included in all contracts with foreign suppliers to safeguard against presence of intermediaries. The following clauses are to be included in the Tender Enquiry:

- i. Penalty for use of undue influences
- ii. Agents/Agency Commission
- iii. Access to book of Accounts
- iv. Conduction of Arbitration Proceedings in India under the Arbitration and Conciliation Act 1996

5.11 Clause on Penalty for use of undue influence:

The seller undertakes that he has not given, offered or promised to give, directly or indirectly any gift, consideration, reward, commission, fees, brokerage or inducement to any person in servicing of the Buyer or otherwise in procuring the Contract or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the Contract or any other Contract with the Government 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 offence by the seller or anyone employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act, 1947 or any other Act enacted for the prevention of corruptions 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 has been committed shall be final and binding on the seller. Giving or offering of any gift, bribe or inducement or any attempt to 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 the decision of the Buyer, directly or indirectly or any attempt to influence in any officer/employee of the Buyer for showing any favour in relation to this or any other contract, shall render the seller to such liability/penalty as the buyer may deem proper, including but not limited to termination of the contract, imposition of penal damages, forfeiture of the Bank Guarantee and refund of the amounts paid by the Buyer.

5.12 Clause on Agents/Agency commission:

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 amount, gift, reward, fees, commission or consideration to such person, party, firm or institution, whether before or 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 along with interest at the rate of 2% per annum above the LIBOR rate. The buyer will also have the right to recover any such amount from any contracts concluded earlier with the Govt. of India.

5.13 Clause on Access to the books of accounts:

In case it is found to the satisfaction of the Buyer that the Seller has engaged an Agent or paid commission or influenced any person to obtain the contract as described in clauses relating to Agents/agency commission and penalty for use of undue influence, the seller, on a specific request of the buyer shall provide necessary information/inspection of the relevant financial document/information.

5.14 The CVC on the subject of consideration of Indian agents has recently decided that in all cases of procurement, the following guidelines may be followed:

- (a) In a tender, either the Indian agent on behalf of the Principal/OEM or Principal/OEM itself can bid, but both cannot bid simultaneously for the same item/product in the same tender.
- (b) If an agent submits bid on behalf of the Principal/OEM, the same agent shall not submit a bid on behalf of another Principal/OEM in the same tender for the same item/product.

5.15 Procurement of item from other than the OEM

OFB has been encountering difficulties in the procurement of raw materials/components/sub-assemblies required for the manufacture of tanks/BMPs and related systems in India as per TOT from erstwhile USSR. These difficulties relate to OEM not being known, non participation of OEM in the tender enquiry, the lack of knowledge on obsolescence of equipment of OEM and ambiguity in the term procurement to be made from established sources other than OEMs. The Ministry's clarification on the subject is that any source other than OEM be treated as established source if the Ambassador of that country in India certifies that the source has an arrangement with the OEM to supply/trade the items and that this arrangement is recognized by the government.

5.16 Providing a level playing field between Indian industry vis-à-vis foreign supplier

In order to provide a level playing field in the area of defence procurement between Indian companies, which are liable to pay duties and local taxes and foreign companies, who do not have such a liability, Competent Authority has approved to neutralize the impact of taxes and duties payable by Indian industries at the time of preparation of ranking statement as under :-

- 1) In case of foreign supply, the basic cost (CIF) quoted by him shall be the basis for the purpose of comparison of various bidders.
- 2) In case of indigenous suppliers, excise duty on fully formed equipment be offloaded.
- 3) Ignore sales tax and other local levies, i.e, Octroi, entry tax etc. in respect of indigenous suppliers including defence PSUs/OFs.

In addition, it has also been decided that the payment condition shall be similar for domestic private suppliers, defence PSUs/OFs and the foreign suppliers.

5.17 Training:

The Tender/contract shall explicitly provide for training of the operators, engineers and other technical persons for acquainting themselves and gaining proficiency in the use of the equipment. It helps in absorption of technology and spreading the knowledge gained during training to operatives at different levels.

5.18 Guarantee and Warranty of Supplies:

(a) Guarantee:

The supplier shall guarantee:

- (i) Satisfaction of technical and other parameters mentioned in the specification, and contract.

- (ii) Quality and strength of materials used in the manufacture of the equipment considering the applicable codes of practice and regulation.
 - (iii) Adequate factors of safety for all parts of the equipment to withstand the mechanical and/or electrical stresses developed therein under specified operating conditions.
 - (iv) Performing data furnished/specified for the equipment shall be actually obtainable when the equipment is installed and tested at site.
- (b) **Warranty:**
- (i) The supplier shall warranty that the equipment will be in accordance with the specification/contract suitable in design and workmanship for conditions envisaged in the specifications.
 - (ii) The supplier shall give warranty that the machine/plant/equipment will be free from defects in design, material and workmanship.
 - (iii) Supplier's obligations under the warranty shall involve repair, rectification and making good at site any defect, imperfection or fault attributable to defective design, material or workmanship.
 - (iv) If the Plant/machine is found to have a defect that can be assumed to be present also in some other portion of the Plant/machine, the Supplier shall investigate whether such further defect is present, and shall make good any further defects found.
 - (v) Inspection by purchaser's representatives at various stages would not relieve the supplier of his obligations under the warranty.
 - (vi) Warranty period will be for twelve months after commissioning and final acceptance of the machine. But this will not be beyond 18 (eighteen) months from the date of delivery for indigenous equipment or 21 months from date of delivery for imported equipments, in case of delay in final acceptance for causes not attributable to the vendor. This is also called Defect Liability period or Defect Correction period.
 - (vii) The supplier shall be asked to furnish PBG / Warranty Bond (Bank Guarantee) for 5% of contract price valid for two months after warranty period, as security for its warranty obligations, before release of final 10% payment. The format for Warranty Bond is given in the Appendices.
 - (viii) The suppliers generally do not accept liability of the defects caused by circumstances for which they are not responsible, such as improper or insufficient maintenance, incorrect operation, improper operating conditions not in accordance with the Contract, repairs carried out improperly by the purchaser, or normal wear and tear. Hence, factories shall be careful in this regard.

(c) General conditions of Warranty:

Unless special Warranty/Guarantee clause has been stipulated in the invitation to tender or any of its Annexure, the following Warranty shall form part of the TE and contract placed on the successful tenderer:

- The contractor/seller hereby warrants that the plant/equipment sold/supplied to the purchaser under this contract shall be of the best quality and workmanship and new in all respects and shall be strictly in accordance with the specifications and particulars mentioned in the said contract.
- The contractor/seller further warrants that the plant/equipment would continue to conform to the specified description and quality and would be free from any non-conformity with the requirements of the contract (hereafter referred to as a 'defect') due to faulty design, materials or workmanship, for a period called 'warranty period' or 'defects liability period' as defined below:
 - 12 (twelve) months from the date of commissioning and final acceptance of the plant/equipment at the purchaser's site, in case of turn-key supply contracts, or
 - 12 (twelve) months from commissioning and final acceptance of the plant/equipment at the purchaser's site or 18 (eighteen) months from the date of delivery for indigenous equipment or 21 months from date of delivery for imported equipments, whichever is earlier, in case of other contracts.
- If the commissioning/acceptance of the plant/equipment is delayed due to fault of contractor/seller, the warranty period will automatically get correspondingly extended further for the delayed period.
- Notwithstanding the fact that the purchaser (or his representative) may have inspected and/or approved the plant/equipment, if any defect is discovered in the plant/equipment during the aforesaid warranty period and the decision of the purchaser in that behalf shall be final and binding on the contractor/seller, the purchaser shall be entitled to call upon the contractor/seller to rectify such defect.
- The purchaser shall notify the defects to the contractor/seller in writing without undue delay after the defects are noticed, and in any event not later than thirty (30) days after the expiry of the warranty period.
- Upon receipt of notice from the purchaser about any defect that occurs during the warranty period, the contractor/seller shall respond immediately and make good the defect within a reasonable period, or such specific period as may be allowed by the purchaser at the request of the contractor/seller, without any charges and costs to the purchaser.

- If the plant/equipment is found to have a defect that can be assumed to be present also in some other portion of the plant/equipment, the seller/contractor shall investigate whether such further defect is present, and shall make good any further defects found.
- If a defect appears, requiring immediate action due to the risk of resultant damage, and if the contractor/seller cannot make immediately good the defect, the purchaser is entitled to apply all necessary measures to prevent or limit damage.
- This warranty is not applicable if the defect is attributable to normal wear and tear or incorrect operation or negligence or willful damage on the part of the purchaser.
- Parts replaced or repaired under the above provisions shall be subject to the same warranty from the contractor/seller, and under the same conditions as apply for the rest of the plant/equipment, for a period of one (1) year after such replacement or repair has been effected. The warranty period for the rest of the plant/equipment shall be extended only by the time during which it was out of operation as a result of defects covered by the above provisions. Nothing contained in this clause shall however extend the warranty period by a period beyond two (2) years after the commissioning and acceptance of the plant/equipment.
- Defective parts which have been replaced shall be made available to the seller/contractor without cost. However, the seller/contractor shall be responsible for lifting the defective parts and transporting the same at his cost from purchaser's place within mutually agreed time period.
- In case of failure on the part of the contractor to fulfil any warranty obligations, the contractor/seller shall pay to the purchaser such compensation, as may arise from the breach of the warranty herein contained."

5.19 Integrity Pact (IP):

- (a) 'Pre Contract Integrity Pact' would be signed between the Factory and the bidders for all procurement of P&M over Rs 100 Crores. The Integrity Pact would be a binding agreement between Factory and bidders for specific contracts in which the government promises that it will not accept bribes during the procurement process and bidders promise that they will not offer bribes.
- (b) The bidder shall be asked to submit the EMD in the form of Integrity Pact Bank Guarantee (IPBG) in such cases. At present, the amount of IPBG is Rs 1 crore, in cases where the cost as estimated by the Buyer is above Rs 100 crores and up to Rs 300 crores and Rs 3 crores, if above Rs 300 crores.
- (c) The Earnest Money/Security Deposit shall be valid up to a period of five years or the complete conclusion of contractual obligations to complete satisfaction of both the bidder and the buyer, whichever is later. In case there are more than one bidder, the Earnest Money/Security Deposit shall be refunded by the buyer to those bidder(s) ***whose bid does not qualify (do not qualify) after the stages of TEC/ TPC, as constituted by the Buyer, immediately after a recommendation is made by the TEC/ TPC on bid(s)*** after an evaluation.
- (d) The IP and IPBG format are given in appendices.

CHAPTER – 6

TENDERING PROCEDURES & e-PROCUREMENT

The purchase of P&M shall follow a procurement programme of the purchaser to ensure that the equipment fulfils the objective with which it was purchased. GFR stipulates that all purchases shall be made in accordance with the existing norms and guidelines of the Government. The procurement guidelines in the GFR and the legal provisions make it incumbent upon the purchaser to ensure a transparent and fair compliance with the laid down procedures. Hence, the purchaser shall necessarily follow the guidelines while safe guarding the interests of the state.

The fundamental principles of public buying are contained in Rule 137 of GFR 2005. It is stipulated therein that 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 followed in making public procurement must conform to the following:

- (a) The specifications in terms of quality, type etc., as also quantity of goods to be procured, shall be clearly spelt out keeping in view the specific needs of the procuring organisations. The specifications so worked out shall meet the basic needs of the organisation without including superfluous and non-essential features, which may result in unwarranted expenditure. Care shall also be taken to avoid purchasing quantities in excess of requirement to avoid inventory carrying costs;
- (b) Offers shall be invited following a fair, transparent and reasonable procedure;
- (c) The procuring authority shall be satisfied that the selected offer adequately meets the requirement in all respects;
- (d) The procuring authority shall satisfy itself that the price of the selected offer is reasonable and consistent with the quality required;
- (e) At each stage of procurement, the concerned procuring authority must place on record, in precise terms, the considerations which weighed with it while taking the procurement decision.

6.1 Types of Contracts: Contracts are classified into following three types depending on the item being purchased and accordingly attract different types of taxation.

Type	Items purchased	Tax
Goods contract	Materials, machines, tools, spares, etc.	VAT, CST.
Services contract	Training, supervision of erection and commissioning, inspection, project consultancy, etc.	Service Tax
Works contract	Civil works, electrical works, instrumentation, pipings, etc.	Works contract tax.

For above three types of contracts, Ministry of Finance has published separate manuals (all on 31-08-2006) which can be used as reference documents in all Ministries and Departments.

Procurements of plant & machinery in OFs fall under the category of goods contracts. They also generally involve services like training and supervision of erection & commissioning. Big turn-key projects like procurement of chemical plants also involve civil and erection works.

6.2 Combination of items: Procurement shall be done in such a way as to attract fair and healthy competition. Tender enquiry shall be done for only machines of the same or related specialty. For example, 'Transformers' and 'CNC lathe machines' are two different categories of machines having different sets of suppliers; combining these two machines in one TE shall be avoided as suppliers will either not quote at all or forge alliances to participate in the TE, thus distorting the competition. Thus, separate contracts are concluded for different machines/plants. For projects requiring civil works of considerable magnitude along with supply and installation of equipment, separate contracts are normally awarded for civil works and P&M. When a large, complex contract is to be undertaken for which synchronization of civil works and procurement of P&M is likely to be difficult, a turnkey (design, supply, install) contract shall be considered.

6.3 Bidding Procedures: Following types of bidding procedures can be adopted depending on the complexity of the item to be purchased. The particular procedure to be followed in a case shall be decided in advance and mentioned in the NIT.

(i) **Single-Stage, Two-Part Bidding Procedure (Two Bid system):** This is the normal procedure and is applied for most of the Plant & Machineries. Complete technical specifications are prepared in advance. Bidders are asked to submit two sealed bids simultaneously, i.e. in two parts as under:-

- (a) **Technical bid (or Techno-commercial bid)** consisting of all technical details, unpriced copy of price bid along with commercial terms and conditions.
- (b) **Price bid** indicating item-wise price for the items mentioned in the technical bid.

Initially, only the technical bid is opened on the date and at the time specified in the bidding documents. The price bid remains sealed and is held in custody by the factory. The objective is to evaluate the technical bids without referring to price. Bids that do not meet qualification criteria or do not conform to the specified requirements may be rejected as non-responsive / deficient bids. Only the price bids of the technically responsive bidders are opened in public on the date and at the time intimated to them in advance. The price bids of the technically responsive bidders are evaluated. Following approval by the Competent Financial Authority or TPC, the contract is awarded to the bidder who submitted the lowest evaluated substantially responsive bid.

(ii) **Two-Stage Bidding Procedure:** This procedure allows for finalization of specifications and/or screening of potential suppliers in the first stage and issue of formal tender documents in the second stage. The basic objective is to avoid awarding a contract to unqualified bidders based

on superficial evaluation and to limit the number of bidders to a manageable size. This is performed in two ways as given below.

(a) **EOI before TE (EOI+TE):** Where technical specifications need to be iterated more than once i.e. the specification of the desired plant or machinery is not clear, this type of two stage tendering process should be resorted to. In the first stage, a notice shall be issued calling for Expression of Interest (EOI) / Request for Information (RFI) from leading experienced and knowledgeable manufacturers/ suppliers in the relevant field through open advertisement. The broad objectives, constraints, pre-qualification criteria for short-listing of vendors, application format, etc shall be published while calling for EOI. The firms shall be asked to send applications in stipulated format on or before a stipulated date & time, along with their detailed technical proposals that will be considered by the purchaser in finalizing tender specifications. On receipt of the applications, technical discussions/presentations may be held with the short-listed manufacturers/suppliers, who are prima facie considered technically and financially capable. At this stage, expert bodies like DRDO Units/Universities/Institutes and other stake holders may also be involved who can add value to the decision making on the various technical aspects and evaluation criteria. Based on the discussions and presentations, for which proper records should be kept, broad based specifications shall be finalised to provide equitable opportunity to the prospective bidders. In the second stage, techno-commercial bids are called from the short-listed firms as per the usual two bid tendering system. If EOI does not contain PQ criteria, then after finalisation of specifications, TE is to be published in the internet as per usual procedure. (Ref: CVC circular No 01/02/11 Dt 11/02/2011 on Transparency in Tendering System.)

(b) **PQ before TE (PQ+TE):** This is applied to the cases where technical specifications have been finalized, but involves documents of classified / secret / sensitive nature like plant/factory layouts and proprietary/licensed technology and design details. Pre-qualification (PQ) of the bidders is done in the first stage of the tender. The NIT shall include the particulars of the tender along with the complete pre-qualification requirements and would follow all the procedures of publicity that are normally followed for open tenders including publicity on the web site. In the second stage, the complete tender documents are issued to the pre-qualified vendors for submitting their techno-commercial and price bids. The pre-qualification criteria shall have both technical and financial criteria commensurate with the requirements of the particular procurement. They shall be made neither very stringent nor very lax to restrict/facilitate the entry of bidders. It is also necessary to make well defined PQ criteria, for example if not clearly stating the cut off dates regarding work experience, which may result in stalling the process of finalising the contract. Meaning of “similar plant/equipment/work” should be clearly defined. [Ref: CVC circulars (OM) No. 12-02-1-CTE-6 Dtd 17/12/2002 and 07/05/2004 and CVC circular No. 005/VGL/7 Dtd 28 Feb 2005.]

(iii) **Two-Stage, Two-Part Bidding Procedure:** As per this procedure, the bidders are requested to submit offer in two sealed bids simultaneously, one containing the technical

proposal and the other the price proposal. Initially, only the technical proposals are opened on the date and at the time specified in the bidding documents. The price proposals remain sealed and are held in custody by the Purchaser. The technical proposals are evaluated. If amendments or changes are required in specification/scope, they are discussed with the bidders. All the bidders are then advised in writing of the changes required. The objective is to ensure that all technical proposals conform to the same acceptable technical standard and meet the desired technical requirements. Bids of bidders who are unable or not prepared to amend their technical bids to conform to the final technical standard required by the Purchaser shall be rejected, with approval of appropriate TPC, as deficient bids. In the second stage, the bidders are invited to submit revised technical proposals and supplementary price proposals. The supplementary price proposal must only contain changes in price resulting from changes in the technical proposals. Supplementary price proposal that contain changes other than those discussed during technical evaluation may result in rejection of the bids. The original and supplementary price proposals, and the revised technical proposals are opened in public on the date and time intimated to the bidders. They are evaluated. Following the approval of CFA / appropriate TPC, the contract is awarded to the bidder who submitted the lowest evaluated substantially responsive bid. This bidding procedure is suitable for procurements for large/complex plants and machines where alternative technical proposals are possible. This is an alternative to EOI+TE procedure and is useful when the likely suppliers do not reveal full technical details of available equipments during BQ or EOI stage.

6.4 Modes of Tender:

The following are standard methods of obtaining tenders.

- (i) Single Tender Enquiry (STE)
- (ii) Limited Tender Enquiry (LTE)
- (iii) Advertised Tender Enquiry (ATE)

6.5 Single Tender Enquiry:

- a. Normally, Single Tender Enquiry shall not be resorted to for procurement of Plant & Machinery. However, in terms of Rule 154 of GFR-2005, procurement from a single source may be resorted to in the following circumstances:-
 - (i) It is in the knowledge of the factory that only a particular firm is the manufacturer of the required goods i.e. there is only single known source (SKS).
 - (ii) In a case of emergency, the required goods are necessarily to be purchased from a particular source. The reason for such decision shall be recorded. Approval of competent authority shall be obtained.
 - (iii) For standardization of machinery or spare parts to the existing sets of equipment, the required item is to be purchased only from a selected firm i.e. on the basis of proprietary article certificate (PAC).
- b. Single known source (SKS) certificate or Proprietary Article Certificate (PAC) in the prescribed format shall be provided by GM/Sr GM before procuring the P&M on STE.

Approval of Operating Division Member/OFB shall be taken if the value of purchase exceeds the financial powers of GM/Sr GM. Prescribed format for PAC or SKS Certificate is given in the Appendices.

6.6 **Limited Tender Enquiry:**

- a. This method may be adopted when the estimated value of the P&M to be procured is up to Rs 25 lakhs. The number of suppliers in LTE shall be more than three. In case of LTE, it shall be certified that the demand is urgent and any additional expenditure involved by not procuring through advertised tender enquiry is justified in view of urgency. It shall also be put on record the nature of the urgency and reason why the procurement could not be anticipated. It shall also be recorded in writing that it will not be in public interest to procure the P&M through advertised tender enquiry. Further, the sources of supply are definitely known and possibility of fresh source(s) beyond those being tapped is remote.
- b. The limited tender enquiries are sent to all likely sources. They will include:
 - i. Registered Suppliers
 - ii. Past Suppliers
 - iii. Likely suppliers as informed by the User.
 - iv. Firms who are known to have the capacity to supply.
- c. Once Limited Tender Enquiry is issued, it is implied that rejection of any offer on the ground of unknown/un-satisfactory performance/on the plea of unsatisfactory capacity verification of the firm is not in order. It is expected that, the firm, based on whose BQ and specification, factory has firmed up the specification and estimated cost is included in the list of short listed vendors for issue of LTE.

6.7 **Advertised Tender Enquiry (ATE):**

6.7.1 Subject to exceptions for which STE and LTE may be issued, invitation to tenders by advertisement (in the form of a Tender Notice or NIT) shall be used for procurement of P&M of estimated value of minimum Rupees Twenty Five Lakhs.

6.7.2 There are two forms of ATE:

- (i) **Open Tender Enquiry:** When publicity is given for bidding by only Indian firms it is called Open Tender Enquiry (OTE) or National Competitive Bidding (NCB). This shall be resorted to for procurement of indigenous items. The NIT is called Open Tender Notice.
- (ii) **Global Tender Enquiry:** Publicising the requirement globally is known as Global Tender Enquiry (GTE) or International Competitive Bidding (ICB). The NIT is called Global Tender Notice. This method shall be resorted to in cases where it is felt that the plants/machines of the required quality, specifications etc. may not be available in the country and/or it is also necessary to look for suitable competitive offers from abroad. This method of procurement involves payment to foreign suppliers in foreign currency.

For imported items, MOD directives regarding non-association of Indian Agent, Agency commission, Inspection of Book of Accounts shall form the integral part of the Tender Enquiry and specific confirmation from various firms shall be taken before evaluation of the offer.

6.7.3 Advertisement relating to ATE should be given in the Indian Trade Journal (ITJ) published by the Director General of Intelligence and Statistics, Kolkata and at least in three national newspapers having wide circulation. All the tender notices shall be published on OFB's website, government web site for tenders (**tenders.gov.in**) and factory's own web site.

6.7.4 NIT shall be issued to all known OEMs or potential suppliers by post and also by fax/ e-mail. Copy of transmission / postal receipt shall be retained in the relevant file.

6.7.5 Copy of the Global Tender Notice shall be sent to Indian Embassies in the prospective suppliers' countries and to the Commercial Attache of those countries in their Embassies in India, requesting them to give wide publicity of the requirement in respective countries.

6.7.6 CVC has issued a directive vide its Order No.98/ORD/1 dated 18-12-2003 making it mandatory to use web-site in all cases where open tender system is resorted to. Hence, the full tender document shall be published in the internet website for all OTE and GTE cases, excepting those involving documents of classified / secret / sensitive nature like plant/factory layouts and proprietary /licensed technology and design details, for which PQ+TE procedure is to be followed.

6.8 Tender Fee

(a) Factories may charge non-refundable tender fees as given in table below, in the form of demand draft or banker's cheque. Only SSI units registered with NSIC shall be exempted from payment of tender fee.

Sl	Estimated value of the Tender	Tender Fees (Rs)
1	Upto Rs 50 lakhs	200
2	More than Rs 50 lakhs but upto Rs 1 crore	500
3	More than Rs 1 crore but upto Rs 5 crores	1,000
4	More than Rs 5 crores but upto Rs 50 crores	2,000
5	More than Rs 50 crores	5,000

Note: Cost of drawings and specifications shall be extra.

(b) Price of the tender document shall take care of the preparation and delivering cost only. If it is too high, it will discourage the prospective bidders to purchase the document and participate in the bidding process. Accordingly, changes to above amounts if required, shall be decided by factories in consultation with integrated finance at the time of issuing the TE.

6.9 Text of Tender Notice:

6.9.1 The tender notice for an ATE shall be carefully drafted. It shall contain all the salient features of the requirement in brief to give a clear idea to the prospective tenderers about the requirements. Superfluous or irrelevant details should not be incorporated in the tender notice, as it will increase the cost of the advertisement.

6.9.2 The Tender Notice should contain:

- (a) Description and specification of the P&M with the location where it is required
- (b) Period and terms of delivery
- (c) Deadline for receipt of tenders
- (d) Place, time & date for opening of tenders
- (e) Amount & Form of Bid Security / Earnest Money Deposit
- (f) Any other important information

6.9.3 The following additional guidelines shall be followed:

- (i) Request for release of advertisement shall be sent well in advance so that adequate time is available for release through press.
- (ii) Newspaper cuttings (to the extent possible) in each case shall be collected and kept in file as a proof of publicity and also shown to TEC. For e procurement, all amendments/ corrigendum/ extension of TOD shall be intimated through website only.
- (iii) Full details of the dates on which advertisement have actually appeared in the Newspapers shall be indicated, while sending cases to higher authorities.
- (iv) Wherever applicable, for publication of tender notices in national newspapers, widely circulated publications in English and Hindi shall be chosen, preferably also having a local edition.

6.10 Single Tender Enquiries shall be sent to the supplier under Registered Post/Speed Post. Tender Enquiries after pre-qualification shall also be sent to selected vendors through registered post/speed post.

6.11 While initiating re-tendering action, it has to be ensured that all the firms who participated in the original tender are also included and issued fresh Tender Enquires through registered post/speed post.

6.12 **Preparation and Issue of Tender Enquiries:**

Procurement of Plant & Machinery is done through invitation of bids. As per GFR, the bidders shall furnish their quotation as per the prescribed format and as per the instructions incorporated in the tender document. The process of tendering through sealed cover can be followed by any of the above stated methods.

- (a) The Tender Enquiry (TE) is the most important document in the procurement process and shall be prepared with due care. This shall include the following:

- i. Clear instructions to the bidders.
 - ii. Full and clear specifications and scope of requirement.
 - iii. Standard and Special terms and conditions.
 - iv. Evaluation criteria, for both technical bids and price bids, including purchaser's option to load the offered prices suitably to accommodate minor deviations in commercial clauses (special conditions of contract).
 - v. Format for submission of Bids including documents/securities like EMD, PBG, Advance Bank Guarantee, Warranty Bond, Pre-Contract Integrity Pact and IPBG.
- (b) The tenderer shall sign all the documents accompanying tender document. The tender enquiries may be issued under the facsimile signature of the officer signing for and on behalf of the President of India. The office copy will be signed in ink.
 - (c) **Validity of offers:** The tender documents shall include minimum validity of six (6) months for General Purpose/SPM/Stand alone Machines and minimum twelve (12) months for all Chemical and Metallurgical process plants and Integrated system with multiple Plant & Machines to avoid repeated reference to bidders for validity extensions.

6.13 Standard and Special Conditions of Contract to be stipulated in TE

- (a) A contract is a legal document. It must be governed by terms and conditions to protect the interest of both the parties to the contract. So, every purchase officer is not only thoroughly familiar with each conditions of a contract, but that he is also able to take appropriate and timely action to safeguard the rights and honour of the Purchaser. It is also desirable that the conditions of a contract are practical, fair and just for both the Purchaser and the Supplier. The conditions of contract become binding for both parties on signing/acceptance of the mutually agreed contract.
- (b) Format for TE including the standard and special conditions of contract has been detailed in the Appendices for guidance.
- (c) The standard conditions of contract (also called 'general conditions of contract') are generally applicable to all contracts and have legal implication. Therefore, neither any deviation from the text of these clauses nor any deletion of these clauses is allowed. In case a deviation from these clauses has to be considered/allowed due to insistence of the Seller due to special circumstances of the case, then decision is to be taken by appropriate TEC / CFA after obtaining legal advice from Branch Secretariat of Law Ministry.
- (d) The special conditions are supplementary conditions applicable to the specific TE. The special conditions listed in the Format for TE comprise of several commercial clauses, which may or may not be relevant for the particular procurement case. Hence, a conscious decision is to be taken while framing tender specifications to incorporate the relevant clauses from this list.
- (e) In addition, there may be need to stipulate conditions like stage inspection, acceptance trials, installation, commissioning and pre-defined stages of payment for supplies/works/services.

Such conditions shall be decided while processing the sanction of demand and shall be mentioned in the TE.

(f) Deviations may be accepted to the commercial clauses having impact on the price, provided it is possible to apply suitable loading on the offered prices for equitable comparison of the tenders. Such loading criteria should be decided before opening of the price bids.

6.14 Pre-Bid Conference

In case of turn-key contract or contract of special nature for purchase of sophisticated and costly equipment, a suitable provision shall be kept in the tender enquiry document for a pre-bid conference for clarifying issues and clearing doubts, if any, about the specification and other allied technical details of the plant, equipment and machinery projected in the tender enquiry document. Representations, if any, received during the pre-bid conference shall be critically examined. The objective shall be to allow a level playing field as wide as possible. The date, time and place of pre-bid conference shall be indicated in the tender enquiry document for information of the interested bidders. This date shall be sufficiently ahead of tender opening date. Any amendment shall be duly notified to all bidders who purchased the bid documents or shown interest in case of e-procurement.

6.15 Format of Tender

- i. The tenderers shall be asked to furnish their quotations as per the prescribed format and also as per the instructions incorporated in the tender documents. Bids received by cable or facsimile or in the form of scanned copies shall be ignored and rejected.
- ii. Where the price has components like price of the machines, costs for installation & commission, operators' training etc., the bidders shall be asked to furnish the cost break-up, indicating the applicable prices and taxes for each such component along with the overall price. The payment schedule & terms will be linked to this cost break-up.
- iii. The bidders are required to furnish clause by clause compliance of tender specifications in a specified format, as shown below, along with their technical bids. Failure to submit this compliance statement would make their offers liable for rejection.

Para of Tender Enquiry & required specification.	Specification of machines offered	Compliance to TE specification, Yes or No.	Non-compliance, deviation from Tender specification to be indicated

6.16 Extension of Tender Opening Date

- i. Sometimes, situations may arise necessitating modification of the tender documents already issued (LTE case) or already put on sale (ATE case). Also, after receiving the documents, a bidder may point out some genuine mistakes necessitating amendment in the tender documents. In such situations, it is necessary to amend/modify the tender documents suitably prior to the date of submission of bids. Copies of such amendment / modification shall be simultaneously sent to all the selected suppliers by registered/speed post/courier/e-mail in case of LTE. In case of ATE, the copies of such amendment / modification shall be simultaneously despatched, free of cost, by registered/speed post/courier/e-mail, to all the parties who have already purchased the tender documents and copies of such amendments are also to be prominently attached in the unsold sets of the tender documents (which are available for sale), including the tender documents put in the website.
- ii. When the amendment/modification changes the requirement significantly and /or when there is not much time left for the tenderers to respond to such amendments, and prepare revised tender, the time and date of submission of tenders shall be extended suitably, along with suitable changes in the corresponding time-frames for receipt of tender, tender validity period etc and validity period of the corresponding EMD/bid security.
- iii. Depending on the situation, such an amendment may also need fresh publication adopting the same procedure as for publication of the original tender enquiry.
- iv. Requests for postponement of date of tender opening from the suppliers will be decided on their merits by Sr. GM /GM. Accordingly, all agencies including the firms which had already submitted the offer along with other prospective supplier shall be informed through website.

6.17 Amendments / Modifications to Tenders

The tenderer, after submitting its tender, is permitted to submit alterations/modifications to its tender so long as such alterations/modifications are received duly sealed and marked like original tender, upto the date & time of receipt of tender. Any amendment/modification received after the prescribed date & time of receipt of tenders shall not be considered.

6.18 Receipt, Custody and Opening of Bids:

- (i) Bids received by post/courier in the CR Office shall be dropped in the tender box. Bids which are received by hand at CR Office shall be signed and stamped with date/time of receipt before dropping in the Tender Box.
- (ii) Bids will be received before the date and time indicated on the bids.
- (iii) If an envelope containing tender documents does not have any particulars mentioned on it, the envelope may be opened but resealed in the presence of a Gazetted officer. The fact that it was opened and resealed shall be recorded and endorsed on the envelope.
- (iv) Bids shall not be allowed to move in open condition, even if it is a late offer. Any fax offer received, or bids received in torn envelopes will be passed on to the engineering office. The purchase officer shall arrange to put it in an envelope and seal it, mentioning

the fact of condition of envelope, date and time of receipt. Valid offers will be put in the tender box.

- (v) Each tender will be numbered and initialed with date and time on the first page. Bids shall be opened immediately after the deadline of receipt of bids with minimum time gap in between. Bids received after due date of tender opening will be marked 'Late' and the same need not be opened and the same shall be returned in due course.

6.19 Technical bid opening:

- a. On the due date and time of Tender opening, the bids received in time shall be opened in the presence of two Gazetted Officers nominated by Sr. GM/GM and authorized representatives of the participating bidders. The purchase officer shall not open the bids on his own. The authorized representatives, who intend to attend the tender opening, shall bring letters of authority from the corresponding bidders. A statement with signatures will be prepared for all the representatives present. Bids shall be opened immediately after the deadline of receipt of bids with minimum time gap in between. Bids received after due date of tender opening will be marked 'Late' and the same need not be opened and the same shall be returned in due course.
- b. The quantity, prices, delivery etc will also be circled and initialed with date. Any corrections, alterations, erasing and cutting etc observed on the tender will also be circled, initialed with date to indicate the fact that such entries were there at the time of receipt of bidders.
- c. The sealed covers containing **the price bids will not be opened**, but the sealed price bid envelopes shall be signed by both the opening Officers and handed over to the D.O./G.O. of Engineering Office for safe custody. After opening, every tender shall be numbered serially, initialled, and dated on the first page by all the officials authorized to open the bidders. Thereafter, both the opening Officers shall be counter sign all pages of technical bids (all copies).
- d. The tender opening officers shall mark **Blank bids**, if any. The tender opening officials shall mark the original, duplicate, triplicate copies in a tender set. Alterations in bids, if any, made by the bidders, shall be initialled with date & time by the officials opening the bids to make it clear that those alterations existed on the bids at the time of opening. Wherever any erasing or cutting is observed, the substituted words shall also be encircled and initialled with date & time to make clear that such erasing/cutting of the original entry was present on the tender at the time of opening.
- e. The tender opening officers shall read out the salient features of the bids like description and specification of the P&Ms, terms of delivery, delivery period, discount if any, whether EMD furnished or not and any other special feature of the tender for the information of the representatives attending the tender opening.
- f. If any of the bidders or his authorized representative present during the tender opening date and time request to know the contents of others technical bids, Tender opening Officer shall read out the technical bids in presence of the representatives of all bidders.

- g. A spot Comparative Statement of Bidders will be made out including the particulars read out during tender opening.

6.20 **Scrutiny of the technical bids:**

- a. E.O. shall prepare technical comparative statement of tenders (Technical CST) and forward it to User section. User section in consultation with the related maintenance sections will scrutinize the technical part of the bid and forward the recommendation to E.O., duly approved by Group Officer/Controlling Officer of User section. E.O. shall scrutinize the general, commercial & other terms and conditions. This shall be carried out in a definite time frame.
- b. After incorporating clarifications, if any, sought from the bidders in the respective technical CST, the recommendations of user section is obtained. E.O. will put up to appropriate level of TEC for deliberations and decision. After approval of the appropriate level of TEC, factory will issue notice with a time frame of minimum 7 days to the technically acceptable bidders, regarding schedule for opening of price bids to enable them attend the price bid opening.

6.21 All technical evaluation shall be done in a time bound manner, so as to complete the procurement case within the original validity. Beyond the validity of offer, further extension of validity may be asked from the firm, but in no case, revision of bids having financial repercussions shall be entertained.

6.22 **Price bid opening:** On the due date of price bids opening, only the price bids of bidders whose offers have been considered technically acceptable will be opened. Price bids of technically unacceptable offers will not be opened and returned to the tenderer in unopened condition as received. Each page of the price schedule or letter attached to it shall also be initialled by them with date, particularly the prices, delivery period etc., which shall also be circled and initialled with date.

6.23 **Late and Delayed Bids:** Bids or modifications to bids, received after opening of bids is called 'late tender'. Bids or modifications to it received after the time fixed for receipt of bidders, though before the time fixed for opening is called 'delayed bids'. In a two-bid system, financial bids received after opening of the techno-commercial offer will also be regarded as late offer. Such delayed/late offers need not be opened and "Late/Delayed" endorsed on their original envelope and returned to the firm, unopened, after Tender opening.

6.24 Decision on placement of order shall be taken by the relevant TPC at Factory or OFB or, at MoD if the case is beyond the powers of OFB.

6.25 The above procedures described applicable in case of manual system of tendering. However, all cases valuing more than Rs 10 lakhs shall be processed through e-procurement system. The basic principles are same for both manual and electronic systems of tendering.

6.26 **e-procurement:**

- (a) Purchase of goods through electronic mode of interface with bidders and IT enabled management of the entire procurement process (notice inviting tenders, supply of tender documents, receipt of bids, evaluation of bids, award of contract, and execution of contract through systematic enforcement of its various clauses and tracking of claims, counter-claims and payments) is called e-procurement. In order to cut down transaction costs and improve efficiency and transparency, Government has made it mandatory for all the Ministries/Departments including the Central Public Sector Undertakings under their administrative control to conduct all their procurements electronically.
- (b) National Informatics Centre first took up pilot projects to design secure IT solution addressing concerns like encryption / decryption of bids, digital signatures, secure payment gateways, date/time stamp for activities, access control etc. It is necessary that the system should be secure, capable of maintaining complete confidentiality at appropriate stages of the bidding process, so that the bidders feel confidence in electronically transmitting their queries and bids.
- (c) OFB has introduced e-procurement system since 4th September 2011 for ordnance factories for procurement of raw materials, plant & machineries and civil works through an internet based portal. The web address of the portal is ***http://www.ofbeproc.gov.in***. The e-procurement system, apart from simplifying and automating the tendering system with minimum manual intervention, has increased operational efficiency, transparency and visibility of bidders to vendors. The e-procurement system has facilitated quicker decision making and provided access to real-time information with enhanced MIS capabilities. The system rationalizes the procurement cost and reduces the procurement cycle time.

6.27 **Main Features of e-procurement**

- (a) e-procurement is used for all P&M procurement cases for Rs 10 lakhs and above. The system supports all modes of tendering like OTE, LTE, GTE & STE.
- (b) The system is accessible through the internet through role based restricted user access, user authentication (*OFB & Vendor*) and access control by –
 - i. Digital signature certificates (DSC)
 - ii. User login ID & password.
- (c) Tender Management in the e-procurement system includes:
 - i. Online enrolment by vendors
 - ii. Tender preparation, approval and release
 - iii. Publishing of Bidders on portal
 - iv. Amendment of bidders
 - v. Bid submission
 - vi. Publishing clarifications time to time as desired

- vii. Publishing pre-bid meeting clarifications to the bidders
 - viii. Opening of bids (technical and commercial bids)
 - ix. Technical evaluations of the bids received
 - x. Commercial evaluations of the bids technically selected
 - xi. Automatic generation of comparative statement of technical & commercial bids
- (d) The system has built-in feature for bid data encryption, decryption by DSC of authenticated users. Bid Opening is done with multi-authorization (*two users*). The system has facilities for Integration with existing PPC package to take benefits of using existing database of Purchase Order module of PPC package.
- (e) The portal has a centralized Help Desk facility with toll free number, online customer complaint facilities and full-fledged operational manuals for OFB users and outside vendors. These operational manuals provide the requisite instructions on using the portal.
- (f) The basic procurement procedures (*unless repugnant to the context or not relevant in e-procurement being system performed*) shall remain as contained in this manual even if procurement is through e-procurement.

6.28 Steps for Uploading e-Tender

The procedures to be followed for uploading tender through e-Procurement portal are as follows.

a. Step 1:

Click on **TENDER** at dialogue box and select **Create New Tender** option.

b. Step 2:

In the New Tender page, at the Header the various stages to be followed are mentioned viz:

Overview / Details / Vendor Classification / Technical Specifications / Publication / Attachment / Approval / Submit.

c. Overview:

i. Click on Overview button.

ii. Fill up all the Tender Overview Information. Click on Next Button.

Note: Short description should be only name of the machine/plant with capacity. Description should give name, capacity and brief scope of work for supplier.

d. Details:

i. On clicking the next button of the Overview, it will lead to the Details page.

ii. Here the item information such as Quantity, Unit of Measurement, Price Bid Template, Destination details are filled.

iii. Click on Next Button.

e. Vendor Classification:

- i. On clicking the next button of the Details page, it will lead to Vendor Classification page.
- ii. Here, Pre-Qualified Vendors may be selected if required. In case of OTE / GTE, no Vendors are selected. Click on Next button.

f. Technical Specification:

- i. On clicking Next at Vendor Classification page, Technical Specification page gets opened.
- ii. **Validity of Offer and Compliance to General Conditions of Contract** are filled on clicking on **Add** button at Sub Heading “**General Conditions**”.
- iii. Under the Sub Heading “**Technical Specification**”, click on **Add** button and upload the Technical specifications as required.
- iv. Click on Next button.

g. Publication:

- i. In this page all the details concerned with Publication time, TOD, Bid Submission closing date, etc., are filled.
- ii. Click on Next button.

h. Attachments:

- i. In this page, the required attachments like Annexures and Drawings if any are attached in PDF format by browsing.
- ii. Click on Next Button.

i. Approval:

- i. In this page the Verifying officer, Approving Officers, Bid Openers role assigning is done.
- ii. Click on Next button.

j. Submit:

- i. Here, preview of the Uploaded Tender is verified and edited if required.
- ii. Click on Next button and end with clicking on **Submit**.

6.29 Digital Signature Certificate for Vendors:

- a. Foreign vendors often cite problems in getting DSC for enrolment in e-procurement portal. A step by step procedure to be adhered by foreign vendors prior to obtaining of DSC is given below, which can be intimated to them by factories, if required.
 - a) The vendor downloads the Application form from any of the licensed Certifying Agencies (CA) as approved by CCA. (Please visit website **<http://cca.gov.in>** for details).
 - b) Vendor fills up the application form and visits the Indian Embassy in their respective country along with the requisite documents for vetting.
 - c) The certified copies of documents are verified & certified by the Indian Embassy, with reference to the corresponding original documents. Originals will be returned after verification by Indian Embassy.

- d) Payment to CA shall be made in Rupees or by online fund transfer for equivalent amount in respective foreign currency (Swift code of the CA's Bank will be provided by the CAs on request).
- e) The vendor courier the application form duly filled and signed by the applicant and the documents to the CA in India.
- f) The CA issues the DSC along with e-token and sends the same to the vendor.
- b. Documents required to be submitted by an applicant, on behalf of an Organization (foreign vendor), to Indian Certifying Agencies for obtaining Class III digital signature certificate, after vetting by Indian embassy.
 - A) Certified photo copy (from either Company Secretary or a Director or Partner of the Organization) of any one of the below mentioned documents:
 - i) Certificate of incorporation
 - ii) Memorandum and articles of Association.
 - iii) Registered Partnership Deed.
 - iv) Valid Business License document.
 - B) Certified photo copy (from either Company Secretary or a Director or Partner of the Organization) of any one of the following.
 - i) Latest Annual Report
 - ii) Latest Income Tax Return
 - C) Bank details of the organization
 - D) Authorization letter (in original) in favour of the applicant from the applicant's organization. The authorizing person should be one rank higher in that organization.
 - E) Latest colour passport size photograph of the applicant.
 - F) Self attested photo copies of Passport & Driving License (signed by the applicant with company stamp).
- c. It is clarified that copy of PAN card is not applicable for foreign vendors and physical presence of representative of the foreign vendor is not required to obtain a digital signature from Indian certifying agency.

CHAPTER – 7

EARNEST MONEY & PERFORMANCE SECURITY

7.1 Earnest Money Deposit (EMD) or Bid Security

- (a) To safeguard against a bidder's withdrawing / altering its bid during the bid validity period in the case of advertised or limited tender enquiry, EMD shall be obtained from the bidders except those who are registered with Central Purchase Organization (e.g. DGS&D), National Small Industries Corporation. The bidders are required to furnish EMD along with their bids. EMD need be submitted for a contract value upto Rs.1 lakh.
- (b) EMD shall be charged at 2% of the estimated value of the Plant & Machinery subject to a ceiling of Rs 50 lakhs where the estimated cost of the Plant is less than Rs. 100 Cr. At the time of tender enquiry, EMD shall be calculated taking into account the value of all components of cost. The absolute value of EMD shall be indicated in the tender.
- (c) EMD may be submitted in the form of Account Payee Demand Draft (DD), Fixed Deposit Receipt (FDR), Banker's Cheque or Bank Guarantee (BG) in specified format safeguarding the purchaser's interest in all respects. Because of limited validity period of demand draft and banker's cheque, such EMDs shall be deposited in the Govt. fund and the same amount will be refunded to bidders, as applicable. EMD submitted in the form of bank guarantee shall be valid for 45 days beyond the period of validity of offer.
- (d) Arrangement is being made for electronic receipt of EMD and tender fees in e-procurement website. When this is implemented, EMD shall be received only electronically or as BG.
- (e) When the value of procurement is over Rs 100 crores, EMD shall be in the form of IPBG, as required under Pre Contract Integrity Pact.
- (f) Offers received without EMD shall be summarily rejected. They will not be processed even for technical evaluation/acceptance.

7.2 Refund of EMD

EMD furnished by all unsuccessful tenderers shall be returned to them without any interest whatsoever, soon after TPC but not later than 30 days after conclusion of the contract. EMD of the successful tenderer shall be returned, without any interest whatsoever, after receipt of performance security from it as called for in the contract.

7.3 Forfeiture of EMD

EMD shall be forfeited if the tenderer withdraws or amends its tender or impairs or derogates from the tender in any respect within the period of validity of its tender. Further, if the successful tenderer fails to furnish the required performance security within the specified period, its EMD will be forfeited.

7.4 Performance Security:

- i. To ensure due performance of the contract, Performance Security Deposit (PSD) shall be obtained from the successful bidder to whom the contract has been awarded. Performance Security shall be obtained from every successful bidder within 30 days of the contract for due performance of the contract.
- ii. As per GFR, the amount of the Performance Security Deposit should be of 5 to 10% of the value of the contract in Indian rupees. In case of purchase of P&M in Ordnance Factories, the PSD value is 5% of the contract value for the supply and warranty obligations.
- iii. If PSD is submitted by the contractor in the form of BG, it is called Performance Bank Guarantee (PBG). The validity of PBG shall be till 60 days beyond expiry of warranty period. If the validity of PBG is till 60 days beyond the stipulated date of commissioning as per the contract, another BG (Warranty Bond) shall be taken for 5% value for the period till 60 days beyond expiry of warranty period, otherwise the validity of PBG shall be got extended for this period to cover warranty obligations of the contractor.
- iv. SSI Units registered under NSIC will be exempted from submission of PS/ SD up to the monetary limit for which the unit is registered as per Development Commissioner, SSI, Min. of Small Scale Industries, Govt. of India letter vide F. No. 22(1)/ 2003/ EP&M dt. 29/7/2003.

7.5 Failure to submit Performance Security Deposit:

- i. Failure to submit Performance Security Deposit may entail cancellation of contract. They may even be labeled as unreliable and no tender shall be issued for one year from the due date of submission of performance security. However, a request for extension of date of submission of performance security may be considered on the merits of each case by General Manager. Unless the firm submits the security deposit, factory shall not carry out any kind of inspection/PDI.
- ii. If a contract has been completed within due date and within the period of validity of Bank Guarantee submitted as performance security, payment shall not be held up because the BG has not been revalidated within the period preceding submission of bills.

7.6 The forms of Performance Security acceptable are as follows:

SI No	Drawn in favour of	Forms of deposits/ conditions thereof	Retention
1.Demand Drafts/ Banker's cheque of Scheduled banks	Sr. GM /GM	Interest free deposits held by OFs Account Payee DD shall be taken.	Shall be deposited to Govt. fund before expiry.
2. Fixed deposit receipts in scheduled banks	Pledged in the name of Sr. GM/	The bank shall certify on it that it can be withdrawn only on demand or sanction of the pledge. The bank shall also agree that on receipt of signed	-do-

	/GM	treasury challan and withdrawal order from the pledge, they will deposit the amount into the nearest treasury and send the receipt thereof to the purchaser.	
3. Bank Guarantees (PBG)	Sr. GM /GM	BG on non-judicial stamps paper may be retained, along with revalidation papers. It shall be valid for a period of 60 days beyond DP or period of performance. The bank guarantee is to be issued in the prescribed format by a Scheduled Bank. In case of foreign firms, PBG may be issued by a First Class International bank of repute located abroad, but it is to be confirmed by a Scheduled Bank preferably State Bank of India. It should be insisted upon the supplier that BG should be sent to the factory through the scheduled Indian bank by the issuing bank under registered post (A.D.). If BG is received through the supplier, the issuing branch should be requested to immediately to send by Regd. Post (A.D.) an unstamped duplicate copy of the BG, so that factory can compare and confirm that the BG is in order. The name, designation and code numbers of bank officers signing the Bank Guarantee may be verified from Regional/Zonal branches of the banks at Delhi, Mumbai, Chennai and Calcutta.	Shall be retained as valuable document. Firms will be asked to extend validity as & when required.

7.7 Refund / Forfeiture of Performance Security:

(i) Performance Security shall be refunded to the supplier without any interest, whatsoever, after it duly performs and completes the contract in all respects but not later than 60 days of completion of all such obligations under the contract. The contractor is expected to submit an Application-cum-cash bill for refund of Security Deposit. Where the deposit has been en-cashed by Local Accounts, the same will be refunded from their end. When it is in custody of the purchaser, the same shall be released to the contractor. If the contract provides for submission of Warranty Bond after commissioning of the equipment, PBG shall be refunded after receipt of Warranty Bond.

(ii) Performance security shall be forfeited and credited to the Govt account in the event of a breach of contract by the supplier, in terms of the relevant contract. Bank guarantees may also be invoked in case of specific breach and strictly in terms of the agreement. The decision shall be taken by the office who accepts the Bank guarantee or higher authority. In case of delay in getting the guaranteed money, which might enable a firm to obtain legal measure to prevent such encashment, request may be made to Central Office of the Bank to investigate and fix responsibility. Administrative decision may be taken to debar acceptance of BG from such banks and from such firms.

(iii) When a Performance Security refund is not claimed for three full years, it is credited to Consolidated Fund of India, under Rule 189 of Central Govt Account, Receipt and Payment Rules. Release of lapsed deposits may also be arranged in accordance with Rule 190 of Central Govt. Account, Receipt and Payments Rules.

7.8 Verification of the Bank Guarantees

Bank Guarantees submitted by the tenderers / suppliers as EMD / Performance Security need to be immediately verified from the issuing Bank before acceptance.

7.9 Safe Custody and Monitoring of Bank Guarantees & Other Instruments

Engineering Office of the Factory shall ensure safe custody and monitoring of EMDs, Performance Securities and other Instruments. The dealing staff shall put up position to superiors for timely action. Monitoring shall be done on monthly basis for review of all Bank Guarantees and other instruments expiring after 3 months, along with a review of the progress of the corresponding contracts. Extension of Bank Guarantees and other instruments, where warranted, shall be sought immediately and implemented within their validity period.

7.10 Special concession for Autonomous Bodies

For Autonomous Institutions under the administrative control of Central Government (e.g. CMTI, Bengaluru), indemnity bond may be accepted in lieu of bank guarantee i.e. Advance Bank Guarantee (ABG), Performance Bank Guarantee (PBG) or Warranty Bond. (Ref: OFB letter No 502/P/EP/Policy Dt 29/01/2013.) Format of indemnity bond is given in the Appendices.

CHAPTER-8

EVALUATION OF TENDERS

8.1 Evaluation of bidders is one of the most significant areas of Purchase Management. The entire process of tender evaluation and placement of contract must be transparent. All the aspects, which are to be taken into account for evaluating the bidders, including the method to be adopted for evaluation of bidders and the techniques for determining the lowest evaluated responsive tender for placement of contract are to be incorporated in the tender enquiry document, in clear and comprehensive manner without any ambiguity and or confusing stipulations therein, so that the interested vendors can formulate their competitive offers in a meaningful manner and participate in the tendering process with confidence.

8.2 All the bidders shall be evaluated strictly on the basis of the terms & conditions incorporated in the tender enquiry documents (based on which offers have been received) and the terms, condition etc. stipulated by the bidders in their bidders. No new condition shall be brought in while evaluating the bidders. Similarly, no tender enquiry condition (specially the significant/essential ones) shall be over looked while evaluating the bidders. It shall be ensured that no tenderer gets undue advantage at the cost of other bidders and or at the cost of OFB. The evaluation of bidders is done in different phases.

8.3 Preparation of Technical CST:

After opening of technical bids, EO shall prepare a clause-wise Technical Comparative Statement of Tenders (Technical CST) on each tender term / specifications. The clause-wise compliance statement submitted by the firms shall be considered for filling the Technical CST, but entries shall be verified from the original Bids. It shall be recorded in a tabular form indicating compliance vis-à-vis the tender specifications. It shall contain the following details among other things:

- (i) Whether the tender is unsigned.
- (ii) The tenderer is not eligible as per qualification criteria.
- (iii) Validity of offer
- (iv) EMD details.
- (v) Special technical features
- (vi) Scope & cost of supply viz. the basic machine, accessories, spares etc.
- (vii) If price quoted is ex-works or at destination.
- (viii) If freight is charged extra
- (ix) If packing and forwarding charges are extra
- (x) If erection and commissioning charges are extra
- (xi) Payment terms
- (xii) Applicable Taxes and duties etc
- (xiii) Pre-despatch inspection terms offered by the firms
- (xiv) Final acceptance terms as accepted by the firms
- (xv) Warranty and Guarantee offered.
- (xvi) Delivery schedule quoted including erection & commissioning period.

- (xvii) For estimated cost above Rs. 100 crores, the prescribed Integrity Pact Bank Guarantee along with a duly signed agreement of Integrity Pact in the specified format, attached with the TE.
- (xviii) Acceptance of the Arbitration clause.
- (xix) The tender validity is shorter than the required period.
- (xx) Required EMD has not been provided.
- (xxi) Whether the tenderer has agreed to give the required performance security.
- (xxii) Whether the tenderer has quoted for machine manufactured by a different firm without the required authority letter from the proposed manufacturer.
- (xxiii) Whether the tenderer has quoted for the entire requirement as specified in that schedule. (Example: It has been stipulated that the tenderer will supply the equipment, install and commission it and also train the purchaser's operators for operating the equipment. The tenderer has however, quoted only for supply of the equipment).

The Technical CSTs are prepared before seeking clarification or confirming acceptability of offers. After receipt of all clarifications from the firms, it shall be duly updated to complete the Technical CST within seven days. The columns shall not be left blank, or entries contradictory to the final technical recommendations in absence of proper updation. A clause-wise compliance statement, submitted by the firm, to indicate conformance with technical specifications must also be considered for filling technical CST. All corrections and over writings must be initialed.

a. In case of procurement of plant & machinery of imported origin, following additional information is submitted by the foreign firms and the same shall be verified:

- i) Penalty for use of undue influence
- ii) Agent/Agency Commission
- iii) Access to the Books of Accounts
- iv) Conduct of Arbitration proceedings in India under the Arbitration & Conciliation Act, 1996. within a maximum period of seven days.

b. The above are only indicative and all details are required to be compiled with a view to assist proper decision taking in the TEC at Factory and OFB level.

8.4 Preliminary examination of Technical Bids:

a. EO shall send one set of all the bids along with Technical CST immediately to user section for scrutiny within maximum 15 days. The Technical Scrutiny Committee (TSC) consisting of GO/DO of User, Mechanical, Electrical and Electronics Maintenance sections shall scrutinize the technical bids with respect to the technical specifications of tender enquiry and shall submit the detailed scrutiny report to the Engg Office within maximum 15 days.

b. Simultaneously, EO shall scrutinise the offers with respect to all tender clauses i.e. both commercial and technical parts. After receiving the comments of user/TSC, EO shall seek clarifications, as considered necessary, on complete techno-commercial specifications from the Bidders. After receiving replies from the Bidders, EO shall update the Technical CST. GO/DO of EO and user section shall sign the updated Technical CST Thereafter, user section shall immediately send recommendation under signature of its Group Officer/Controlling Officer (whosoever is member of the Fy TEC for the case) to EO.

8.5 Technical Evaluation Committee (TEC) meeting at factory:

- a. Engg. Office shall be circulate a brief of the case for TEC meeting in the prescribed format indicating major/minor deviations and the recommendations of TSC among all concerned members well before the TEC meeting is held.
- b. The respective TEC-I/II at factory level is empowered to scrutinize and approve technical selection of firms for P&M under delegated financial powers of GM/AGM. Minutes of the TEC are prepared authorizing the Engg. Office to open the price bids of technically acceptable offers.
- c. TEC shall see whether the offers are technically suitable and whether the tenderers have agreed to the main / essential conditions incorporated in the tender enquiry, for example, terms of payment, liquidated damages clause, warranty clause, dispute resolution mechanism or arbitration clause, applicable law and any other important condition having significant bearing on the cost/utility/performance of the required P&M.
- d. The aim of TEC will be to firm up the desirable criteria, optional offers, tooling required, etc and freeze all techno-commercial clauses, so that all the offers are on equal footing before Price Bids are opened. Deviations may be accepted to the commercial clauses having impact on the price, provided it is possible to apply suitable loading on the offered prices for equitable comparison of the tenders. Such loading criteria shall be decided by TEC before opening of the price bids. If TEC decides that further clarifications / confirmations are required to be obtained from the firms for proper evaluation of the offers, the same are obtained and suitable decision is taken by TEC thereafter.
- e. For cases exceeding GM's powers, Fy/TEC recommendations shall be forwarded to OFB for approval. The Fy/TEC recommends the technical suitability of offers received against the tender, indicating reasons in detail about the offers not considered technically acceptable. The minutes of meeting is prepared as per the prescribed format (given in the Appendices) and sent to OFB along with the technical bids in original, catalogues if any, Technical CST and tender specifications (& drawings, if any) for approval of TEC/OFB. If Fy TEC feels that there are unresolved points requiring discussion with the bidders or decision of OFB/MoD, a deviation statement containing specifically such points shall also be enclosed.

8.6 Minor Informality/Irregularity/Non-Conformity: Some minor informality and/or irregularity and/or non-conformity may be found in some bids. These may be waived provided the same does not constitute any material deviation from the tendered specifications or have financial impact and, also, does not prejudice or affect the ranking order of the tenderers. Wherever necessary, observation on such 'minor' issues may be conveyed to the tenderer by registered letter/speed post etc. asking the tenderer to respond by a specified date also mentioning therein that. If the tenderer does not confirm Fy/OFB's view or does not respond at all by that specified date, its tender will be liable to be rejected. Depending on the outcome, such bidders are to be ignored or considered further. Details of all the bidders, which have been declared unresponsive and ignored as per above analysis, and also the ground for their becoming unresponsive are to be accurately recorded in the purchase file.

8.7 Discrepancies between original and additional copies of a Tender – Sometimes discrepancies are also observed between the original copy and the other copies of the same tender set. In such a case, the text etc. of the original copy will prevail.

8.8 Disagreement with Finance Member:

(a) In case of disagreement with Finance Member, the Sr.GM/GM as the Competent Financial Authority (CFA) can overrule the Finance Member under intimation to the next higher CFA as well as the IFA (Integrated Financial Adviser) giving reasons for overruling the financial advice.

(b) Secretary/TPC shall send a copy of such TPC, where the Finance Member was overruled to Member/Finance of OFB for analysis for any system improvement. However, the decision of the CFA for the procurement shall stand.

8.9 Technical Evaluation at OFB:

(a) The respective Section at OFB, on receipt of the TEC proceedings and technical offers, will scrutinize for correctness of entries and compliance of instructions related to TEC proceedings. Conformance to the specifications, appropriateness of selection is examined ab initio and the comments of the Engg. Division and the Operating Divisions are elicited in order to either endorse the recommendations of the factory or seek further details, for a proper technical evaluation.

(b) After TEC/OFB meeting, all members of TEC/OFB shall sign the minutes, authorizing the factories to open price bids of technically acceptable offers in respect of cases under OFB/MOD power.

8.10 Opening of Price Bids and Evaluation by TPC at the Factory:

a. On receipt of approval of TEC/OFB, in respect of cases under OFB/MOD power and Fy TEC-I/II in respect of cases under GM/AGM's power, price bids of only the technically acceptable offers are opened in presence of bidders' representatives. It shall be ensured that the price bids of offers which are technically rejected need not be opened. The bidders, whose price bids are to be opened, are to be duly informed about opening of their price bids.

b. Factories should impress upon the bidders to ensure that their offers must be kept valid. The price bids of offers which are technically rejected need not be opened. The bidders, whose price bids are to be opened, are to be duly informed about opening of their price bids.

c. On opening of price bids a tentative Ranking Statement shall be prepared on the spot and all relevant details shall be announced to the bidders attending the tender opening. A complete Ranking statement giving full details shall be prepared subsequently to include all relevant information necessary for assessing the price at destination and ranking of different bidders.

- d. DO/GO of Engg Office shall verify and sign the final CST/Ranking Statement and Local Accounts Officer shall authenticate the same. There should not be any overwriting or corrections.
- e. The ranking statement shall be prepared on equitable basis giving basic cost of machine, accessories, tooling, essential items, packing and forwarding charges, erection and commissioning costs, training cost, taxes and duties, freight, payment terms, terms of pre-despatch inspection, criteria for performance and acceptance, validity of offers, warranty and guarantee conditions etc.
- f. For ranking of offers, price of complete scope of supply as detailed in technical specifications excluding the price of spares shall be considered.
- g. In cases where all offers from indigenous sources are under consideration, ranking shall be assessed on FOR destinations.
- h. In cases where all offers from foreign suppliers are under consideration, ranking shall be assessed on CIF basis at port of entry on SBITT exchange rate prevailing on date of price bid opening.
- i. In cases where mixed offers i.e. some from foreign bidders and some from indigenous bidders are under consideration, the ranking shall be assessed on CIF basis for foreign offers and ex-works basis for indigenous offers after off-loading Excise Duty on fully formed equipment and ignoring Sales Tax and other Local Levies etc.
- j. To convert foreign currency into Indian Rupee, the SBITT selling rate for foreign currency prevailing on date of price bid opening will be considered.
- k. Order on foreign bidders will be on FOB basis and indigenous offer on DAP destination basis including Excise Duty, Sales Tax and other local levies, Transportation Charges etc.
- l. The cost of spares with levies and duties thereon may be written separately in the same tabulated format for all firms. The total financial implications may also be worked out.
- m. The ranking statement for imported plant and machinery will be based on the exchange rate on the date of opening of bidders (Price bid) which shall be mentioned in the CST. The rate of exchange prevailing on the date of price-bid opening is to be taken for evaluation of bidders. In case, the decision on price-bid is not taken within 3 months of price bids opening, the rate of exchange prevailing on the date, when the actual decision would be taken will be applicable. The requirement creates complex situation if the decision is not taken within 3 months of opening of price bids in the event of change of the ranking position based on fluctuations in rate of exchange after 3 months of opening of price bids.
(Authority: MOF, Deptt. of Economic Affairs letter No. 4 (1)/Feb.1/94 Dt. 30.07.92)
- n. TPC selects the lowest offer among the technically suitable offers for placement of supply order in the form of minutes of meeting confirming the reasonability of the cost.

o. For cases under GM/AGM's power, Factory TPC decides the cases for placement of Supply Order. For cases under OFB/MOD's power, minutes of meeting (in the format given in the Appendices) along with Price bids, financial CST, etc are sent to OF Board for approval of TPC/OFB.

8.11 Non-conformities between the figures and words of the Quoted Prices – Sometimes, non-conformities/errors are also observed between the quoted prices in figures and that in words. The same is to be taken care of as indicated below:

- a. If, in the price structure quoted for the required goods, there is discrepancy between the unit price and the total price (which is obtained by multiplying the unit price by the quantity), the unit price shall prevail and the total price corrected accordingly, unless in the opinion of the purchaser there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price corrected accordingly.
- b. If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
- c. If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

If there is such discrepancy in an offer, the same is to be conveyed to the tenderer with target date on the above lines and if the tenderer does not agree to the observation of the purchaser, the tender is liable to be ignored.

8.12 Reasonability of price:

- a. The reasonableness of the prices quoted by the lowest technically acceptable tenderer shall be ascertained based on Last Paid Rate or Budgetary Quotation based on which the demand estimated cost was assessed, or latest order placed on some reputed firms for similar plant & machinery.
- b. Before placing the contract on the lowest evaluated responsive tender (L1), it shall be ensured that the price to be paid is reasonable. The broad guidelines for judging the reasonableness of price are as under:
 - i. Last purchase price of same (or, in its absence, similar) machines
 - ii. Current market price of same (or, in its absence, similar) machines
 - iii. Price of raw materials, which go into the production of the machines
 - iv. Receipt of competitive offers from multiple sources
 - v. Quantity involved
 - vi. Terms of payment

- vii. Delivery conditions
- viii. Cost analysis (material cost, production cost, over-heads, profit margin)

NB: Price paid in an emergency purchase or purchase price of goods offered by a firm through 'distress sale' (i.e. when the firm clears its excess stock at throw away prices to avoid further inventory carrying cost etc.) are not accurate guidelines for future use.

8.13 If additional fund required is within 15% of the sanctioned amount or Rs. 1 crore whichever is less, the case need not be referred to OFB/PFC. In case the additional fund requirement is more than 15% or Rs 1 crore of the sanctioned cost by OFB/PFC, the factory is required to process the case for approval of OFB/PFC with justification. This is not applicable for Resultant Single Offer where the case shall be forwarded to OFB.

8.14 The SOs for P&M to be purchased under GM/AGM's powers are placed based on decisions taken in the respective factory TPC-I/TPC-II meetings on connected issues and on approval by a Competent Financial Authority.

8.15 For cases beyond the financial power of GM, Factory/TPC recommendation shall be forwarded to OFB clearly indicating all the points where OFB's decisions are needed.

8.16 Check points for scrutiny of Bids:

Procedural check-points for scrutiny of offers of various firms against tender enquiry:

- (i) Processing of Plant and Machinery cases shall be carried out keeping in view the delegation of financial powers to GMs and OFB issued by OFB from time to time.
- (ii) All offers shall be signed by the Tender Opening Officers with date and time.
- (iii) It may be checked whether EMD has been deposited by the tenderer or exemption has been asked as per latest Government Orders.
- (iv) Due care shall be taken to prepare the Compliance Statement for technical as well as commercial bids. As far as possible, each system/sub-system shall be shown separately and the compliance from the bidder shall be asked system/sub-system wise. In case, the Compliance Statement of the offer has not been submitted by the firm as per the compliance format and requires further clarification, the same may be obtained from the bidder by TSC provided it does not have financial repercussions.
- (v) In the CST and in the TPC, brief name of the firm and Model No. of the item shall be written clearly. Information obtained after clarification shall be included in the technical CST.
- (vi) In case, the firm is required to give some clarifications and may require a discussion, the firm shall be called by a letter indicating a specific date by which the firm shall submit their clarification.
- (vii) The full TSC is required to be involved in the discussion. Minutes of meeting shall be prepared including all clarifications and shall be signed by all including the representatives of the firm.

(viii) If further clarifications are required, the minutes of discussion shall indicate specific date by which the firm shall submit their clarifications. The firm shall be informed. It shall be recorded that in case, they fail to submit the clarifications by the specific date, their offer is likely to be ignored.

(ix) It is required to be very careful in rejecting an offer. The technical details will have to be studied and if required, the firm shall be told the specific points indicating whether they can comply with the required specification. Once a reason for rejection has been indicated against a firm, it shall be seen whether the same has been confirmed by the acceptable tenderer.

(x) Once the Tender has been opened, no change in the specification shall be resorted to. Minor variations without any financial repercussion, if any, may be considered, provided it is accepted in the TEC/TPC.

In exceptional cases having limited competition, if TEC feels that certain minor changes are required for equitable comparison of offers, necessary justification shall be provided in the minutes of TEC. In such cases, supplementary price bids pertaining to only the changes shall be taken from the Bidders.

(xi) Reasons for rejections are to be recorded in the TEC Minutes with reference to the tender specification and also from functional point of view.

(xii) In case of OTE/GTE, capacity/capability of the bidders and the performance of P&M offered shall be ascertained before deciding upon the technical acceptability of offers of the bidders.

(xiii) In case, any firm raises a technical doubt on the specification after opening of tender bids, the same shall be studied with diligence and necessary action taken, if there shall be sufficient grounds for authenticating the parameters framed in the specification. Deliberations in this regard may be recorded in TEC minutes.

(xiv) Excise duty, Sales Tax, P&F charges, Octroi etc. shall be clearly specified by the firm. In case of nil duties, the same shall also be specified. In case, they have not confirmed in the technical bid, the same shall be asked before holding of final Technical Acceptance. In accordance with the limitations in admitting and paying variations in statutory duties, the firms shall clearly mention the rate at which the duties are levied. In case the vendor mentions the ED varying from some percentage to some percentage, the CST shall be prepared taking the maximum that could be levied as per orders on date.

(xv) For standard items, which have been indicated by the firm in the offer, it shall be specifically stated whether those are being supplied as accessories. These items include Voltage Stabilizer, Isolation Transformer etc.

(xvi) All clarification/confirmations shall be asked before the opening of the price bid. No correspondence shall be made with the firm, seeking clarifications, after opening of the price bid.

(xvii) The following indicative list of entries will be reflected in the priced CST:

- (a) Total including basic, standard items and essential items as per the scope of supply without spares and optional/desirable items
- (b) Total including basic, standard items and essential items as per the scope of supply without spares and optional/desirable items but with duties.

- (c) Ranking shall be made including basic standard items and items as per scope of supply without spares.
- (d) Spares.
- (e) Total of spares and with duties.
- (f) Total with spares and optional items,
- (g) Payment terms.
- (h) Validity
- (i) Warranty
- (j) Delivery Period.

8.17 Lack of Competition – Sometimes sufficient number of tenders may not be received. A situation may also arise where, after analyzing the tenders, only one responsive tenderer is obtained. In such situations, it is to be first checked whether, while floating/issuing the tender enquiry, all necessary requirements like standard tender enquiry conditions, industry friendly specifications, wide publicity, sufficient time for formulation of tenders, etc. were fulfilled. If not, the tender shall be re-issued/re-floated after rectifying the deficiencies. However, if after scrutiny it is found that all such aspects were fully taken care of and in spite of that there is only one responsive tender, then contract may be placed on that tenderer provided the quoted price is reasonable.

8.18 Tender Purchase Committee Meeting at OFB:

- a. For P&M to be purchased under OFB powers, the TPC recommendations of the factory may be forwarded to OFB in the prescribed format (given in the Appendices) with copies of CST/Ranking Statement in quadruplicate, enclosing copies of price bids etc.
- b. The concerned section in OFB will scrutinize the ranking statement with the factory TPC recommendations and the tender documents, other clarification obtained by factory. The brief, duly prepared, having all connected particulars will be submitted for consideration of appropriate TPC.
- c. After TPC/OFB decision, minutes of TPC shall be prepared. TPC decision shall be communicated to the factory for placement of Order or further action as advised. The detailed TPC minutes shall have necessary decisions of TPC for finalizing contractual terms of the S.O.
- d. In submitting TEC and TPC recommendations/decisions, the processing Section shall ensure that they are complete and in conformity with the latest guidelines issued.
- e. If the case is beyond the financial powers of OFB, the processing section shall send it to MoD for approval, along with chronological Statement of Case (SOC), copies of TPC/OFB minutes, copies of commercial CST, copies of Tender Enquiry, copies of Price Bids and draft letter of Government sanction.

8.19 Award of Contract

- (a) After approval of procurement by relevant TPC or CFA, a sanction order shall be issued mentioning the code head of expenditure. This shall be vetted by associated Finance before issue. This will be the basis of placing supply order on the selected bidder.
- (b) Before expiry of the tender validity period, the factory shall issue Letter of Intent (LOI) i.e. notify the successful tenderer in writing, by suitable foolproof method, that its tender (briefly indicating therein relevant details like quantity, specification of the goods ordered, prices, delivery period, etc.) has been accepted. In the same communication, the successful tenderer shall be instructed to furnish the required Performance Security within a specified period (generally one month). This will help the contractor for planning his activities.
- (c) Promptly after the above notification (within one month), factory shall also issue the supply order to the successful tenderer asking therein, *inter alia*, to send its unconditional acceptance of the contract within fifteen days. It shall also be made known to the successful tenderer that in case, it does not furnish the required performance security or does not accept the contract within the stipulated target dates, such non-compliance will constitute sufficient ground for forfeiture of its EMD and processing the case for further action against it (the successful tenderer).
- (d) Supply Order shall be placed in standard format along with specifications as enclosed with tender enquiry as well as conditions of supply. If any modification is required to standard format for any individual order, then it shall be done as per approval recorded in the concerned TPC minutes.
- (e) The lowest technically acceptable offer shall be recommended for placement of order. Where only one valid and technically acceptable offer is received, it shall be treated as Single Resultant Tender (SRT).
- (f) The numbering system for the SOs will have eight-digit alpha-numerical code as follows:
- Each SO no. will be prefaced by "CAP" to signify Capital Order. This will be followed by a three digit numeric code of the factory, followed by slash, followed by two zeroes "00" to mean SO for RR/NC item. This will be further followed by a slash and then by three digit numeric code for the project for which the item is being purchased. Where the item is being purchased as NC and not for any project, it will be "001". This code in parenthesis will precede the SO number of the factory.
- (g) If standard format cannot be used for supply order, as in case of turn-key projects, GM of the factory shall sign a contract with the successful bidder. Legal and financial advice shall be taken in drafting the clauses in the contract. The draft contract shall be got vetted by the Finance Division/OFB in cases of value exceeding GM's powers. It shall also be vetted by the Branch Secretariat of Law Ministry. Signing of contract shall be done within three months of issue of LOI.

(h) Delivery period as per tender enquiry/firm's quotation shall be agreed mutually and to be mentioned in the supply order. Normally, deviations in respect of payment terms or waiver of penalty or some other terms and conditions are not considered. In case, the firm(s) do not agree to abide or comply some of the terms and conditions of the tender but due to urgency of the machines re-tendering is not possible, in that case, the concerned TEC/TPC may consider certain deviations of commercial terms based on the merits of the case and with recorded reasons in the TPC minutes, for accepting the same.

(i) Any payment due to foreigners, for erection and Commissioning of Plant and Machinery, is liable to be taxed under the Income Tax Act and the recipients are liable to pay the amount. It shall be made known to the contractor's personnel for deduction to be made at source by the purchaser.

8.20 Letter of Intent:

Letter of Intent is a communication to the bidder that his bid submitted has been accepted and the formal S.O. will be issued. This will help the bidders for planning his activities. Such communication must contain the price, delivery date and other salient particulars. S.O. shall be issued within 1 month from the date of issue of letter of Intent except in those cases involving sign of contract by both parties. In latter cases, this period is 3 months.

8.21 Extension of Tender Validity Period

The entire process of scrutiny & evaluation of tenders, preparation of ranking statement and notification of award must be done within the original tender validity period. The validity period shall not be unreasonably long as keeping the tender unconditionally valid for acceptance for longer period entails the risk of getting higher prices from the tenderers. If however, due to unavoidable circumstances or some unforeseen reasons, factory is unable to decide placement of the contract within the original validity period, it shall request, before expiry of the original validity period, all the responsive tenderers to extend their tenders upto a specified period. While asking for such extension, the tenderers shall be asked to extend their tenders as it is, without any changes therein. They may also be told to extend the validity of the EMD for the corresponding additional period (which is to be specified in the request). A tenderer may not agree to such a request and this will not tantamount to forfeiture of its EMD. But the tenderers, who agree to extend the validity, are to do so without changing any terms, conditions etc. of their original tenders.

8.22 Time Limit for Procurement & Accountability:

a. The ill-effects of delay in processing and clearance of various procurement activities needs no emphasis. The decentralization of decision making mechanism and delegation of financial powers are aimed at facilitating faster decision making and obtaining best value for money. However, the delegation of powers also implies "authority with accountability". Every individual in the chain of the procurement process is accountable for taking action in a specified time period so that the requirements are met on time.

b. Approval of PFC/OFB is being issued for a two year block at a time, so that factory may plan and may take action in advance. The meeting of PFC/OFB, AVHQ and OEFHQ shall be taken as the date of sanction for issue of TE. The following time-frame for processing of procurement proposals after approval of PFC/OFB should be followed:

Sl No	Activity	Time frame
1.	(i) Finalization of Factory TEC. (ii) Submission of TEC/Fy recommendation to TEC/OFB, AVHQ, OEF HQ	Within 3 months from the date of approval
2.	Issue of TEC/OFB, AVHQ, OEFHQ approval	Within 1 month
3.	(i) Finalization of Factory TPC. (ii) Forwarding of TPC/Fy recommendation to TPC/OFB, AVHQ, OEF HQ	Within 1 month
4.	TPC/OFB approval	Within 1 month

The timely procurement action by the factories is necessary for expeditious modernization of OFs.

CHAPTER – 9

CONTRACT MANAGEMENT

9.1 Introduction:

Contract Management involves monitoring the implementation of a contract after it is placed to ensure timely completion of all the supplies and related services shown in the contract as per terms & conditions incorporated therein.

9.2 Text of Contract:

The very first requirement for ensuring a trouble free contract management is placement of contract with unambiguous and transparent terms & conditions, which have already been agreed to by both the purchaser and the supplier in black & white.

9.3 Performance Security:

The purchaser shall ensure that the supplier receiving the contract furnish the required Performance Security in the prescribed form by the specified date, failing which necessary action including forfeiture of the Earnest Money Deposit is to be taken against the supplier.

9.4 Acknowledgement of Contract:

The supplier shall acknowledge and unconditionally accept the contract within the specified days from the date of issue of contract. While acknowledging the contract, the supplier may raise some issues and/or ask for some modifications against some entries in the contract; such aspects shall be immediately looked into for necessary action and, thereafter, supplier's unconditional acceptance of the contract obtained. If both the parties (viz. the purchaser and the supplier) simultaneously sign the contract across the table, further acknowledgement from the supplier is not required.

9.5 Contract Effective Date and Commencement Date:

- a. The contract effective date is the date from which the contract comes into effect i.e. the date of signing the contract.
- b. The commencement date is the date with reference to which the delivery obligations of the supplier shall start under the contract. The commencement date is generally indicated in contracts with foreign firms and is conditional upon the completion of certain activities by both parties as mentioned in the contract. [Earlier, such a date was called effective date of contract. However, to avoid legal complications, it is now preferable to call the date of signing as the effective date of contract.]
- c. Some examples of activities on which the commencement date is based are:
 - (i) Date of signing of the contract.
 - (ii) Furnishing of End User's Certificate by the purchaser.

- (iii) Obtaining Export Licence by the seller and sending a copy to the purchaser.
- (iv) Furnishing of performance bond by the seller in terms of performance security.
- (v) Receipt of Bank Guarantee for advance payment from the seller.
- (vi) Receipt of advance payment by the seller.

9.6 **Monitoring and Coordination:**

- a. All the authorities, who are entrusted with some responsibilities and duties to perform in terms of the contract, shall work in unison in a coordinated manner to ensure completion of the contract without any time overrun, cost overrun and related legal complication. It is, therefore, necessary for the factory/OFB to keep a proper watch and coordinate all such activities to avoid any bottleneck or problem in the execution of the contract.
- b. With respect to laid down time frame and targets for expenditure, regular monitoring is done at the site, factory level, OFB and MoD through weekly, monthly, quarterly, half yearly reports as relevant in each case.
- c. For large projects (e.g. new factories), Steering Committee and Project Management Board (PMB) are also constituted, generally under the chairmanship of Chairman/OFB and Secretary/DP respectively, for monitoring and timely decisions. Periodic mid-stream reviews shall be carried out with respect to sanctioned product-mix to ensure that the facilities created are commensurate with the actual requirements.
- d. **Monitoring of Securities and other Instruments:** Proper procedure for safe custody and monitoring of bank guarantees and other instruments shall be laid down by each Factory and followed accordingly.

9.7 **Amendment to Contract:**

- (a) Many a times, due to various reasons, changes and modifications are needed even in a duly concluded contract. Either party to the contract can request for an amendment. If the proposed amendment is acceptable to other party to the contract, then amendment can be issued.
- (b) Requests for such changes and modifications mostly emanate from the supplier. Immediately on receiving such a request, the factory/OFB shall examine the same and take action as necessary with the approval of the competent authority.
- (c) No variation in the terms of a concluded contract shall normally be made, unless the contract specifically provides for it.
- (d) Any amendment to contract terms requested by the supplier may have, *inter alia*, financial impact and/or technical impact and/or legal impact. Therefore, before agreeing to the request of the supplier, the factory/OFB shall scrutinise the issue on its merits to ensure that the requested amendment will not have any adverse effect on the factory/OFB. Financial concurrence shall be obtained before issuing any amendment having financial implications/repercussions. Otherwise, TPC may take appropriate decision.

(e) Further, there may be an occasion where consultation with Law Ministry will be necessary before issuing the proposed amendment. Such issues shall be processed, as deemed fit, depending on the merit of the case.

(f) Amendment to delivery period (DP) should be issued in stipulated formats (enclosed in the Appendices) with right to impose LD as per the contract conditions.

9.8 Payment to the Supplier:

Factory shall ensure that all the payments due to the firm including release of performance security are made on priority basis without avoidable delay.

9.9 Special care for import cases:

For import of Plant and Machinery, some of the important aspects which need to be evaluated / followed are as follows:

(i) Provision of adequate safe-guards in the AT/Supply orders for invoking of the same in case of failure of on the part of the supplier of plant and machinery or default. The default or breach is always reckoned from the date as mutually agreed or as contracted.

(ii) The supplier shall bear Responsibility of system integration.

(iii) the seller shall guarantee Assurance and reliability of all bought out vendor items like-components/sub-assembly/ sub-systems etc.. An appropriate provision shall be made in the contract for the same.

(iv) Provision for training in usage, maintenance etc. shall be made in the contract. In accordance with the commitments made by the respective parties to the contract, a schedule will be laid down for compliance.

(v) In case of complex plants, it may be considered to depute design review team comprising of representatives of users, maintenance, inspection as also stage inspection where necessary. If approved, based on the requirement of the user, their charter of duties and plan of action shall be mutually agreed recorded and implemented early.

(vi) The modalities of inspection (PDI & final inspection after erection & commissioning) shall be clearly and unambiguously set out in the contract.

(vii) Provision for pre-despatch inspection by the purchaser's inspection team as per schedule shall be ensured.

(viii) Sustained follow up and implementation of contracts and close monitoring is an absolute necessity.

(ix) The inspection team shall be well versed in carrying out the pre-despatch inspection encompassing all aspects of performance. If inspection of imported P&M shall be done on receipt in India, availability of special test equipments/special test instruments shall be ensured.

- (x) Receipt at the destination and its erection shall be planned and monitored for adherence. Planning for civil works for foundation, services, dry runs shall be done in advance and monitored for compliance of by all concerned.
- (xi) Timely availability of raw materials for trials and commissioning shall be ensured.
- (xii) Despatch of components for trials at the supplier's premises shall be arranged in time.
- (xiii) Preparation of inspection and acceptance, supply of men and materials and components etc shall be completed on time and the inspection agencies must complete the tasks as per stipulated time.

9.10 Despatch of components as per input drawings:

(a) While purchasing machines/equipments required for stage processing of components, the quality of the output is checked stringently by the purchaser. It is the purchaser's obligation to supply input components, materials, samples etc. to the supplier. The need arises due to the fact that:

- (i) The input to the plant or machine may have special features not ordinarily available/obtainable by the supplier from other sources. Explosives and chemicals made to specifications of producing factory will have to be supplied to the manufacturer for pre-despatch inspection of the machine.

- (ii) The input to the machine may be required to be semi-processed by the machines available at the purchaser's firm. The quantity of such inputs to be supplied to the supplier shall be discussed and decided mutually.

(b) Further, it may be desirable to carry out the functional trials, wherever practicable, at the pre-despatch stage and check performance of the machine being purchased, for which the terms and conditions of such supply shall be laid down in the contract as given below:

- (i) The supply of input components normally required for specified duration of trials and testing shall be within purchaser's scope of responsibility. The supplier shall pay for any further requirements.

- (ii) Under general conditions, the cost of stores expended during trials and testing shall be borne by the supplier, unless the purchaser carries out special and independent tests. The supplier will reimburse the costs of tests and components, where there is no agreement of free supply of components to the supplier. This aspect shall be made clear in the contract.

- (iii) Before despatch of the input components to the supplier, the purchaser shall ensure that they conform to the quality standards of input materials. The input material shall be exclusively inspected and certified by the purchaser's QC department before despatch to the supplier.

- (iv) The finished products along with the unused balance components/ materials shall be returned to the purchaser, and segregated as acceptable, scrap and balance unused

components/ materials etc., if supplied free to the supplier as a part of the contractual conditions. Even when paid for, the supplier would be guided by the disposal instructions of the purchaser. Apart from final quality verification, the purchaser may require them back for converting to scrap on account of lethality considerations. Therefore, as a general rule, the finished products, unused balance components/materials, scrap shall be claimed back.

(v) The delivery of input components shall adhere to the mutually agreed schedule.

9.11 Sequencing:

(a) If more than one item is ordered on one supplier, for individual plant and machinery or a group of system and sub-systems, it becomes necessary that the manufacture and supply follow a regulated sequence. Many manufacturers subcontract readily available materials to the OEMs and it might be possible that the hydraulic power pack, coolant system and Conveyor system etc are delivered ahead of the rest and the main machines are delivered long afterwards. Even if the main machine is delivered, the vital accessories are delayed leading to delay in commissioning after part payments are made.

(b) It would, therefore, be required that on placement of contract, the supplier shall be asked to schedule delivery and inform the purchaser accordingly. It shall be obligatory for the supplier to pre-programme the delivery schedule and obtain purchaser's approval before proceeding with the manufacture and supplies.

9.12 Termination of a Concluded Contract:

A contract may be terminated in the following circumstances:

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

9.13 Closure of Purchase File:

On completion of all activities against a contract, the purchase file shall be preserved in the record room and destroyed after expiry of the applicable mandatory retention period with the approval of the competent authority.

CHAPTER 10

DELIVERY, TRANSPORT & RELATED TERMS

10.1 Introduction

- a. In this chapter, the issues concerning Delivery Schedule including Transportation & Transit Insurance and various aspects covering Delays in Supply have been discussed.
- b. Despatch is an important activity in the process of procurement, where another agency or third party is involved – the Carrier. This calls for coordinated action by the purchaser and the supplier to ensure that the machine purchased is despatched safely, satisfactorily and commissioned as per schedule.
- c. Despatch can be by road, rail, sea or air. Each carrier has its own set of practices and regulations for meeting the operational requirements and conditions.

10.2 Delivery Period

- a. The period for delivery of the ordered P&M and completion of any allied service(s) thereof (like installation and commissioning of the equipment, operators' training, etc.) shall be properly specified in the contract with definite dates and the same shall be deemed to be the essence of the contract. Expressions such as 'immediate', 'ex-stock', "as early as possible", 'off the shelf', etc. must not be used to indicate contractual delivery period.
- b. The bidders shall be asked to indicate
 - i) the delivery schedule
 - ii) period for completion of erection and commissioning at the site.
- c. Based on above, the period for delivery of the ordered P&M and completion of any allied service(s) thereof (like installation and commissioning of the equipment, operators' training, etc.) are to be properly specified in the contract with definite dates and the same shall be deemed to be the essence of the contract.

10.3 Terms of Delivery

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

10.4 Linkage between Terms of Delivery & Date of Delivery:

(a) Delivery dates in respect of contracts incorporating standard and commonly used terms of delivery shall be deemed to be as follows:

- i. **Ex-Works:** The date the supplier delivers the P&M/goods to the purchaser at its (supplier's) factory/premises.
- ii. **FOR, Station of Despatch:** The date on which the goods are placed by the supplier on rail with clear RR (Rail Receipt).
- iii. **FOR, Destination:** The date on which the ordered goods reach the destination railway station specified in the contract.
- iv. **CIP / DAP, Destination:** The date on which the delivery is effected at the destination mentioned in the contract.
- v. **Local Delivery at Site:** The date on which the delivery is made at the consignee's site mentioned in the contract.
- vi. **FAS, port of shipment:** The date on which the supplier deliver the goods alongside the vessel at the specified port of shipment. This date is reflected in the Bill of Lading.
- vii. **FOB, port of shipment:** The date on which the supplier delivers the goods on vessel's board at the specified port of shipment. This date is reflected in the Bill of Lading.
- viii. **CIF, port of destination:** The date on which the P&M/goods arrived at the destination port.
- ix. **FCA, port of shipment:** The date on which the supplier delivers the goods to the buyer-designated carrier at the named place.

(b) The FAS, FOB & CIF terms of delivery are applicable for goods which are directly imported from foreign countries against the subject contract and not imported already by the supplier under its own arrangement. The CIP/DAP terms of delivery may be applied both for domestic as well as imported supplies.

10.5 INCOTERMS

(a) Unless otherwise specifically agreed to by the purchaser and the supplier and incorporated in the contract, the applicable rules & regulations for transportation of goods from foreign countries will be as per the contemporary version of International Commercial Terms (Incoterms) evolved by International Chamber of Commerce, Paris. Incoterms are the official rules for worldwide interpretation about the duties, obligations, etc. of the buyer and the seller for transportation of the goods from seller's country to buyer's country. Incoterms are recognized by the United Nations Commission on International Trade Law (UNCITRAL) as the global standard for such interpretation. The

purchasing Ministry/Department, while ordering goods for importation from foreign countries are to take note of the same.

- (b) The current version is INCOTERMS 2010. Each term defines not only the responsibility for transportation to the specified point, but also other important issues like responsibility for loading / unloading, transit risk, insurance, terminal charges, customs clearance, duty, etc. The demarcation of various responsibilities between the seller and the buyer as per INCOTERMS 2010 can be interpreted from the two reference charts given below.

Chart (1) – INCOTERMS 2010

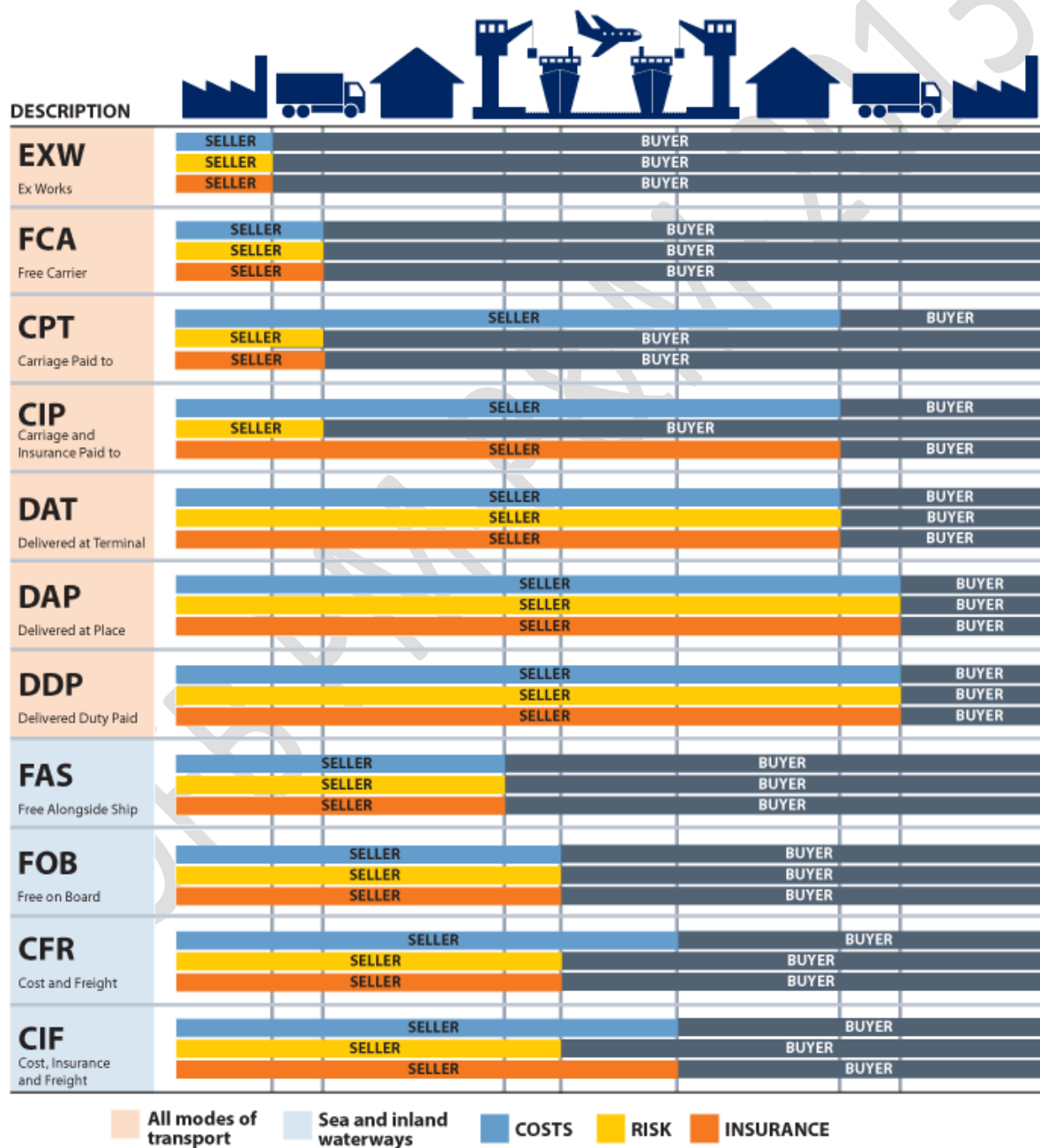


Chart (2) – INCOTERMS 2010

	Rules for any mode or modes of transport							Rules for sea and inland waterway transport			
	EXW	FCA	CPT	CIP	DAT	DAP	DDP	FAS	FOB	CFR	CIF
	Ex Works	Free Carrier	Carriage Paid To	Carriage & Insurance Paid To	Delivered at Terminal	Delivered at Place	Delivered Duty Paid	Free Alongside Ship	Free on Board	Cost & Freight	Cost, Insurance & Freight
SERVICES	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays
Export Packing	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Marking & Labeling	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Block and Brace	1	1	1	1	1	1	1	1	1	1	1
Export Clearance (License, EEI/AES)	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Freight Forwarder Documentation Fees	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer	Seller	Seller
Inland Freight to Main Carrier	Buyer	2	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Origin Terminal Charges	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Buyer	Seller	Seller	Seller
Vessel Loading Charges	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Buyer	Seller	Seller	Seller
Ocean Freight / Air Freight	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer	Seller	Seller
Nominate Export Forwarder	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer	Seller	Seller
Marine Insurance	3	3	3	Seller	3	3	3	3	3	3	Seller
Unload Main Carrier Charges	Buyer	Buyer	4	4	Seller	Seller	Seller	Buyer	Buyer	4	4
Destination Terminal Charges	Buyer	Buyer	4	4	4	Seller	Seller	Buyer	Buyer	4	4
Nominate On-Carrier	Buyer	Buyer	5	5	5	5	Seller	Buyer	Buyer	Buyer	Buyer
Security Information Requirements	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer
Customs Broker Clearance Fees	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Buyer	Buyer	Buyer	Buyer
Duty, Customs Fees, Taxes	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Buyer	Buyer	Buyer	Buyer
Delivery to Buyer Destination	Buyer	Buyer	5	5	5	5	Seller	Buyer	Buyer	Buyer	Buyer
Delivering Carrier Unloading	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer

Notes: 1 – Incoterms® 2010 do not deal with the parties' obligations for stowage within a container and therefore, where relevant, the parties should deal with this in the sales contract.
 2 – FCA Seller's Facility – Buyer pays inland freight; other FCA qualifiers. Seller arranges and loads pre-carriage carrier and pays inland freight to the "F" delivery place
 3 – Incoterms® 2010 does not obligate the buyer nor must the seller to insure the goods, therefore this issue be addressed elsewhere in the sales contract.
 4 – Charges paid by Buyer or Seller depending on contract of carriage.
 5 – Charges paid by Seller if through Bill of Lading or door-to-door rate to Buyer's destination

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10.6 Instructions for Transportation of Imported P&M

(a) As per the general policy of Government of India, all import contracts are to be concluded on FOB/FAS basis. In case a Ministry / Department desires any departure from the above policy including placement of contracts for import of foreign goods on CIF Indian

Port/CIP Destination Basis, prior permission (No Objection Certificate) is required to be obtained from Chartering Wing, Ministry of Shipping.

(b) In case of FOB/FAS contracts, shipping arrangements shall be made by the Chief Controller of Chartering, who heads the Chartering Wing, Ministry of Shipping, New Delhi, India popularly known as “TRANSHART” in shipping world. Chartering wing has two Divisions – Chartering Division for shipping of government cargoes in bulk or full ship loads and Shipping Co-ordination Division for shipping of small parcels on liner vessels. Notice about the readiness of cargo for shipment shall be given by the supplier from time to time at least 6 (six) weeks in advance through Fax/Telex and courier, to the Chief Controller of Chartering, Fax No 0091 11 23718614. Within 3 (three) weeks of receipt of the advance notice, as above, the Chief Controller of Chartering will advise the supplier, through Fax/Telex and courier when and on board what vessels, these goods or such part thereof are to be delivered.

(c) If the advice for shipping arrangement is not furnished to the supplier within 3 (three) weeks as aforesaid or if the vessel arranged is scheduled to arrive at the specified port of loading later than 15 (fifteen) days of the date of readiness of cargo, as aforesaid, the supplier may arrange for such transport on alternative carriers with the prior written consent of the purchaser.

(d) Where the supplier is required under the contract to deliver the goods on FOB/FAS basis and to arrange on behalf and at the expense of the purchaser for ocean transportation on Indian flag vessels or vessels of conference lines in which India is a member country, the supplier may arrange for such transportation on alternate carriers if the specified Indian flag vessels or conference vessels are not available to transport the goods within the time period(s) specified in the contract, with the prior written consent of the purchaser.

(e) Should the goods or any part thereof be not delivered on the nominated vessel (except in case where prior written consent of the purchaser was obtained), the supplier will be liable for all payments and expenses that the purchaser may incur or be put to, by reason of such non-delivery including dead and extra freight, demurrage of vessels and any other charges, whatsoever incurred by the purchaser.

(f) The supplier shall not arrange part-shipments and/or transshipment without the express/prior written consent of the purchaser.

(g) Where the supplier is required under the contract to deliver the goods under CIF/CIP terms, no further restriction shall be placed on the choice of the ocean carrier except that the shipment shall be made by Indian flag vessel or by vessels belonging to the conference lines in which India is a member country.

(h) The relevant rules etc. for shipping of imported goods are contained in the notifications issued by Ministry of Shipping (Chartering Wing). Copies of two circulars are provided in the Appendices of this manual.

(i) **Before processing any case for placement of contract on FAS/FOB/CIF/CIP basis for imported goods, the purchase organization should check the contemporary government instructions in this regard for further necessary action.**

10.7 Despatch by Sea & Role of Embarkation Headquarters:

(a) For such of the plant & machinery and equipment being imported, Embarkation Headquarters carry out clearance of consignments at major ports at Mumbai, Chennai and Kolkata. They are under the control of Army Headquarters for clearing imports/exports of Defence services, Ordnance Factories and DPSUs.

(b) In order to facilitate timely clearance, the Supply Order shall mention concerned EHQ as port consignee. Desired destination, Phone No and Fax No of concerned EHQ are to be included in the contract / SO. Copies of SO or suitable intimation shall be forwarded to the concerned EHQ. OFB Mumbai Office shall also be informed for liaising with EHQ Mumbai, in case of imports through Mumbai port.

(c) The supplier shall be advised to mention the concerned Port consignee i.e. Embarkation Headquarters at Kolkata, Mumbai or Chennai in the Bill of Lading and other documents.

(d) The general duties of Embarkation Headquarters are as follows:

- Securing prompt and economic clearances with Postal and Customs Authorities and prompt despatch of the imported consignments to the ultimate consignees.
- Lodging claims and realizing the value of goods short landed or damaged.
- Preferring claims on Customs Authorities for recovery of excess customs duty paid and speedy recovery/finalization of refund claims.

(e) All correspondences are to be made with OFB Mumbai Office (earlier DGOF Cell at EHQ Mumbai) in respect of consignments imported through Mumbai port. On behalf of Ordnance Factories, OFB Mumbai Office will co-ordinate with the EHQ Mumbai for necessary action. However, duties and responsibilities of EHQ Mumbai vis-à-vis OFB Mumbai Office as amended from time to time are to be followed. For other ports, the documents are to be sent directly to concerned EHQs.

(f) The primary responsibility of getting the consignment cleared rests with the factory. All factories should arrange to follow up by deputing their representatives to different ports to ensure clearance and escort of the consignments. They should depute technical representatives to associate with surveys and detail personnel to escort the consignments, liaise with the factories like GSF, HVF and OFA to load wagons and obtain RRs, trace missing consignments, submit relevant documents whenever asked for and link documents to furnish information on untraceable consignments.

10.8 Shipping Procedure:

(a) Shipping documents and Original bill of Lading, Invoice/Packing Accounts, Specifications to invoice where necessary, Packing list/packing note and Insurance Policy, if the stores are insured, are to be made available at least 14 days before arrival of the vessel at the Port of discharge by the Consignor to the Embarkation Headquarters. Delay in submission of these documents lead to delay in clearance and resulting in payment of extra wharfage or at times incorrect assessment of custom duty. Late receipt of customs duty exemption certificate also leads to excessive charging of customs duty. Such excess levy of wharfage and customs duty are avoidable, if documents are received in time.

(b) The concerned factory shall make the following documents available to OFB Mumbai Office in case of EHQ Mumbai, or directly to EHQ Chennai/Kolkata for consignments arriving through respective ports.

- i. Original Bill of Lading.
- ii. Non-negotiable copies of Bill of Lading: 4 copies.
- iii. Invoice/packing account – 5 copies;
- iv. Specification to Invoice where necessary – 1 copy.
- v. Packing List – 1 copy.
- vi. Packing note – 1 copy in addition to one in the package.
- vii. Insurance policy, if the stores are insured – 1 copy.
- viii. Specification/Certificate of quality – 1 copy.
- ix. Customs Duty Exemption Certificate, if any.
- x. Bank endorsement on Bank's letter head.
- xi. Consignee release order.
- xii. A copy of Certificate of Country of Origin may also be despatched for clearance.
- xiii. The supplier is also required to send a sketch of the consignment along with outward dimensions and gross weight etc along with the despatch documents.

10.9 Transport of Imported goods - Recommended actions at various stages:

(A) Contracting Stage: -

(a) Embarkation Headquarters concerned shall be indicated as port consignee/landing officer in the contract in case of non-explosive cargo.

(b) For P & M, being non-explosive cargo, clearance is to be through EHQ.

(c) A copy of the contract shall be forwarded each to Q/Mov (Shipping) in case of sea cargo and Q/ Mov (Air) in case of air cargo, Embarkation Headquarters concerned and landing officer.

(d) A copy of contract shall also be forwarded to Govt. forwarding agent viz. M/s Schenker & Co for sea and M/s Balmer Lawrie for air consignments respectively. Besides smooth function, it earns Govt. rebate.

(e) Contracting authorities shall make the supplier responsible to bear the cost of extra wharfage if the delays in clearance are due to late receipt of documents or due to wrong / obliterated marking on the packages by inserting a suitable penalty clause in the contract. The supplier shall also be responsible to process the original Bill of Lading (B/L) expeditiously abroad and despatch by courier. In case delay is anticipated, the foreign supplier shall inform consignee/indentor and concerned EHQ, the details of cargo, marine & ship despatched on date. Also Shipping Agent in India is to be requested to release cargo against indemnity bond in absence of original Bill of Lading to avoid extra wharfage.

(f) In case payment is through Bank, a suitable clause may be added in the contract that B/L will be presented in the Bank within 2 days of B/L. In case of any errors in documents due to supplier, extra wharfages on this account will be borne by supplier.

(g) Clauses like 'shipper to order' and 'order of Bank' shall be avoided as far as possible in the contracts so as to avoid delay in clearance and payment of extra wharfages.

(h) Bank operating the Letter of Credit (LC) shall be advised to closely liaise for arranging issue of Bank Release Order (BRO) immediately on receipt of documents to concerned EHQ.

(i) Whenever insurance is done it shall be from Port to Consignee and not from Port to Port. Cargo is to be despatched through SCI or Air India normally.

(j) A clause is to be added that one additional copy of packing note along-with value of each item in respect of each package is to be forwarded to landing officer (concerned EHQ). This will be in addition to the copy placed in each package. In case the same is not provided, and if any loss is suffered an account of that, then the supplier will be required to make good the loss.

(k) Modalities of recoveries towards the losses suffered on any of the above are to be contained in the contract.

(B) Receipt of shipping documents:

The following actions are to be taken:

(i) Consignee factory shall forward shipping documents, CDE, Bank endorsement, Bill of Lading etc., as mentioned above to OFB Mumbai Office (for EHQ Mumbai) / EHQ Kolkata / EHQ Chennai 14 days in advance of the expected date of arrival of the ship.

(ii) AOTR (Anticipated Out Turn Report) shall be checked by the consignee for correctness. Escort is to be arranged if asked for.

(iii) Bill of Entry will be prepared by EHQ. In case any of the documents required for clearance of consignments was not sent earlier, the same will have to be rushed to the OFB Mumbai Office or concerned EHQ for effecting clearance within the due date.

(iv) **Assessment and Payment of Custom Duty:**

- (a) Invoice/Packing list/Specification certificate to be sent to Embarkation Headquarters, if not sent earlier.
- (b) Consignees have to send Technical Representative, where required.
- (c) Customs Duties exemption certificate to be sent in advance.

(v) **Marine/Insurance Survey:** Consignee has to send technical representative for marine/insurance survey. Consignee will also send technical representative, whenever required.

(vi) Prefer claim against Port Trust Authorities/Agents/Customs for short receipt of consignments and damages etc. Consignee has to forward the cost/repaired value/ depreciated value of the stores, if required. The invoice or the item-wise value is to be sent to Embarkation Headquarters, if not available at their end. Consignee has to confirm the correctness of claim.

(vii) **Despatch of Stores to the ultimate consignee:**

- (a) At present, the normal mode of despatch of stores is by Road. Hence, transportation is to be arranged by the Consignee accordingly.
- (b) Disposal instructions are indicated by consignee for “Will follow” consignment well before the arrival of the ship.
- (c) Consignee is to send escorts wherever necessary.
- (d) Issue of FOTR: Consignee has to confirm the correctness of the FOTR (Final Out-turn Report).

(C) **Clearance on Letter of Guarantee / Indemnity Bond:**

(a) In case of delay in forwarding documents required for reasons not under control of consignee, EHQ may be requested to consider clearance of consignment on Indemnity Bond. However action is to be taken to send the requisite documents to EHQ at the earliest opportunity and all efforts shall be made to enable EHQ for redemption of bond within one month.

(b) Another problem that sometimes arises is that when the Bill of Lading is marked 'To Order'. In such cases, the Agents require either the original Bill of Lading duly discharged in favour of Embarkation Headquarters or a Release Order from the Shippers before issuing a Delivery Order. Clearance is not permitted on Letters of Guarantee. Consignee shall ensure that the original Bill of Lading is made available to Embarkation Headquarters without delay.

(D) **Responsibilities of Embarkation Headquarters:**

(a) On receipt of the above mentioned documents or any information from the Controlling Headquarters/Consignee/Mov Directorate, Army Headquarters, before the arrival of the vessel, Embarkation Headquarters will prepare an Anticipated Out-turn Report (AOTR) on the prescribed proforma and distribute its copies to all concerned including, the consignee and the Controlling Headquarters. The AOTR will be prepared on service basis i.e. separate AOTR for

each Service e.g. Navy, IAF, Medical, Ordnance Factory, etc. If any doubt exists regarding the ultimate consignee, disposal orders will be obtained immediately from the respective Controlling Headquarters. Pending receipt of disposal orders, the consignee column of the AOTR will be marked "To Follow".

(b) The Original Bill of Lading is used for obtaining Delivery Order from the Steamer Agents. (Shipping Agents).

(c) There are cases where shipping documents do not reach Embarkation Headquarters in time but advance intimation regarding the arrival of stores is received from the consignees/Controlling Headquarters concerned. In such cases, the complete manifest of the vessel, which is received in advance by the Steamer Agents (Shipping Agents), will be checked for the details of cargo intended for Defence Consignee. Delivery orders for stores in respect of which Bills of Lading have not been received will be obtained by presenting Letters of Guarantee/Indemnity Bonds to the Steamer Agents. (Shipping Agents)

(d) In all cases where stores are cleared on Letter of Guarantee/Indemnity Bond, expeditious action will be taken by Controlling Headquarters to obtain original Bills of Lading from the Shippers/Suppliers/Consignees to redeem the Letter of Guarantee/Indemnity Bond.

(e) After the Delivery Order is obtained, Bill of Entry will be prepared and submitted to the customs authorities for assessment of Customs duty. A passed B/E implies approval by Customs for the clearance of stores. Simultaneously, chappas/Import Applications will be prepared for the payment of port dues. Extreme care will be exercised in preparing Bills of Entry and chappas/Import Applications with a view to ensuring that the details given therein are strictly in accordance with the shipping documents. Bills of Entry as per the current requirements of the Customs authorities at the port will be prepared and presented to them for their scrutiny, assessment of Customs duty (where shipping documents and other information required by customs authorities are available) and pass orders. Even a slight error may cause delay in issue of pass order by the Customs authorities which in turn will delay clearance of the stores resulting in avoidable expenditure on extra wharfage to the State.

(f) In the same chappas/challan both wharfages and extra wharfages to be paid are indicated. A copy of the chappas/challan is sent by the Embarkation Headquarters to the Audit to enable them to admit payment of the wharfages charges to Port Trust for recouping the Imprest Account placed at the disposal of the port authorities, by the Defence. Wherever extra wharfages is indicated on the chappa/challan the Audit keep a watch over it for regularisation action.

(g) Customs and Port Trust formalities will be completed expeditiously to avoid any delay in the clearance of store.

(h) Every possible effort will be made to clear the maximum number of packages from the Docks within the Last Free Date (LFD). In respect of packages/Equipment which cannot be cleared within LFD on account of their not being readily traceable/ available for delivery, necessary log entries/not found reports will be made with the Shed Superintendent of Port Trust. In case the consignment cannot be cleared on account of much congestion around the Defence cargo (i.e. the cargo is inaccessible), a Jam/Congestion Certificate will be obtained from the Shed Superintendent to avoid payment of extra wharfages. Embarkation Headquarters concerned will obtain Congestion Certificate from the Port authorities and place it on ship's file.

(i) When the stores are ready for clearance, the Bills of Entry will be got exempted from Octroi duties by the Octroi Inspector of the Municipality.

(j) Thereafter, a Shed Delivery Order for each Bill of Entry will be prepared and produced to the Port Trust, along with the Bill of Entry and the Delivery Order, for issuing orders to the Shed Superintendent to release the stores. A gate pass is prepared by the Port Trust for the number of packages/stores taken out by road. The number of packages taken out is endorsed on the Bill of Entry. Subsequently, clearance is effected by obtaining the concerned Bill of Entry back from the Port Trust till all the packages /stores on the Bill of Entry are finally cleared.

(E) Despatch to Ultimate Consignee:

(a) Mode of despatch to ultimate consignee shall be defined in the contract. The code head of accounting shall also be mentioned in the contract/covering letter as given below:

Nature of transaction	Head to which to be debited	
	P&M under RR	P&M under NC
(i) Customs duty	01/813/02	01/922/32
(ii) Freight charges	01/813/03	01/922/33

(b) Transport contract should be finalized by factory before receipt of the consignment at the port so that it transported from the port without delay.

(c) If consignment is received in container (s), then it is preferable, both technically and financially, to carry the stuffed container to factory and then open it, because:

- There may be several packages in one container and destuffing the container at the port will involve finalizing another contract for repacking in boxes/crates,
- Destuffing may disturb orientation of packages,
- There may be misplacement/loss/damage while repacking, particularly when more than one container is received,
- It shall also involve delay, particularly when more than one container is received, etc.

(F) Demurrage and Wharfage:

- (a) Demurrage means detention of a ship, container, rail wagon, or other cargo conveyance during loading or unloading beyond the scheduled time of departure and compensation paid for such detention. Wharfage means accommodations provided at a wharf for the loading, unloading, or storage of goods and payment made for such accommodations. *(A wharf is a fixed platform built on the shore of a harbor and supported by piles, where ships may dock to load and unload cargo or passengers.)*
- (b) Factories should take prompt action on liaison with EHQ, despatch of shipping documents, advice on Customs duty assessment, associating on marine/Port survey, arrangement on timely clearance/transportation under escort and follow up with EHQ on claims.
- (c) Demurrage and wharfage charges are treated as loss of public money and accordingly regularized as per the prevalent procedure. A Board of Enquiry (BoE) shall be held to investigate the losses. An officer of LAO should be part of BoE. Convening BoE may be dispensed with by the CFA for trivial cases i.e. if loss is estimated to be less than Rs 10,000/- (ten thousand only). If investigation shows that loss is not due to theft, fraud or gross neglect, it shall be written off by CFA through loss statement. If the loss is found to be due to theft, fraud or gross neglect, the responsible persons may be allowed (but cannot be compelled) to make good the loss in whole or part. Departmental disciplinary action including penal recovery may be taken against the responsible government servants as per CCS (CCA) Rules. After CFA has taken above actions of recovery / departmental action, or has decided not to take such action(s), net loss is to be written off through loss statement. CFA is determined with reference to the gross value of loss. Net value of loss is calculated after deducting the amount of recovery (including penal recovery) from the gross value. Submission of loss statement is not necessary in cases where the value of loss has been recovered in full i.e. net amount of loss is nil.
- (d) In case of loss of stores in transit or while lying in custody of Port authorities prior to delivery to the consignee, holding of BoE is not necessary if (i) goods are short landed, (ii) goods are damaged or lost during landing or afterwards in custody of port authorities and appropriate action for claims has been taken by the EHQ, or (iii) claim is accepted by the carrier or port authority to their maximum liability.
- (e) It is often experienced that destuffing the containers at factory takes time and returning of containers to the port is not possible within the Last Free Date (LFD), resulting in payment of container detention charges. Since the charges cannot be practically avoided considering LFD of only 14 days, it has been decided in consultation with Finance Division/OFB in 2007 that such container detention charges shall not be considered as loss and shall be paid as part of the cost of transportation of the machine under relevant budget head.

(G) Assessment of Customs Duty:

(i) Importer Exporter Code (IEC Code) is to be mentioned by shipper in the Bill of Lading for customs clearance of imported goods. This is later reflected in the Bill of Entry. OFB Mumbai Office has obtained IEC Code of “0307084434” specifically for the 41 Ordnance Factories (OF Project Korwa being 41st) from O/O Additional DGFT, Mumbai. In the past, Ordnance Factories were using “0100000011” which is the general IEC Code for all Ministries / Departments of Central Government. The new IEC code should be used in all import cases to get the benefit of fast track clearance procedure available for the Accredited Clients under the ‘Accredited Clients Programme’ of CBEC. This will allow customs clearance of most consignments on the basis of self assessment / declaration, without examination of goods. For clearance of consignments at Ports other than Mumbai, the concerned EHQ/CHA (Customs House Agent) should be informed to file the Annexure for Bill of Entry indicating this IEC Code and respective Branch Code of the factory. OFB Mumbai Office may be contacted for any clarification and details in this regard.

(ii) If the goods are cleared electronically through ‘Customs EDI system’, no formal Bill of Entry is filed as it is generated in the computer system, but a cargo declaration having prescribed particulars is filed for processing of the Bill of Entry.

(iii) For purposes of valuation and assessment of Customs Duty, the goods can be broadly classified into the following categories:

- (a) Non-dutiable.
- (b) Dutiable.
- (c) Preferential assessment.

(iv) Non dutiable goods:

Consignee will advise OFB Mumbai Office/EHQ Concerned on non-dutiable items. For such items Custom duty Exemption Certificate (DEC) is to be obtained, Consignee will take action to obtain DEC from MOD signed by appropriate authority as per ICT Act as soon as supply order is concluded. DEC is to be obtained well in advance of arrival of consignment and made available to EHQ.

(v) Dutiable goods:

(a) Each store is required to be classified under appropriate Customs Tariff code for purposes of assessment. Indian Customs follows the Harmonized Commodity Description and Coding System of tariff nomenclature (HS Code), which is the internationally standardized system of classifying traded products. It will be ensured that every possible care is taken in indicating the correct classification for each item in the Bill of Entry. Consignee shall advise OFB Mumbai Office/EHQ concerned in time on the classification applicable for assessment of custom duty.

(b) The other important aspect is the authentic proof of value. Invoice/packing accounts, where available, will invariably be furnished. Consignee shall keep close liaison with OFB Mumbai Office/EHQ concerned for documents/certification etc as required.

(vi) **Preferential assessment:**

(a) The claims for refund of Customs duty can be broadly classified as under:

- Claims pertaining to short landed cargo.
- Claims pertaining to the cargo landed but missing from the port premises.
- Claims pertaining to the packages pilfered/damaged before or during landing.
- Claims pertaining to packages landed in sound condition but damaged/pilfered during storage with port authorities.
- Claims pertaining to excess levy of Customs duty due to arbitrary assessment, difference of opinion on classification, levy of duty on exempted goods and mistake in calculations.

(b) Consignee factory will follow up the issues and pursue with OFB Mumbai Office/EHQ concerned for filing claims with concerned agency within the time limit available for such purposes. All supporting/proof etc. are to be provided, as required, and it is to be ensured that no claim becomes time barred for want of action on the part of consignee. Similarly revision application/appeals are to be pursued where appropriate.

(vii) **Refund claims/appeals/revision applications:**

Preferential assessment of duty is permissible in respect of some goods provided documentary evidence e.g. country of origin; certificate is produced before the Customs authorities. It will be ensured that the required documents/certificates are made available to OFB Mumbai Office/EHQ for submission to Customs authorities.

(viii) **Claims pertaining to excess levy of Customs duty**

(a) Arbitrary Assessment: Normally there shall not be any case of this nature because in the absence of Invoices/packing Accounts, the Customs authorities accept valuation certificate issued by Min of Def with the concurrence of associated Finance. However, in case where invoices/packing accounts or valuation certificates are not available consignee shall examine the matter and arrange for necessary action.

(b) Difference of opinion on Customs Tariff: In such cases, relevant documents and data shall always be made available to Embarkation Headquarters. The grounds for a claim shall be clearly stated and supported by documentary evidence.

(c) Refund Claims due to Levy of Customs Duty on Exempted Goods: If the Assessing Officer does not accept the Duty Exemption Certificate and levies the customs duty, reasons thereof, and the additional evidence required by them in support of DEC, the same are to be furnished so as to ensure that the refund claim, when preferred, is duly supported by additional

required data and evidence. This will obviate the necessity to go in for appeals/Revision Petitions and considerably reduce the work required to be put in on appeal/Revision Petition.

10.10 **Despatch by Air**

(a) As per the extant directive of the Government, airlifting of the imported goods from abroad will be done only through the National Carrier i.e. Air India only on a 'Charge forward basis'. All air freight charges, which are shown on the relevant consignment note as chargeable to the consignee, are to be paid to Air India in Rupees. However, before processing any contract involving import of goods through air, contemporary instructions in this regard may be ascertained and followed. If Air India shows inability to lift the consignment, other reputed international carrier may be decided mutually with the supplier.

(b) For Air Consignments following documents are to be furnished.

- (i) Air Way Bill (AWB) / Copy of AWB
- (ii) Cargo Arrival notice
- (iii) Banker's endorsement on Banker's Letter Head
- (iv) Consignee's release order
- (v) Invoice / packing list
- (vi) Custom Duty Exemption Certificate, if any

(c) The above documents shall be made available to OFB Mumbai Office or EHQ Kolkata / Chennai, as necessary, 14 days in advance for effecting timely clearance. A suitable clause is to be incorporated in the supply order to the effect that, if clearance is delayed for non-receipt of documents from the supplier in time, the supplier shall make good the losses towards payment of extra wharfage.

(d) On receipt of the Commercial invoices from the supplier, Embarkation Headquarters prepares five copies of convoy notes and forward the same to the consignee, in duplicate. The consignee thereafter prepares their ledger entry/ receipt vouchers for audit and sends back one copy of convoy note to Embarkation Headquarters. This indicates receipt of the consignment by the consignee. If no discrepancy is reported back to Embarkation Headquarters within a month, it is presumed that the goods have been received correctly.

(e) Consignee factory shall make very close liaison with OFB Mumbai Office, or EHQ Chennai/ Kolkata and monitor activities relating to clearance of consignment and assessment of custom duty for ensuring timely clearance and correct assessment of custom duty.

10.11 **Packing and Marking:**

(a) The packing of the consignments shall be done carefully and appropriately so as to prevent any damage to the P&M in the accepted means of transport.

(b) The packing shall be weather-proof and sea-worthy (if dispatched by sea). Components inside shall be padded fastened securely and overall covered/sealed with tough polythene sheets. Hygroscopic material in sealed packets may be kept inside to avoid ingress of moisture in sea environment. The supplier will be fully responsible for suitability of packing material to withstand rough handling and exposure to sea conditions.

(c) Sophisticated/delicate machines/components of delicate nature, likely to be damaged during transit or small and urgent consignments may be air-lifted after obtaining approval of competent authority.

(d) Each package is to be marked by the supplier with indelible ink, prominently indicating-

- (i) Contract number and date.
- (ii) Full address of consignee
- (iii) Port of landing, station of dispatch as applicable
- (iv) Arrow showing upright position
- (v) Care mark for glass/fragile items
- (vi) Brief nomenclature of items inside
- (vii) Marking for special slinging positions in block English letters
- (viii) Each package shall contain packing list, Invoice, packing note giving cost of each item contained, a copy of pre-delivery inspection certificate, identification tag on each item.
- (ix) Each of the packages shall ordinarily be less than 5m in length, 2.5m in width and 2.5m in height, and less than 10T in weight.

10.12 **Inland despatch of machines:**

(A) **Despatch by road:**

(a) The machine suppliers often resort to transport by road for early delivery of machines, due to less likelihood of damage or loss in transit as in extended transit times of railways. The transit risks are either covered by the transporter or by the supplier. Since the delivery is at the door of the purchaser, in-transit handling is nil thus reducing chances of damage. This is the preferred mode of despatch for the purchaser as well.

(b) Generally (especially for machines requiring installation and commissioning at site by the supplier), the desirable terms of delivery are CIP destination or Delivery at site, so that the supplier remains responsible for safe arrival of the ordered goods at the site. Therefore, Ex-works or FOR Despatching station terms should be avoided.

(c) As the transport contracts do not generally include loading and unloading of consignments, during the unloading the purchaser has to assist in lending the services of skilled personnel and mechanical devices, free of cost or chargeable basis as per terms of Contract.

(d) On receipt at the factory, the external packing is thoroughly checked and if found in order, the delivery of the consignment, duly packed is accepted. A provisional receipt is issued in the following format: "This is a provisional certificate. It is only a token of receipt of goods by the consignee and is without prejudice to his right of inspection and rejection under the general conditions of contract. It is issued on 'as is where is basis', the Contractor remaining responsible for proving the total quantities actually delivered."

(e) In all cases of transport by road, payment is released to the Supplier subject to:-

- ii) Receipt of the consignment at the factory in good condition;
- iii) Joint Inspection along with representative of Supplier for verification of the items as per Packing List;

(f) Liability of loss:

If the term of delivery as per the supply order is FOR destination, the title of the property passes on to the consignee only on delivery of the consignment. Therefore, transit losses will be borne by the supplier.

In many cases, even though the consignment has been booked FOR station of despatch, the supplier remains responsible for arrival of consignment in good condition. The supplier stands responsible to supply the deficient quantities.

(B) Despatch by rail

(a) This is the most commonly adopted means of transport under concessional tariff rate against Military Credit Note.

(b) The supplier must submit the Clear Railway Receipt, as a proof of dispatch through railways. There shall not be any remark like "said to contain basis" or "at owner's risk" etc. The packing shall conform to the tariff schedule for the consignment to be under the charge of the railways. The consignment shall also contain the copy of packing note/Invoice. The clear RR shall be despatched to the consignee at the earliest.

(c) On receipt of the RR, the particulars are entered in a register. The arrival details are checked every day at the railway station by the Stores staff in charge of receipt.

(d) On receipt of the consignment the packing is checked for damage, if any. If it is loaded in a full wagon, the seals shall be checked, if there is any tampering. In the event of any discrepancy, the observations may be recorded in the railway delivery register. In such a case an "open delivery" shall be requested, for opening packages/wagons in the presence of the technical representatives of railways in addition to the normal delivery staff.

(e) Competent staff of the factory shall also be available to assist in identifying and enlisting the extent of damages.

(f) Railways do not accept responsibilities for goods despatched under MC note for any loss/deterioration if such losses are not pointed out on or before delivery or where there has been a case of misconduct on the part of the railway employees. Care shall be taken therefore that such discrepancies are reported before receiving the consignment.

10.13 Insurance

Wherever necessary, the goods supplied under the contract, shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the contract. If considered necessary, the insurance may be done for coverage on “all risks” basis including war risks and strike clauses. The amount to be covered under insurance should be sufficient to take care of the overall expenditure to be incurred by the purchaser for receiving the goods at the destination.

Note: Insurance of imported goods/equipment would need to be arranged on a very selective basis and only for cases where the value of individual shipment is expected to be in excess of Rs. 5 crore. Where delivery of imported goods is required by the purchaser on CIF/CIP basis, the supplier shall arrange and pay for marine/air insurance, making the purchaser as the beneficiary. Where delivery is on FOB/FAS basis, marine/air insurance shall be the responsibility of the purchaser.

10.14 Distribution of Despatch Documents for Clearance/Receipt of Goods

The supplier shall send all the relevant despatch documents well in time to the purchaser to enable the purchaser clear or receive (as the case may be) the goods in terms of the contract. Necessary instructions for this purpose are to be incorporated in the contract. The usual documents involved and the drill to be followed in general for this purpose are as follows:

(a) For Domestic Goods

Within 24 hours of despatch, the supplier shall notify the purchaser, consignee, (others concerned), the complete details of despatch and also supply following documents by registered post / speed post, (or as instructed in the contract):

- (i) Supplier's Invoice indicating, *inter alia* description and specification of the goods, quantity, unit price, total value;
- (ii) Packing list;
- (iii) Certificate of country of origin;
- (iv) Insurance certificate;
- (v) Railway receipt/Consignment note;
- (vi) Manufacturer's guarantee certificate and in-house inspection certificate;
- (vii) Inspection certificate issued by purchaser's inspector and
- (viii) Any other document(s) as and if required in terms of the contract.

(b) For Imported Goods

Within 24 hours of despatch, the supplier shall notify the purchaser, consignee,(others concerned), the complete details of despatch and also supply following documents by air mail / courier (or as instructed in the contract):

- (i) Supplier's Invoice giving full details of the goods including quantity, value, etc.;
- (ii) Packing list;
- (iii) Certificate of country of origin;
- (iv) Manufacturer's guarantee and Inspection certificate;
- (v) Inspection certificate issued by the Purchaser's Inspector;
- (vi) Insurance Certificate;
- (vii) Name of the Vessel/Carrier;
- (viii) Bill of Lading/Airway Bill;
- (ix) Port of Loading;
- (x) Date of Shipment;
- (xi) Port of Discharge & expected date of arrival of goods and
- (xii) Any other document(s) as and if required in terms of the contract.

10.15 Installment Delivery

(a) The goods ordered in a contract to be delivered by installments may be an "entire" contract or a "severable" contract as per illustrations given below:

i) **Entire Contract:** Total number of units of the required goods is 100.

Delivery Schedule: Delivery to commence after 30 days of placement of contract and to be completed within 4 months @ 25 units per month i.e., completion by 30.06.2006 or earlier.

ii) **Severable Contract:** Total number of units of the required goods is 100.

Delivery Schedule: 25 units by 31.03.2006; 25 units by 30.04.2006; 25 units by 31.05.2006; 25 units by 30.06.2006.

(b) In the case of a severable contract, each installment constitutes a separate contract and extension in delivery period, if needed is to be done for each installment separately. If goods are accepted after expiry of the delivery date of a particular installment without extension in delivery period being given with reservation of right to liquidated damages etc., the purchaser will not be legally entitled to claim the liquidated damages etc. Therefore, in case of severable contract, the purchaser should watch delivery position of each installment as per the specified date for that installment, and, whenever necessary, extend the corresponding date for the installment in question or cancel that installment, in which there is delay in supply.

10.16 Delay in Supplies for which Supplier is not responsible

(a) Normally, in the following circumstances, the contractual delivery period needs to be re-fixed to take care of the lost period, without imposing any penalty to the supplier.

- (i) Cases where the manufacture of goods is dependent on the approval of the advance sample and delay occurs in approving the sample though submitted by the supplier in time.
 - (ii) Where extension in delivery period is granted on account of some omission on the part of the purchaser which affects the due performance of the contract by the supplier.
 - (iii) Cases where the purchaser controls the entire production.
 - (iv) Delay in sending PDI team or Shipping arrangement for Shipment by purchaser
- (b) The delivery cannot be re-fixed to make a contract a 'severable' contract without the specific agreement of the supplier, if the delivery originally stipulated in the contract was in the form of an 'entire' contract.

10.17 Force Majeure Clause:

Despite the contractual obligations and earnestness on the part of the contractor to comply with the provisions, difficulties in the execution of the contract arise due to circumstances beyond the control of the contractor. Some of such difficulties and the remedies thereof, available to both the supplier and the purchaser are contained in the Force Majeure clause.

a) Force Majeure is herein defined as any cause which is beyond the control of the Contractor or the Purchaser as the case may be and includes Acts of God, War, Flood, Civic Commotion, UN Embargo, Sabotage etc. However, events like civic strike and internal disturbances shall not form conditions for Force Majeure.

b) The CONTRACTOR shall not be liable for delay in performing his obligations resulting directly or indirectly from any force majeure cause as referred to and defined in Paragraph above. All obligations shall subject as here in after provided be extended for a period equal to the time lost by reasons of any such cause even though such cause may occur after the Contractor's performance of his obligations has been delayed for other causes. If any such delay lasts for more than one month, the parties shall immediately consult with one another for purpose of agreeing upon a reasonable basis on which the CONTRACTOR shall resume production of the unfinished work and if the parties do not agree upon a solution of the problems involved including adjustment of the price, such price adjustment being both upwards and downwards depending on the variation in the basic indices of materials and layout, then either party may be written notice, cancel the portion of the equipment which is delayed. If the PURCHASER is the canceling party, the question whether he shall pay any cancellation charges and if so, the amount of such charges shall be decided by the Arbitrators as herein provided. If the CONTRACTOR is the canceling party, the PURCHASER shall not be obliged to pay any cancellation charges but the question as to whether the CONTRACTOR is liable to pay any cancellation charges will be decided by the Arbitrator as herein provided. All the provisions of this Article shall apply, whether the disrupting cause is total or partial in its effect upon the ability of the CONTRACTOR to perform.

(c) The parties are obliged to inform each other within 24 days of occurrence of a Force Majeure, by Fax and confirm by a registered letter, about the cause of Force Majeure and its character. The party claiming Force Majeure is also obliged to inform the other about the date when the Force Majeure has come to its end, or ceased to exist. On demand, the party claiming

Force Majeure shall submit the documents on the existence of Force Majeure to the other. If the contracting parties have not informed each other of the existence of Force Majeure, they cannot refer to the Force Majeure Clause.

As per CVC instruction, this clause need not be incorporated in the contracts unless specifically asked for by the supplier.

(ref: CVC ID no. 000/DEF/067 dt 26-12-2000)

10.18 Remedies to Purchaser for delay in Supply / Non-Supply for which Supplier is responsible

The purchaser has the following options depending upon the circumstances of the case:

- (i) Extend the delivery with imposing of liquidated damages and other denial clauses
- (ii) Forfeit the performance security
- (iii) Cancel the contract
- (iv) Impose other available sanctions/penalties

10.19 Liquidated Damages

(a) The Liquidated Damages (LD) are mutually agreed pre-estimated damages recoverable from the contractor to take care of delays in supplies and performance, for which the contractor is responsible. The breach shall be reckoned from the agreed delivery schedule.

(b) An LD clause in the contract enables the supplier to know the limit of its risk or liability for payment of damages for delay on its part in effecting supplies.

(c) If the contractor fails to deliver the P&M within the period fixed for such delivery or at any time repudiates the contract before the expiry of such period, the General Manager may recover from the contractor LD as per the contract, without prejudice to the other remedies available to the purchaser under the terms of the contract.

(d) *LD against Erection and Commissioning:* It is mandatory to include in the tender specification where firm may be asked to give time frame required for erection & commissioning of P&M after supply. Accordingly LD is to be imposed if firm is unable to maintain the time frame indicated in the S.O as per their commitment in the tender. For erection & commissioning of the P & M, delay will be attributed to them and LD will be imposed @ 0.5% of the contract price of the P&M for each and every week and part of a week for which the erection and commissioning of P&M have been delayed subject to maximum of 5% of the value of contract price of the P&M. This LD will be in addition to the normal LD against delay in delivery.

(e) *Imposition of LD while granting extensions to delivery period:* While granting extensions of delivery period on an application of the contractor, the letter and spirit of the application should be kept in view in fixing a time for delivery and it must be decided while granting extension whether it would be with or without imposition of Liquidated Damages.

(f) Indian Contract Act 1872 allows recovery of reasonable compensation for breach of contract, not exceeding the sum stipulated in the contract as the amount to be paid in case of such breach, whether or not actual damage or loss is proved to have been caused thereby. Therefore, for imposition of LD, there is no need to establish actual loss due to late supply. The legal position with regard to claim for liquidated damages is as follows:

- Whatever be the quantum of the loss sustained, the claim cannot exceed the sum stipulated in the contract.
- Only a reasonable sum can be claimed as damages and what is a reasonable sum would depend on facts.
- If the sum stipulated in the contract is very high compared to probable / actual damage, then it is called penalty. Irrespective of whether the sum stipulated is in nature of LD or penalty, the Court shall award only a 'reasonable compensation' not exceeding the amount so stipulated.
- Court may proceed on the assumption that the sum stipulated reflects the genuine pre-estimate of the parties as to the probable loss and such clause is intended to dispense with proof thereof.

(g) **Quantum of LD (Standard clause to be specified in TE):**

- (i) In the event of seller's failure to have the plant / machines or any part/installment thereof delivered by the date/dates specified in the contract, the buyer may at his discretion withhold any payment until the whole of the plant / machines have been supplied and the buyer may also deduct from the seller as agreed, Liquidated Damages and not by way of penalty, the sum of 0.5% of the contract price of the delayed supplies for each week or part of a week for which the delay has occurred, subject to maximum of 5% of the value of delayed supplies.
- (ii) For delay in completion of any works or services attributable to the supplier, which leads to delay in commissioning and final acceptance of the plant / machines, LD will be imposed @ 0.5% of the full contract price of the plant / machines for each and every week and part of a week of delay in commissioning and final acceptance, subject to maximum of 5% of the full contract price. This LD will be in addition to the LD against delay in delivery of supplies.
- (iii) The sum of LD for (i) and (ii) above, i.e. for delays in supplies as well as works & services, will be subject to overall ceiling of 5% of full contract price.
- (iv) LD will be calculated on the basis of total value of goods, including elements of statutory duties and levies viz VAT/sales tax, excise duty, etc as indicated in the contract.

(h) **Guidelines for Levying of LD:** The following guidelines should be followed while taking decisions on imposition of LD.

Sl	Circumstances	Quantum of LD
1	Delay in supplies/works resulted in actual/demonstrable monetary loss and the Supplier was responsible for the delay.	Full LD as per the provisions of contract, subject to the LD not exceeding the ceiling specified.
2	Delay in supplies/works resulted in actual/demonstrable monetary loss but the Supplier was responsible only for a part of the delay and the remaining part was beyond Supplier's control.	Full LD for the period for which the Supplier was responsible for the delay, subject to the LD not exceeding the ceiling specified.
3	Delay in supplies/works resulted in actual/demonstrable monetary loss but the entire delay was due to circumstances beyond the control of the Supplier.	LD may be waived in full
4	Actual/demonstrable monetary loss cannot be certified and no inconvenience has been caused.	LD may be waived in full
5	Actual monetary loss cannot be certified but inconvenience has been caused.	LD may be levied at the rate as may be decided, but less than the maximum stipulated.

(i) **Waiver of LD:** Liquidated damages may be waived in full or part, with the approval of the CFA and the concurrence of the IFA, as per the above guidelines. In all such cases, adequate reasons should invariably be recorded for waiving the LD.

10.20 Consequential Damages:

As per Govt. instructions (Ministry of Finance – Deptt. of Expenditure letter dt. 13-11-2000) a clause on Consequential Damages may be added in the contracts in cases of turnkey contracts besides other penalties. A Consequential Damage is imposed over and above LD in case of time critical Turn-key Projects where considered necessary, which shall be stipulated in the RFP/TE and incorporated in the contract.

10.21 Review of Performance:

(a) Review of performances periodically is a means of deciding those ones which need timely corrective action one of such contingency is when the supply does not materialize within the delivery period. The options available are:

- i. Extend delivery date
- ii. Refix delivery date
- iii. Cancel the contract and repurchase the quantity.

(b) Whether to extend or cancel the contract depends upon if the purchaser is convinced that the supplier would come forward during the extended period. If there is no possibility, it would be advisable to cancel the contract and repurchase, if the requirement exists.

(c) The extension to DP is to be as asked for by the firm and mutually agreed. The letter and spirit of application for extension by the firm would have to be considered rather than only end dates. The supplier shall get effective time for performance of contract. The purchase officer is

competent to grant extension for contracts if it falls within his power of purchase. Such extensions are however conditional upon right to levy liquidated damage and denial for increase in prices, duties etc. Copies of extension shall be given to Inspector concerned.

(d) If there is no response to the contract by the firm, the purchase officer may issue a notice-cum-extension letter (Performance Notice) in specified proforma. If there is no response within 15 days, Cancellation Notice may be issued to the firm. Shall the trend continue, the Purchaser would be in a position to cancel the contract after a notice period of 15 days. The original delivery date would remain as the date of breach.

(e) If the firm despatches the material without getting DP extended, it will be at its own risk. The purchaser is free to cancel the contract and no claim will lie even if the material is taken delivery of the material can be rejected if delivered beyond delivery period. The RR and other despatch documents shall be returned to the firm.

(f) By a written notice of default sent to the firm, the purchaser can cancel the contract. The performance security deposited shall be forfeited and the purchase will procure elsewhere. The contractor is however free to perform to the extent the contract is not terminated.

10.22 Denial Clause (DC):

Since delay in delivery is a default by the seller, the buyer may protect himself against extra expenditure during the extended period by stipulating a denial clause (over and above Levy of Liquidated Damages) in the letter conveying extension of delivery period. In denial clause any increase in statutory levies are to be borne by the seller during the extended Delivery period, while Purchaser reserves its right to get any benefit of downward revisions of Statutory Duties.

10.23 Despatch of Goods after expiry of Delivery Period

(a) As per the contract terms, the supplier is not to supply the goods when there is no valid delivery period. In case the supplier makes any supply after expiry of delivery period, the purchaser/consignee can reject the supplies and inform the supplier accordingly; the purchaser shall also have the right to cancel the contract (w.r.t. unsupplied goods) in terms of the contract.

(b) If, however, the purchaser / consignee requires the goods (which has been supplied after expiry of the delivery period), the purchaser may accept the goods and issue a delivery extension letter with usual LD clause and denial clauses, as mentioned earlier, to regularize the transaction.

10.24 Correspondence with the Supplier after Breach of Contract

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

is without prejudice to the rights and remedies available to the purchaser under the terms of the contract.

10.25 **Risk Purchase and General Damages:**

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

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

(iii) The other remedies available to the purchaser in the absence of the risk purchase clause are as follows:

- (a) Deduct the quantitative cost of discrepancy from any of the outstanding payments of the supplier.
- (b) Avoid issue of further TEs to the firm till resolution of the discrepancy.
- (c) Bring up the issue of discrepancy in all meetings with the representative of supplier.
- (d) Provide for adequate Bank Guarantee to cover such risks.
- (e) In case of foreign contracts, finally approach the Government of the Supplier's country through the Ministry of Defence, if needed and raise the issue in Inter Governmental meetings.

CHAPTER – 11

ELEMENTS OF PRICE & TERMS OF PAYMENT

11.1 Introduction

- (a) The elements of price included in the quotation of a tenderer depend on the nature of the P&M to be supplied and the allied services to be performed, location of the supplier, location of the user, terms of delivery, extant rules and regulations about taxes, duties, etc. of the seller's country and the buyer's country.
- (b) In case of indigenous goods, the main elements of price are raw material price, production cost, overhead, packing & forwarding charges, margin of profit, transit insurance, excise duty and other taxes and duties as applicable.
- (c) In case of imported goods, in addition to similar elements of price as above (other than excise duty and taxes), there may be elements of custom duty, import duty, landing and clearing charges and commission to Indian agents.
- (d) Further, depending on the nature of the goods (whether domestic or imported), there may be cost elements towards installation & commissioning, operator's training etc.
- (e) It is, therefore, necessary that, to enable the tenderers to frame their quotations properly in a meaningful manner, the tender documents should clearly specify the desired terms of delivery and, also the duties and responsibilities to be performed by the supplier in addition to supply of goods.
- (f) Where the price has several components like price of the P&M, costs for installation & commission, operators' training etc. the tenderers shall be asked to furnish the cost break-up indicating the applicable prices for each such component (as specified and desired in the tender enquiry document) along with the overall price.

11.2 Indigenous purchase :

In case of purchase of indigenous P&M, the main elements of price as given below:

- (i) Basic Price, which includes price of plant and machinery, packing and forwarding cost.
- (ii) Prices for accessories, other items and toolings as per scope of supply in the tender.
- (iii) Civil Works, related to foundation of plant and machineries as per scope of supply in the tender, if any.
- (iv) Taxes and duties like Excise Duty, Sales tax, Works Contract Tax etc, if applicable.
- (v) Freight charge, if applicable.
- (vi) Local taxes, if applicable.
- (vii) Erection supervision charges or erection charges, if any.
- (viii) Commissioning supervision charges.

(ix) Training charge, for number of manpower and days, if any.

(x) Cost of spares: Whenever asked for and necessary for catering the needs of spares consumed during initial period of one or two years.

11.3 Imported purchase:

The cost of P&M ex-import generally consists of following elements:

- (i) FOB price of the basic machine, accessories and toolings in FE, converted to Indian rupees with the prevailing BC selling rate of conversion.
- (ii) Ocean Freight
- (iii) Customs Duty at the port of landing
- (iv) Landing and clearing charges
- (v) In land freight, other local taxes etc
- (vi) Erection charge/supervision of erection charges
- (vii) Commissioning charges
- (viii) Civil Works, if any
- (ix) Cost of spares whenever asked for and necessary for catering to the needs of spares consumed during initial period of one or two years.
- (x) Insurance of imported Defense Good and equipment shall be resorted to through Government Agency/PSU.

11.4 Cost of Spares:

Even though the cost of spares is an important element of cost in the purchase of plant and machinery, which indicate the cost of maintenance of the plant in future, the cost so offered by the supplier/contractor out of his own volition, assessment of requirement and prices, is not to be considered as an element of cost for ranking the bidders.

11.5 Currency

The tender documents are to specify the currency (currencies) in which the tenders are to be priced. As a general rule, domestic tenderers are to quote and accept their payment in Indian currency; costs of imported goods, which are directly imported against the contract, may be quoted in foreign currency (currencies) and paid accordingly in that currency; and the portion of the allied work and services, which are to be undertaken in India (like installation & commissioning of equipment) are to be quoted and paid in Indian currency.

11.6 Firm & Fixed Price Contract

Contracts for P&M should be concluded on firm and fixed price basis by inviting tenders accordingly.

11.7 Duties and Taxes on Domestic Goods

(a) The duties and taxes including excise duty and VAT levied by the Government on domestic goods vary from product to product. As a general policy, the statutory variations in such duties & taxes are to be allowed during the period from the date of tender to the date of acceptance of the tender (i.e. placement of contract) and during the original/ re-fixed delivery period of the contract so that both the supplier and purchaser are equally compensated for rise or fall in the prices of the goods on account of such statutory variations.

(Note: Re-fixed delivery period means the fresh delivery period which is arrived at by recasting the original contractual delivery period after taking care of the lost period, for which the supplier was not responsible.)

(b) In the tender enquiry conditions, the tenderers, wherever applicable, should be asked to specifically state in their offer whether they intend to ask for the duties and taxes as extra over and above the prices being quoted. In the absence of any indication to this effect by the tenderers, it is to be assumed that the prices quoted include these elements and no claim for the same will be entertained after opening of tenders and during the currency of the resultant contract. However, where the tenderer in its quotation mentions that the prices are exclusive of statutory duties & taxes and the same will be payable extra, this condition should be incorporated in the resultant contract in clear terms.

(c) Sometimes, the tenderer, in its tender mentions that its quotation includes current rates of taxes and duties as applicable and statutory variations, if any at the time of supply will be applicable. This condition may be acceptable. However, correctness of the taxes and duties quoted by a tenderer as applicable during that period is to be verified while considering its tender. Also, only statutory variations, and not any other type of variations are allowed.

Note: Sales tax is not leviable on transactions of sale in the course of import.

(d) Categories of cases constituting sale in course of Import are:

- (i) Where the movement of goods from the foreign country to India is occasioned directly as a result of the sale.
- (ii) Where there is a privity of contract between the foreign supplier and the purchase organization.
- (iii) Where the Indian supplier acts as the agent of the foreign manufacturer in the agreement of the sale.

11.8 Excise Duty:

(a) Excise Duty is leviable on manufacture and the manufacturer is liable to pay Central Excise Duty when a new commodity or goods comes into existence as a result of manufacturing activity. Such goods shall be usable, movable, saleable or marketable. Therefore, repair/reconditioning of an article does not amount to manufacture of new goods even though it may have upgraded existing equipment. Unpacking and repackaging also does not become new goods.

(b) Section 4 of Central Excise and Tariff Act 1985 states that the deemed value or normal price of goods is the price at which it is normally sold by the assessee in the course of business. It is arrived at by including the following:

- (i) Full cost of manufacture consisting of raw materials, components, cost of processing etc
- (ii) Taxes and duties paid on inputs, excluding CENVAT credit
- (iii) Cost of packing
- (iv) After sale service charges during warranty/guarantee period
- (v) Cost of marketing etc
- (vi) Charges for tests, over and above those normally done by the assessee, as required by the purchaser to be done through outside agency, is not to be included.

(c) **Claims for reimbursement of Excise Duty:** Wherever excise duty is to be paid extra, it shall be stated as such explicitly in the tender and in the contract. Unless it is stated as such in the tender, it would be assumed that the offer is inclusive of excise duty. The mere statement that the offer is exclusive of excise duty does not entitle the firm for reimbursement of the duty. Whenever the prices are exclusive of excise duty and it is to be paid extra at a specified rate, it shall be mentioned in the contract as such and it shall have been mentioned in the quotation itself. Where it is mentioned in the tender that the rate is exclusive of excise duty, but no mention is made of excise duty to be paid extra, no claim for payment of excise duty will be entertained later. As per extant orders, break-up of all inclusive rate viz., Basic price, Excise duty, CST, etc. needs to be given. In view of this, it must be made mandatory on the bidders to provide details of all Govt. levies including Excise Duty so that there is no scope for inclusion or exclusion of taxes, levies at a later date.

(d) As per section 64(A) of Sale of Goods Act, the contractor is entitled to be reimbursed for such amount he is obliged to pay as a result of imposition of taxes, provided such imposition takes place after making of the contract and that taxes have been levied on goods sold. Any intention to deny payment of such taxes shall be made clear in the contract itself.

(e) It is a legal position that whenever the firm's offer is based on excise duty prevailing on the date of their quotation, any statutory variation will be to purchaser's account. The acceptance of tender shall specifically incorporate that statutory variation in the rate of excise duty will be admitted from the date of opening of tender. If it is not allowed, there will be no contract between the parties. Thus the statutory variation in custom/excise duty and other statutory taxes between date of opening of tender and date of supply of goods will be admitted.

(f) Whenever excise duty is to be paid extra, it will be paid with the initial bill for payment. The bills for excise duty will not be withheld for recovery of liquidated damage. The firm has to attach copy of Excise duty payment details along with bill. While submitting bills for payment, the firm has to undertake the following:

- (i) Excise Duty claimed is not more than that as per the relevant act applicable within the original delivery period.
- (ii) That the Excise duty claimed has been paid to the authorities
- (iii) Certificate to the effect that no refund has been received.
- (iv) Certificate with final bill that no claim for refund is pending for disposal and
- (v) An undertaking that in case any refund received has not been refunded to the purchaser the amount can be recovered from pending bills.

11.9 Sales Tax/ VAT:

(a) The liability for payment of Sales Tax is on the dealer/supplier and he cannot pass it on to the Government, as a purchaser as a matter of course, unless the latter has agreed as per terms of contract to reimburse that element. Therefore, unless specifically stated in the tender, it will be presumed that Sales Tax is included in the quoted price. Where Sales Tax is legally liable and it is payable as per contract, it will be reimbursed being statutory tax at the rate prevalent at the time of agreed delivery.

(b) Central Sales Tax:

(i) Inter-state sales which occasion the movement of goods from one State to another or which are effected by transfers of documents of title to the goods during their movement from one State to another are liable to Tax under the Central Sales Tax Act, 1956. The entire revenue accruing under levy of CST is collected and kept by the State in which the sale originates. The Act excludes taxation of imports and exports.

(ii) CST being an origin based tax, is inconsistent with Value Added Tax which is a destination based tax with inherent input tax credit refund. Through an amendment to the Central Sales Tax Act, the rate of CST for inter-State sales between registered dealers (against Form-C) was reduced from 4% to 3% w.e.f. 1st April, 2007. Through this amendment, facility of inter-State purchases by Government Departments at concessional CST rate, against Form-D was withdrawn. The rate of CST on inter-State sales to Government was made same as VAT/ State sales tax rate.

(iii) Central Sales Tax rate has been further reduced from 3% to 2% with effect from 1st June, 2008. Reduction of CST rate first from 4% to 3% & then from 3% to 2% has been done as a precursor to the introduction of Goods & Services Tax (GST).

(iv) Hence, as far as purchase of P&M by factories is concerned, CST is now same as VAT as applicable in respective states. Factories have to take action in future as per the prevalent rules.

11.10 Local taxes and Octroi:

Goods supplied against Govt. contracts are generally exempted from levy of Town duty, Octroi, Terminal tax, and other levies of local bodies. Wherever required, the contractors shall obtain exemption certificate from the purchaser. In case local bodies insist upon payment of

duties, the same shall be paid by the contractor in order to avoid payment of demurrage and other penalties, and the receipt forwarded to purchase officer with copies of notification etc. for reimbursement. The purchase officer shall authorize payment against such receipts and the vouchers will be retained for pursuing refund.

11.11 Customs Duty on Imported Goods

- (a) It is generally expected that all Government goods will be imported on FOB basis. For all import of Defence goods of OFB, the liability for payment of Customs duty as per contract rests with the General Manager of the factory. But if any Indian firm/ tenderer quotes against OFB Tender for imported equipment/plant and machinery, in such cases, the tenderer shall quote prices in INR including Customs duty and associated taxes as a cost of basic price of the machines and subsequently add details of other taxes like Sales Tax/VAT as extra as in Second sale. OFB/Factory shall not take any responsibility for payment of Customs duty, export license, etc in such cases.
- (b) In the event of replacement of any defective component of goods against a supply order, the supplier will be responsible to bear all the cost including the Custom duty as applicable at that time for replacement of the same, considering the fact that such extra payment would have been avoided had the supply been made in time and found satisfactory.
- (c) **Customs Duty Exemption Certificate (DEC):** In the FOB supply of imported goods, the responsibility of payment of custom duty rests with the purchaser. But before making such payment and to avail of exemption, factory should obtain exemption certificate for payment of Custom duty from the competent authority. Accordingly, the following procedure may be followed-
 - i) Five ink-signed sets of the proforma shall be sent to OFB New Delhi office with certification by General Managers for getting the DEC issued by MoD.
 - ii) Concerned Joint Secretary in the MoD will do the necessary certification after verification.
 - iii) It is necessary that the customs notification number, its clauses and sub-clauses, nomenclature, quantities etc. shall be mentioned in detail at appropriate places.
 - iv) It is necessary to keep abreast of current customs notifications while filling of the proforma.

11.12 Terms of Payment: Tender documents shall contain the offered payment terms to make the bidders aware before submission of bidders.

11.13 Terms of Payment for Indigenous P&M (For F.O.R Supply):

(a) 90% value of material plus 100% Taxes, Duties if any, less LD due to delayed supply, if any, will be paid after acceptance in Pre-dispatch inspection of machine at Firm's works and on receipt of machine in safe condition at Purchaser's end against submission of Warranty Bond amounting to 5% of contract value and valid till two months after warranty period. Freight charges will be payable on actual against documentary evidence but not exceeding as quoted by the firm and accepted by purchaser.

(b) Balance 10% value of material plus 100% Erection & Commissioning (E&C) charges shall be paid after commissioning of P&M.

11.14 Terms of Payment for Imported P&M (For F.O.B Supply):

(i) Payment will be made through irrevocable Letter of Credit only for 100% value of the order established on a scheduled bank in India. In case of payment through confirmed LC, the charges of confirmation will be borne by the contractor. Purchaser will establish LC only three months prior to the actual date of delivery/ shipment. In case contractor insists on establishment of LC immediately after conclusion of contract/ placement of order irrespective of delivery/ shipment schedule, LC will be established by the purchaser immediately after conclusion of contract for a period of three months with a provision in LC that cost of further extension of validity of LC will be borne by the beneficiary and the issuing bank will be advised accordingly while amending the LC.

(ii) If any extension of the Letter of Credit (LC) is required due to the fault of the supplier, the supplier will have to pay for such extension.

(iii) 90% payment for supply and services including training charges at firm's premises, if any, will be paid after acceptance in Pre Despatch Inspection (PDI) of machine at Firm's works against dispatch documents i.e. bill of lading / airway bill, acceptance certificate by PDI team, etc. against submission of Warranty Bond amounting to 5% of contract value and valid till two months after warranty period.

(iv) Balance 10% value of supply and including training charges at firm's premises, if any, plus 100% Erection & Commissioning (E&C) supervision charges after commissioning and final acceptance of machine at purchaser's end.

11.15 For having a level playing field to indigenous supplier vis-à-vis Foreign supplier and in terms of ministry of finance manual 2006 (para 9.2 & 9.13.2), payment through LC may be extended to indigenous supplier in GTE cases only. However the payment terms shall be similar to 11.13 on FOR basis. Payment through LC shall not be extended in OTE cases.

11.16 **Special Terms of Payment:**

(a) **For contracts involving Furnaces, Metallurgical plants, Heavy duty presses and Chemical plants or any turnkey projects of high value:** In such P&M, the functional PDI at Firm's premises is not possible. Payment terms will be 80% against firm's Guarantee Certificate and self inspection of material, equipments, systems subassemblies, etc and submission of 5% B.G., subassemblies, etc. Balance 20% shall be paid against successful erection & commissioning of the plant. 5% B.G. submitted at the time of 80% payment will remain valid till two months after the warranty period. The F.O.R and F.O.B conditions as elaborated for normal P&M will accordingly be modified to cater for such cases.

(b) For contracts involving Turnkey projects where stage payment is contemplated:

- a. Payment terms may be arrived at Factory PFC meeting in consultation with Finance representative and the same may be got approved by PFC/ OFB along with the mode of tender. Payment terms so decided must be part of Tender Enquiry.
- b. However, for chemical and explosive plants being procured on turnkey basis through GTE, factories shall follow the model payment terms given in the Appendices. This is same as that circulated vide OFB letter No 502/P/EP/Policy Dt 20/04/2012 with the concurrence of Finance Division/OFB, except for warranty bond value of 5%.

11.17 **Advance Payment**

(a) Advance payment shall not be generally made for purchase of P&M.

(b) However, for cost intensive P&M costing more than Rs 10 crores and for turnkey projects, advance payments can be considered. In such cases, specific terms of advance payment must be included in the tender documents, keeping in view the following conditions/ guidelines.

- i. The limit for advance payment shall be restricted to 15% of the contract value in terms of DPM 2009 (Supplement 2010) and DDP ID no. 26(6)/Import-Gen/2006/DP(Plg III) dt 13-08-2007. Cases beyond this limit will require the approval of the Secretary (DP), MOD and Financial Adviser, Defence Services/ Secretary (Defence Finance).
- ii. Any advance made to suppliers will be interest free within original delivery period of the contract, but shall carry interest beyond this period if delay is due to the contractor. The

rate of interest shall be 12-month LIBOR + 100 basis points for payment in foreign currency and SBI's Base rate plus 200 basis points for payment in Indian Rupee.

- iii. Advance payment shall be given against an unconditional Bank Guarantee called Advance Bank Guarantee (ABG). The amount of ABG shall be 110% of the advance amount as per CVC guidelines, so as to enable recovery of not only principal amount but also the interest portion, if so required due to default on the part of the supplier.
- iv. The ABG shall be from an Indian Scheduled Bank duly authorized by RBI to handle Government transactions, provided by the suppliers. In case of foreign vendors, it may be from 1st Class International Bank to be confirmed by a Scheduled bank, preferably the State Bank of India.
- v. Advance Payment shall be adjusted in full at one go, or set off pro-rata against the successive payments due to the supplier, if so insisted upon by the supplier in his offer. If 15% advance has been given, the set off is to be given @ 15% of invoice value.
- vi. As per CVC guidelines dated 17.02.2011, for machinery and equipment advance, insurance and hypothecation to the employer shall be ensured. However, such advance is generally not given in Ordnance Factories.

11.18 CVC has issued various circulars from time to time on the subject matter which may be followed strictly:

- 1. If the Management feels its necessity in specific cases, then it shall be clearly stipulated in the tender document and its recovery shall be time based and not linked with progress of work.
- 2. The amount of mobilization advance; interest to be charged, if any; its recovery schedule and any other relevant detail shall be explicitly stipulated in the tendered documents upfront.
- 3. Machinery and Equipment advance, insurance and hypothecation to the employer shall be ensured.
- 4. Utilization certificate from the contractor for the mobilization advance shall be given in installments and subsequent installments shall be released after getting satisfactory utilization certificate from the contractor for the earlier installment.
- 5. The advance payment may be released in stages depending upon the progress of the work and mobilization of required equipments etc.
- 6. There shall be a provision in the contract for adjustment of advance progressively even as the bills are cleared for payment.
- 7. The Bank Guarantee etc. taken towards security of "Mobilization Advance" shall be at least 110% of the advance so as to enable recovery of not only principal amount but also the interest portion, if so required.

8. A clause in the tender enquiry and the contract of cases providing for interest free mobilization advances may be stipulated that if the contract is terminated due to default of the contractor, the “ Mobilization Advance” would be deemed as interest bearing advance at an interest rate of % (to be stipulated depending on the prevailing rate at the time of issue of NIT) to be compounded quarterly.

(Authority: Rule 159. GFR and Supplement 2010 to DPM 2009 & CVC Guidelines dated 08.06.2004, 10.04.2007 & 17.02.2011)

11.19 Stage payments:

When stage payments are considered e.g. for turn key projects and for procurement of machines from government controlled autonomous institutions like CMTI, following should be ensured:

- (i) Stages (milestones) against which payments are to be made should be clearly defined.
- (ii) Necessary provision should be incorporated in the contract ensuring purchaser's ownership on the stages up to which work is completed and payment is made.
- (iii) Recovery of advance amount paid already should be made proportionately from the stage payments.

11.20 Documents for Payment

(a) The documents, which are needed from the supplier for release of payment, are to be clearly specified in the contract. The paying authority is also to verify the documents received from the supplier with corresponding stipulations made in the contract before releasing payment. The important documents, which the supplier is to furnish while claiming payment, are:

- i. Original Invoice
- ii. Packing List
- iii. Certificate of country of origin of the goods to be given by the seller or a recognized Chamber of Commerce or other agency designated -+by the local Government for this purpose.
- iv. Certificate of pre-despatch inspection by purchaser's representative
- v. Manufacturer's test certificate
- vi. Certificate of Insurance
- vii. Bill of lading/Airway bill/Rail receipt or any other dispatch document, issued by a government agency (like the Department of Posts).
- viii. Supplier's certificate that product is new, un-used and also meets the other relevant contractual requirements.

(b) While claiming payment, the supplier is also to certify in the bill that the payment being claimed is strictly in terms of the contract and all the obligations on the part of the supplier for claiming this payment has been fulfilled as required under the contract. There should also be a suitable provision for verification of the authenticity of the person signing the invoice etc. for claiming the payment.

11.21 Modes of Payment

(a) Payment to Domestic Suppliers

- (i) Payments to domestic suppliers were usually made by cheque/demand draft drawn on a Government treasury or branch of the Reserve Bank of India or State Bank of India transacting government business.
- (ii) It is now mandatory for the suppliers/vendors to indicate their bank account numbers and other relevant e-payment details so that payments can be made through electronic mode i.e. ECS for local payments and NEFT/RTGS for out-station payments, instead of payment through cheques. A copy of the model mandate form prescribed by RBI to be submitted by suppliers/vendor for receiving payments through ECS is given in the Appendices to this manual. The details given in the mandate form should also be incorporated in the supply order/contract.
- (iii) In such of those cases where there has been global tendering, in order to have uniform payment clauses, if domestic suppliers, especially against high value contracts for sophisticated equipment/machinery, desire payment through Letter of Credit, the same, may be agreed to.

(b) Payment to Foreign Suppliers

- (i) Payments to foreign suppliers are ordinarily made by Letters of Credit (LC) opened by the State Bank of India or any other scheduled/authorized Bank. While opening the Letters of Credit, factories should follow the provision of Uniform Customs and Practices for Documentary Credit (UCPDC).
- (ii) For contracts below USD 1,00,000, it is preferable to make payment to the seller through Direct Bank Transfer (DBT) for which buyer has to ensure that payment is released only after the receipt of the prescribed documents. Accordingly, it may be specified in the TE that the payment would be made through DBT for contracts of value below USD 1,00,000.

(c) e-Payment

- (i) NEFT: National Electronic Funds Transfer (NEFT) is a nation-wide payment system facilitating one-to-one funds transfer. Under this Scheme, individuals, firms and corporates can electronically transfer funds from any bank branch to any individual, firm

or corporate having an account with any other bank branch in the country participating in the Scheme. For being part of the NEFT funds transfer network, a bank branch has to be NEFT- enabled. The list of bank-wise branches which are participating in NEFT is provided in the website of Reserve Bank of India at <http://www.rbi.org.in/scripts/neft.aspx>

- (ii) ECS: Electronic Clearing System (ECS) is an electronic mode of payment / receipt for transactions that are repetitive and periodic in nature. ECS is used by institutions for making bulk payment of amounts towards distribution of dividend, interest, salary, pension, etc., or for bulk collection of amounts towards telephone / electricity / water dues, cess / tax collections, loan installment repayments, periodic investments in mutual funds, insurance premium etc. Essentially, ECS facilitates bulk transfer of monies from one bank account to many bank accounts or vice versa.
- (iii) As per Govt of India instructions, payment to all suppliers/vendors, refunds of various nature, and other payments which an organization routinely makes are required to be made through electronic payment mechanism (NEFT) and salary & other payments to the employees through the electronic clearing system(ECS). Accordingly, payment of monthly salary of employees using the ECS system has already been implemented and PCA(Fys) has also started availing the NEFT facility for payments relating to GM/HOD Public Fund Account, LAO Public Fund Account, and Third Party (Suppliers/contractors) payments w.e.f 1st December, 2010.

11.22 Payment by Letter of Credit

(a) Letter of credit is a documentary credit. Two banks are involved for payment to the supplier by Letter of Credit –purchaser's bank and supplier's bank. The purchaser is to forward the request to its bank in the prescribed format as formulated by State Bank of India, along with all relevant details including authenticated copy of the contract. Based on the same, the purchaser's bank opens letter of credit on behalf of the purchaser for transacting payment to the supplier through the supplier's bank. Care shall be taken to ensure that the payment terms and the documents to be produced for receiving payments through letter of credit are identical with those shown in the contract. Generally, irrevocable letter of credit is opened so that the supplier is fully assured of its payment on fulfilling its obligations in terms of the contract. In case, the delivery date of the contract is extended to take care of delay in supply, for which supplier is responsible, the tenure of the letter of credit is also to be extended, but the expense incurred for such extension (of letter of credit) is to be borne by the supplier.

(b) The parties to a Letter of Credit are:

- (i) **Applicant:** It is normally the buyer, who applies to the authorized dealer to open a Letter of Credit. He shall ensure that the items under import are not included in the negative list of Export - Import Policy 1992-93.

- ii) **Issuing Bank:** It issues the letter of credit and undertakes to make the payment. As per provisions of Exchange Control Regulations of RBI, only Authorized Dealers are permitted to open letters of Credit on behalf of their customers who are parties to the trade.
 - (iii) **Beneficiary:** He is the seller of goods to receive the payment. He could be the first or more (second) beneficiary in case of transferable LC.
 - (iv) **Advising Bank:** A bank normally in the country of the beneficiary who advises the LC, thereby assuring genuineness. As per Foreign Exchange Control practices, if the advising bank does not involve itself in the process of checking, they must say so to the beneficiary.
 - (v) **Confirming Bank:** It confirms and adds its guarantee to the credit of another bank. It stays in and allows reimbursement/payment on behalf of opening bank. The cost of confirmation is ordinarily borne by beneficiaries.
 - (vi) **Negotiating Bank:** It is the bank nominated to negotiate the documents or pay the proceeds of the bill against presentation of documents specified.
 - (vii) **Reimbursing Bank:** It is designated by the issuing bank to reimburse to the negotiating bank when payment is claimed against retirement of bills. Normally opening/issuing bank has accounts to which such reimbursements are to be debited.
- (c) The common types of LCs are:
- (i) **Irrevocable Letter of Credit:** This most commonly used Letters of Credit can not be cancelled without the consent of all parties concerned. In contrast, revocable letters of credit can be cancelled/amended by issuing bank at any time, except that it has to honour payment liabilities before notice of cancellation. Revocable LCs are not generally issued by banks in India unless specially permitted and therefore unless specified, all LCs are irrevocable.
 - (ii) **Confirmed Letter of Credit:** Sometimes a bank in the country of the beneficiary does confirmation. This is done at the instance of the beneficiary, an undertaking by the confirming bank in addition to issuing bank. Generally confirmed Letter of Credit will be discouraged. If the seller invites/desires for confirmed Letter of Credit the cost of confirmation may be borne by them.
 - (iii) **Sight Credit:** Under this Credit, the beneficiary receives payment upon presentation of documents to the paying/negotiating bank, after due examination by the bank.
 - (iv) **Revolving Credit:** Under this Credit a commitment is made by the issuing bank to restore the credit to the extent of amount utilized. In cumulative revolving credit, the unutilized amounts, in a period, can be added to the amount during next period. In the non-cumulative credits, the unutilized amounts lapses, if not used. The permissible duration and period of utilization of these credits are specified in letters of credits.

- (v) Acceptance Credit: The beneficiary draws a time draft and the draft is accepted by banks for payment as a discountable instrument upon presentation of document. The seller may get the draft discounted against guarantee of issuing/confirming banks and the payment is debited to the buyer on maturity.
 - (vi) Deferred Payment Credit: Both are retired after a period specified in the contract, after documents are presented. It is a financing instrument for the buyer and ensures payments by buyer on the due date.
 - (vii) Transferable Credit: In this arrangement, the first beneficiary, transfers his rights and obligation to one or more (second) beneficiary/beneficiaries only once. Subsequent transfers to third beneficiaries are not permitted. Wherever partial shipments are permitted, fractions of a transferable credit can be made available.
- (d) The Letter of Credit shall contain the following:
- (i) Name and address of the applicant
 - (ii) Name of issuing bank or the credit document on preprinted stationery
 - (iii) The dates of issuance of credit, and the date and place of expiry of credit shall be stated
 - (iv) Name and address of beneficiary (or beneficiaries in case of transferable credit)
 - (v) Whether if it is confirmed, revocable or not. In case of confirmed credit, the name and address of confirming bank shall be mentioned.
 - (vi) The terms of despatch i.e. FOB, CIF and FAS etc shall be mentioned.
 - (vii) The documents to be presented for payment.
 - (viii) The credit amount and its currency are to be stated. Amounts shall be in figures and words. The expression "circa" and "about" may be construed as 10% above and less than the amount stated.
 - (ix) Credit is negotiable with any bank of beneficiary's choice, unless it is stated explicitly in the credit as to which bank shall negotiate.
 - (x) The credit also states modes of payment like "at sight" or "deferred payment" terms.
 - (xi) If the import bill for payment has not been drawn up as specified on letter of credit, or drawn up on acceptance basis, the same is referred to importer for their acceptance, before any bills are paid by the negotiating banks.
 - (xii) In case final payments are to be accepted by the buyer, depending upon the pending claims to be settled, it must be mentioned in the LC. This would help in settling all pending claims of the purchaser before final payments are made.
- (e) Opening of 'Letter of Credit' and keeping the same alive costs money to the purchaser. Therefore, all efforts shall be made to open the same as close as possible to the date of delivery (within a quarter of the proposed delivery). If any extension of the LC is required due to the fault

of the supplier, the supplier shall be made to pay if any additional cost is involved for such extension.

(f) Documents related with Documentary credits:

- (i) Bill of Lading: The negotiable copies of bills of lading are required to be transacted through banks. However, the original copy of bill of lading ought to be transmitted to Embarkation Headquarters for early release of consignment without paying wharfages/demurrages and delay due to transmission through banks is avoided. It shall show "on board" date prior to last date of shipment stipulated in LC. It shall be made in the name of party in LC and the description of goods shall tally with invoice and with details of LC. The port of shipment, port of destination, Consignee, Consignor, carrying vessel, terms of payment like FOB/CIF and payment made towards freight etc shall find mention in the Bill of Lading. The bill of lading shall be clean. It shall not be claused, received for shipment unless marked "on board" with date, "On deck" etc. It shall be signed manually by Steamship Company or its authorized agent and is properly stamped.
- (ii) Insurance documents: Generally Insurance policy, and not cover notes, duly stamped as per laws of the country, is required, if so specified in the LC. They are negotiated through banks, if needed, for payment purposes. They shall be endorsed in favour of the bank/buyer as the case may be. Third party policy is not acceptable. The date of insurance shall be dated prior to the date of shipment. The insurance policy shall mention the name of ship, merchandise details, number of packages, name of vessel, number of voyages, port of shipment, port of destination/destination warehouse and the details on Insurance documents shall not contradict the stipulation in Bill of Lading or Invoice.
- (iii) Invoices: It is a signed document signed by the beneficiary of the LC made in the name of buyer (who has opened LC) containing description of goods which shall correspond with all details of the description as in LC. It shall tally with price and quantity as per LC. All negotiable copies shall be submitted to the bank and an extra copy for exchange control copy shall be sent to the port consignee. The marking and number of packages shall be identical as given in the LC. The terms of payment like FOB, CIF etc are to be mentioned in the invoice. Any other certification/endorsement required shall also be mentioned and the invoice shall be certified as correct by the beneficiary.
- (iv) Inspection Certificate: It shall contain description of goods, shipper's name and the authority issuing the certificate, which shall be as per LC. The date of drawing of samples shall be mentioned. The samples drawn shall relate to the goods shipped.
- (v) Certificate of Country of Origin: It is required for the purposes of Exchange control. It is generally issued by the Chamber of Commerce of the country concerned and is as stipulated by LC. The description of goods shall agree with that in the Invoice.
- (vi) Packing list: It gives the details of items packed, their volume/size of packing and their approximate quantities. This gives advanced information on planning their unloading and despatch to the ultimate consignee.

(f) As a general requisite, all documents, as stipulated in the LC, are submitted. They are issued by the authority as specified in the LC and contain the details as stipulated in the LC. Documents shall be submitted within the due date. The details in LC are:

- (i) The Credit may be allowed on trans-shipment or partial shipment basis.
- (ii) The particulars of insurance, if required, especially in case of CIF contracts.
- (iii) Mode of transportation, the originating point and destination shall be mentioned.
- (iv) Brief description of goods shall find mention. 'Circa' or 'about' unit prior means 10% tolerance on high or low sides. Generally 5% variation on quantity on either side is permissible. For fixed quantities, definite quantity is stipulated.
- (v) It shall specify documents and nature of documents and their distribution for the purpose of their negotiation by the negotiating bank.
- (vi) Necessary reimbursement instructions like whether reimbursement is available with transmission or on actual receipt of documents after negotiation.

(g) The applicant/importer shall categorically instruct the bank on the above issues to avoid amendments etc at a later date, for which banks charge service charges as per FEDAI Rules. They shall also ensure that permission of RBI is obtained wherever LC permits advance payments. The importer shall ensure that Original Exchange Control copy of bill of Entry/Postal wrapper etc, as evidence of import, are submitted within prescribed period from date of effecting remittance. The authorized dealers compile lists of defaulters every three months. The last date of transshipment shall not exceed 15 days from the date of licence or importation period, wherever so allowed.

(h) **Documentary evidence of Import:**

The extract of RBI's advice to OFB on the subject is reproduced below:

"It is advised that Exchange Control copy of B/E being the conclusive proof of import, triplicate copy of B/E cannot be accepted as documentary evidence of import. You are therefore requested to insist on submission of Exchange Control copy of B/E for home consumption.

Alternately, a certificate from statutory Auditor of O F Board, indicating that the goods have actually been imported as per bank of accounts may be forwarded to the control".

In case the EC copy of bill of entry or Postal/Courier wrapper is not available a certificate by Director, Audit (OF) shall be submitted to the authorized dealer for the purpose.

- (i) Confirmation by foreign banks:
 - i. Various agencies have been requesting SBI to open LCs abroad and have the same confirmed by foreign banks. Such confirmation not only affects the credibility of SBI but also is to material disadvantage. Not only Indian Banks abroad shall be used for opening letters of credit but in the event of not doing so, approval of Govt. be obtained.
 - ii. The cost of confirmation shall be borne by the supplier.

- iii. Imports other than FOB/FAS basis: As per procedure laid down by the Govt. of India, import contracts of Central/State Govt. and PSUs etc, are required to be done on FOB/FAS basis. For contracts entered into on terms other than FOB/FAS, a No Objection Certificate from the Ministry of Surface Transport would be required to be obtained. Authorized dealers would ensure that a No Objection Certificate is obtained by the concerned Govt. organizations in cases of import contracts made on terms other than FOB/FAS before opening import letters of credit on releasing foreign exchange. A copy of the aforesaid “No Objection Certificate” issued by the Ministry of Surface Transport, Govt. of India is to be obtained in the event of approaching SBI with any proposal for opening of Letter of credit on terms other than FOB/FAS.

11.23 Deduction of Income Tax, Service Tax, etc. at Source from Payments to Suppliers

This will be done as per the existing law in force during the currency of the contract.

11.24 Recovery of Public Money from Supplier's Bill

Sometimes, requests are received from a different OF/Ministry/Department for withholding some payment of a supplier out of the payment due to it against a contract. Such requests are to be examined by the factory which has received the request on the merits of the case for further action. It will however, be the responsibility of the OF/Ministry/Department asking for withholding of payment to defend the Government against any legal procedure arising out of such withholding as also for payment of any interest thereof.

11.25 Refund from Supplier

Sometimes, the suppliers, after claiming and receiving reimbursements for sales tax, excise duty, custom duty etc. from the purchaser, applies to the concerned authorities for refunds, on genuine grounds, of certain portions of such duties and taxes paid by it and receives the allowable refunds. Such refunds contain the purchaser's share also (out of the payments already made by the purchaser to that supplier). The tender enquiry document and the contract are to contain suitable provisions for obtaining such refunds from the supplier.

11.26 Payment against Time Barred Claims

Ordinarily, all claims against Government are time barred after a period of three years calculated from the date when the payment falls due unless the payment claim preferred has been under correspondence. However, limitation is saved if there is an admission of liability to pay, and fresh period of limitation starts from the time such admission is made. The drill to be followed while dealing with time barred claims will be decided by the factory concerned in consultation with the Paying Authority. The Paying Authority is to ensure that no payment against such time barred claim is made till a decision has been taken in this regard by the competent authority.

CHAPTER – 12

INSPECTION OF PLANT & MACHINERY

12.1 Introduction

Before accepting the ordered P&M, it must be ensured that they have been manufactured as per the required specifications and are capable of performing the functions as specified in the contract. To achieve the same, the tender document and the subsequent contract should specify the details of inspection and tests to be carried and stages and manner for carrying out the same. The required inspections and tests should be carried out by the technically qualified and competent personnel. Inspection Authority subjects these machines to physical inspection at the Pre-despatch inspection stage and only accepted ones are despatched to the consignee. The machines are also inspected at the site after erection and commissioning to ensure conformance to the stipulation made for post commissioning quality requirements.

12.2 Stages of Inspection / Acceptance:

[Ref: OFB letter No 122/DP/E/M Dated 12th July 2000]

(A) MANUFACTURER'S QUALITY CONTROL:

- a. During manufacture various parts of the equipment are to be subjected to inspection/tests to ensure quality of the product according to relevant National/International standards.
- b. Results of such tests whether carried out by the machine manufacturer or his subcontractors are to be made available to the purchaser. The vendor must indicate in his offer, the stages where such inspection will be carried out and the standards to which such tests will conform.
- c. Test certificates for such tests will have to be forwarded to the purchaser or his authorized Inspector wherever desired.
- d. The manufacturer will submit a Guarantee Certificate in the prescribed proforma for having satisfied themselves of the quality of manufacture of the equipment.
- e. The purchaser may reserve the right to depute Inspector/representative to witness any of the tests at manufacturer's works being carried out as parts of manufacture's quality control.

(B) PRE-DELIVERY INSPECTION (PDI):

- a. After assembly of the equipment at the vendors works pre-delivery inspection will be carried out to ascertain that the equipment so offered for inspection, meets the Purchaser's

specifications broadly and there is fair chance of the equipment passing the final performance tests at the purchaser's works.

- b. Pre-delivery Inspection will consist of static accuracy tests, dynamic load tests and actual trial on sample jobs for which the equipment is tooled up to determine jobs accuracies and rated out-put/cycle time etc.
- c. Specific tests that are to be carried out will be agreed upon jointly by purchaser and vendor and before delivery. Completeness and correctness of equipments as per contract in general will be determined at this stage.

(C) PRELIMINARY ACCEPTANCE:

As soon as the erection of equipment with auxiliary facilities is completed, the representatives of the purchaser and the supplier shall jointly proceed with the preliminary checking and conduct necessary tests to ascertain that the unit has been completely delivered, properly erected and is fit to be operated. This will include no-load and load trials of equipment, on site testing of all important elements of equipment for the functioning and verification of provision of necessary safeguards/facilities to satisfy the statutory requirements. As soon as the tests have been carried out and the results are found to be satisfactory, the purchaser he shall record his preliminary acceptance and proceed with start up runs for the plant/equipment as a whole.

(D) TAKING OVER:

The equipment shall be deemed to be taken over by the purchaser after clearance in preliminary acceptance tests. Taking over in any manner or transfer of title of the equipment to the purchaser in no manner relieves the vendor of his obligation under the contract. Taking over means taking over physical possession with full rights to operate the equipment without prejudice to acceptance tests, guarantee and warranty and other obligations of the vendor. If agreed and mentioned in the contract, "Taking Over Certificate" (TOC) may be issued at this stage. Format of this certificate is in the Appendices.

(E) PERFORMANCE TESTING OR ACCEPTANCE TESTS:

- a. Tests at this stage will cover accuracy of machine, accuracy of product, out turn capacity and sustenance of performance under tropical condition over specified period.
- b. The equipment will normally be put under on tests for two successive weeks (single 8 hrs shifts) unless otherwise stated in the particular Technical specification. The equipment will be subject to tests for 5 days continuously and the sixth day will be utilized for preventive maintenance.

- c. Cycle time for completing the job as tooled up will have to be proved during this test period. Apart from adhering to the individual cycle-timings it has to be proved that the machine will continue to achieve the agreed cycle time at 80%, or as agreed, efficiency of machine time utilization.
- d. All time for tool changing, breakdown, maintenance, adjustment etc. will be included for arriving at 80% efficiency. However, downtime due to non-availability of power compressed air, water and other service facilities will be excluded.
- e. A machine capable of giving rated out-turn at “zero defect” or at the agreed process capability of equipment in terms of accuracy of product is the requirement of the Purchaser. However, if the vendor has quoted for any rejection percentage, which is accepted by the Purchaser at the time of placing order, tests will cover checking of such rejection percentage at this stage.
- f. Failure to achieve the agreed cycle-time or specific efficiency or rejection percentage will automatically call for reduction in total price of the equipment in direct proportion to the reduction in out-turn capability. There will not be any maximum limit for reduction in price.
- g. Performance Endurance under tropical condition will involve satisfactory working under production run for two weeks during summer. The vendor may opt to witness the trials or otherwise. This may or may not be part of final acceptance tests. If it is not part of the final acceptance tests, then it should be kept part of the contractor’s obligations in the contract and should be performed in the warranty period.
- h. All facilities as made available for erection and commissioning will also be made available to vendor's Engineer/Representative during acceptance testing period also.

(F) FINAL ACCEPTANCE:

Final Acceptance Certificate (FAC) as proof of successful commissioning of the equipment will be issued by the purchaser as soon as the equipment passes the acceptance tests in satisfaction of all the contract conditions. Format of this certificate is in the Appendices.

12.3 Inspection authority and their functions:

- (a) Inspection is required to follow a pre-specified charter, known as Inspection schedule, to assure the purchaser that the plant/P&M under procurement is in conformance with the required standards of performance. Thus, all payments are made only after stage wise inspection procedures are complied with, if incorporated in tender and Contract. The contractor shall inform the inspector when the Plant and Machinery is ready for inspection.

(b) Pre-despatch inspection constitutes a very important stage in the procurement process of P&M. The Supply Order clause governing pre-despatch inspection shall clearly spell out the basis on which the Pre despatch inspection will be carried out by Officials authorized by General Managers of the factories.

(c) Officials authorized by General Managers of the factories shall function as Inspection Authorities as per terms and conditions of the supply orders. The Inspector shall ensure that he has all particulars, drawings, specifications etc. He shall make administrative arrangements for such inspections and where test facilities are not made available with the firm, arrangements for quality certification of the components used may be done at reputed institutions, where such tests may be conducted.

(d) On completion of preliminaries, the Inspecting Officials may be deputed to the firm's premises to carryout Pre-despatch inspection. The inspection shall normally follow a pre-decided schedule, governed by Contract conditions. The Inspecting Officials may ask for reports of the firm and carryout inspection in accordance with the national and international standards for machine components for their dimensional and geometrical features. The performance of machine in producing P&M to specified accuracies and repeatability etc. shall also be tested at the firm's premises. Tests carried out on similar machines, the inspection standard and method adopted elsewhere can act as guidelines for planning and carrying out inspection.

(e) Notwithstanding any such inspection and clearance accorded by the purchaser, the seller remains responsible for final testing and acceptance at site. Nevertheless, the purchaser's acceptance at firm's premises indicates compliance to the desired quality standards and performance by the machine so offered. Therefore, a conditional acceptance based on incomplete pre-despatch inspection is not in the interest of the purchaser. The suppliers also highlight lapses on the part of purchaser on the subsequent modes of transport, receipt of machines, storage, erection, commissioning etc. Therefore, a plant accepted on the basis of Pre-despatch inspection gets finally commissioned albeit with delays and protracted correspondences, rectifications in final performance trials, often stretching the purchaser's resources.

12.4 General Conditions of Inspection:

(a) Facilities for test and examination: The contractor shall, at his own expense, afford to the Inspector all reasonable facilities and such accommodation as may be necessary for satisfying him that the goods are being and/or have been manufactured in accordance with the particulars. The Inspector shall have full and free access at any time during the execution of the contract to the contractor's works for the purpose aforesaid, and he may require the contractor to make arrangements for inspection of the goods or any part thereof or any material at his premises or at any other place specified by the Inspector and if the contractor has been permitted to employ the services of a sub-contractor, he shall in his contract with the sub-contractor, reserve to the Inspector a similar right.

(b) Cost of test: The contractor shall provide, without any extra charge, all materials, tools, labour and assistance of every kind which the Inspector may demand of him for any test, and examination, other than special or independent test, which he shall require to be made on the

contractor's premises and the contractor shall bear and pay all costs attendant thereon. If the contractor fails to comply with the conditions aforesaid, the Inspector shall, in his sole judgment, be entitled to remove for test and examination all or any of the goods manufactured by the contractor to any premises other than his (contractor's) and in all such cases the contractor shall bear the cost of transport and/or carrying out such tests elsewhere. A certificate in writing of the Inspector that the contractor has failed to provide the facilities and the means for test and examination shall be final.

(c) Delivery of Goods for Test: The contractor shall also provide and deliver for test, free of charge, at such place other than his premises as the Inspector may specify such material or goods as he may require for tests for which contractor does not have the facilities or for special/independent tests.

(d) Liability for costs of special or independent tests: In the event of rejection of goods or any part thereof by the Inspector in consequence of the sample thereof, which is removed to the laboratory or other place of test, being found on test to be not in conformity with the contract/or in the event of the failure of the contractor for any reason to deliver the goods passed on test within the stipulated period, the contractor shall, on demand, pay to the purchaser all costs incurred in the inspection and/or test. Cost of test shall be assessed at the rate charged by the Laboratory to private persons for similar work.

(e) Method of testing: The Inspector shall have the right to put all the goods or materials forming part of the same or any part thereof to such tests as he may think fit and proper. The contractor shall not be entitled to object on any ground whatsoever to the method of testing adopted by the Inspector.

(f) Goods expended in test: Unless otherwise provided for in the contract, if the special or independent test proves satisfactory and the goods or any installment thereof is accepted, the quantity of the goods or materials expended in test will be deemed to have been taken delivery of by the purchaser and be paid for as such.

(g) The Inspector as the Final Authority to certify performance shall have the following power:

- (i) Before any goods or part thereof are submitted for inspection to certify that they cannot be in accordance with the contract owing to the adoption of any unsatisfactory method of manufacture.
- (ii) To reject any goods submitted as not being in accordance with the particulars.
- (iii) To reject the whole of the installment tendered for inspection, if after inspection of such portion thereof as he may in his discretion think fit, he is satisfied that the same is unsatisfactory.
- (iv) To mark the rejected goods with a rejection mark so that they may be easily identified if re-submitted.

12.5 Verification of Machine Tool accuracy and work piece accuracy:

(a) **Geometrical Accuracy Tests:** The geometrical accuracy tests are carried out on any machine tool basically to check the accuracy of the machine axis movement, main spindle accuracy, etc. These tests have finally been formulated as test charts at the national and international level, viz. ISO, DIN, Verein Deutscher Ingenieure/Deutsche Gesellschaft fuer Qualitaet (VDI/DGQ), etc. In addition, standards at the level of the machine tool manufacturers' association, like IMTMA, have also been formulated. All these test charts deal only with the verification of accuracy and do not apply to the testing of the machine for vibration, noise, etc. As the result of the geometrical accuracy test is an indication of the accuracy of the movement or rotation of the various machine elements, the test shall be conducted only after the completion of the final assembly of the machine, so that the overall effects of the various other elements on the geometrical accuracy can be discerned.

(b) The geometrical accuracy tests are done as per test charts which indicate the required test to be conducted along with the type of equipment to be used and the limiting values of the test results recommended. A code for machine tool testing has been formulated by BIS (IS: 2063-1962) corresponding to a similar international recommendation, ISO-R-230. The major inspection equipment used for conducting the geometrical accuracy tests are:

- (i) Dial gauges/level type of indicators
- (ii) Level
- (iii) Auto-collimator
- (iv) Laser measuring systems
- (v) Test mandrels
- (vi) Squares
- (vii) Straight edges

(c) In case of CNC turning centers, the test chart includes verification of machine elements and sub-assemblies, viz. bed, carriage, headstock spindle, tailstock, tool turret with and without rotary tool feature, etc. Tests are also included for measurement of straightness of carriage movement, spindle run out, spindle indexing accuracy, parallelism of spindle axis to carriage movement, parallelism of axis of centers with the movement of carriage or turret, turret indexing repeatability and coaxiality of turret bore with the spindle axis, squareness of transverse movement of turret with spindle axis, axis positioning accuracy and repeatability.

(d) Similarly, in the case of machining centers, test charts specify the verification of bed, carriage, spindle, table/pallet, etc. Measurement of surface flatness of table/pallet, parallelism of table/pallet surface to axis movement, squareness among axis movements, spindle taper run out, parallelism of spindle axis to axes movements, table indexing accuracy, run out of pallet face, axis positioning accuracy and repeatability of pallet positioning are some of the important tests carried out.

(e) **Positioning Accuracy and Repeatability Test:** Machine tool positional accuracy and repeatability are core descriptors of a CNC machine and indicate the machine's expected level of performance. The main parameters measured are positioning accuracy, repeatability, lost motion

and least input increment. The acceptance inspection should be done using ISO standard 230-2. This standard specifies the methods of testing and evaluating the accuracy and repeatability of positioning of NC machine tools and components by direct measurement of independent axes on the machine. However, many machine tool builders still follow evaluation procedures different from the ISO standard, viz. VDI/DGQ guidelines, National Machine Tool Builders' Association (NMTBA, USA) guidelines or Japanese Institute for Standards (JIS 6330) guidelines. They differ in their analysis procedures and in key parameter definition. As a result the values reported for positional accuracy and repeatability for any one machine can vary depending on which standard is used.

(f) The assessment involves a statistical test, which measures the actual displacement when an axis is moved to a programmed target position. The errors between the targeted and actual distances are usually recorded from the laser interferometer display unit. Laser measurement systems are used for carrying out the axis positioning accuracy and repeatability measurement. A set of errors may be linear, which is made up of progressive and symmetrical errors, ignoring the effect of repeatability. Cyclic errors can be considered as any error, which repeats itself at least once along the axis. A progressive error, as its name indicates, is the error component that changes its value with distance and is regarded as non-cyclic. Generally, the problems of progressive errors are only associated with machines that use the ball screw as part of the positioning system. This is because the machine's controller will only be monitoring the axis servo rotation and any pitch error of the ball screw will show up as a positioning error on the machine.

(g) **VDI/DGQ 3441 System of Inspection:** Two separate groups, Data Processing section of the Production Engineers of Verein Deutscher Ingenieure (VDI) and Quality Assurance Association, Deutsche Gesellschaft für Qualität (DGQ) of Germany were engaged in evolving statistical test methods of machine tools. They were amalgamated in 1970 to publish their joint work as VDI/DGQ guidelines.

(h) General specifications for acceptance of machine tools are contained in DIN 8601. This gives the geometrical accuracies of machine tools, determined as a rule with the machine in the unloaded state. The effects of factors of loading and operation are not fully comprehended under static testing. The quality of workpiece machined is decisive for the operational accuracy of machine tool. These are assessed through statistical methods, as explained in VDI/DGQ system of inspection in VDI/DGQ 3441. They supplement inspection methods of DIN 8601.

(i) VDI/DGQ 3441 are applied to all machines where components to be produced are defined in advance. These procedures are also applied to all machines not tied to specific components, but test conditions and workpiece are to be predecided, in accordance with VDI/DGQ 3442 - 3445. The Geometrical deviation in shape of workpiece is defined in DIN 7148. The conditions of test and inspection should be established and agreed for any particular case.

(j) The accuracy of a component produced on machine under given conditions is due to operational uncertainty. It includes all deviations which occur during production of workpiece, not only defects in the machine system but also random factors as well. The measure of

accuracies in a workpiece is a reflection of operational accuracy of a machine tool, measured in terms of operational uncertainty. Broadly operational uncertainty is due to following:

- i. System deviations: (i) Rigidity, (ii) Geometry of machine tool, (iii) Positional deviations, (iv) Reversal error.
- ii. Random deviation or operational scatter: (i) Positional scatter, (ii) Loading and reversal, (iii) Vibrations.
- iii. Positional Uncertainty: (i) Positional deviations, (ii) Reversal error and (iii) Positional scatter. They are also included in (A) and (B) above.
- iv. The operational uncertainty, comprising of defects due to machine system and random errors, can only be indirectly assessed. This includes inspection under DIN and ISO standards and dynamic behaviour of the machine. By establishing test conditions and static tests, the errors due to machining process like tool wear, operator etc, can be eliminated. The errors due to machine systems like thermal effects, rigidity etc. can be assessed by using DIN/ISO systems. The operational scatter, due to random variations can be assessed. The operational scatters, on the other hand, is measured as $6 \times S$ (S = Standard deviation) of workpieces machined under specified test conditions.

(k) **TEST PROCEDURE IN VDI/DGQ 3441:**

Before these tests, the following should be defined:

- i. Allowable deviations in size, shape and position.
- ii. Technical conditions in tools, and operation layout.
- iii. Number of test workpieces.
- iv. Limiting conditions like machine set up, environment.
- v. Arrangements for measuring workpieces.

(l) In the standard test, the random sampling covers the whole of running time between two tool changes starting with a sharpened tool. This takes care of the tool wear and the other systematic machine variations. For the standard test, in case of single spindle machines, ten individual random samples are generally taken, with every five observations/inspection data for each sample. In a quick, low cost investigation into the overall picture of the operational scatter is required the short tests may be carried out, e.g. when machining with a single spindle machine with sharpened tools, as far as possible, 50 parts are run off one after another. This test is satisfactory for machines, which are not tied to a particular component. Compared with the standard test, the short test offers quicker information, a relatively simple procedure and little expense. In a standard test, operational scatter increases due to higher cutting forces and there is a trend in the observed deviation due to machine systems. Therefore random sampling covers jobs within two tool changes.

(m) The dimensions of each random simple can be taken randomly or over smallest and greatest dimensions. If the shape deviations are too small, it can be neglected. If the shape deviations are large, they are to be separately assessed. The operational scatter is determined by finding Range 'R' as the difference of largest and smallest dimension measured for every random sample. $R_j = X_{i \max} - X_{i \min}$; j is the sample and i is the observation number.

(n) The mean range of m (10) random samples is $R_{\text{mean}} = \sum_{j=0}^{10} R_j / m$

Standard Deviation = $S = R_{\text{mean}} / d_n$; d_n is a factor which is dependent on number of measured values on each random sample. For five values, $d_n = 2.326$

Operational scatter = $6X S$.

(o) The relationship of operational scatter to manufacturing tolerance has been recommended as follows in VDI/DGQ 3441: for example in operations like drilling etc. where tool wear causes a marginal dimensional and trend error, the ratio of Operational scatter to manufacturing tolerance, known as relative operational tolerance, could be 80%. Wherever there is a marked trend, the relative operational scatter could be 60%. In other categories of machine tools, the scatter due trend should be within 20% of manufacturing tolerance. The measurement uncertainty to manufacturing tolerance should be within 20% for all machine tools. In case of negligible trend error, relative operational scatter being 80%, the mean range will be around 30% of manufacturing tolerance.

(p) It would therefore be obvious therefore that the operational uncertainty is contributed by trend of observations and the error of measuring equipment. The standards recommend considering the random variations in Operational scatter, caused due to measurement deviations and operational scatter in shape by machining of workpieces. It may not be feasible economically to use test pieces that would detect all system deviations. The corrections to be applied for range and equipment error can be made as per procedure explained in VDI/DGQ 3441 and the corrected operational scatter estimated. In the event of negligible values of equipment error this can be eliminated.

(q) Similarly positional accuracy by direct measurements are also estimated. This assumes significance in the case of numerically controlled machine tool. The positional scatter, due to random causes, in movement of slides in length directions is also statistically estimated, in the procedure explained in VDI/DGQ 3441. Here again, for deviations in movement of slide, for each position several random observations are taken. From these measurements, for any position, Range is estimated. Positional scatter is calculated by assessing six times the standard deviation of the observation recorded, both in the positive directions and in the negative directions. Reversal error is the difference between two observations, positive and negative directions, at any discrete position. Positional deviation is the maximum difference of the mean values of all measuring positions on a selected axis. Positional uncertainty is the total deviation on any selected axis taking into account values of positional deviation, reversal error and positional scatter. The positional uncertainty should be less than the quoted positional tolerance by the manufactures.

(r) Positional uncertainty is required to be tested for general-purpose machine tools, especially so in numerically controlled machine tools. Random deviations are estimated by direct measurements. Positional accuracy is measured on a particular axis while others are at rest. It demonstrates the quality of measuring system and quality and geometry of drive and slide-ways. The machine is not under load and therefore geometrical interaction of these areas cannot be assessed. The positional uncertainty, deviation and scatter can be derived and it always serves to agree on a value of positional tolerance in advance.

(s) VDI/DGQ 3441 lays down recommendations on types of tests to be carried out depending on the type of machine tool and if it is linked to machining any particular workpiece.

12.6 Process Capability Test:

- a. Working accuracy tests establish the capability of the machine with regard to machining of a few test pieces under controlled machining conditions. The process capability test is carried out to determine by measurement of consecutive pieces produced in a production trial run whether the machine would be capable of producing the specified tolerances in a continuous production run. The basic objective of the process capability test is to determine both the inherent and systematic variations due to the machine or process influencing factors.
- b. Regarding methods of test, VDI/DGQ 3441 standard statistical testing of the operational and positioning accuracy of machine tools - basis is followed. There are two choices for the test procedure, viz. standard test and short test. The test results are analysed statistically to obtain the product dimension variation, which results from variability in performance of the machine itself when used on representative production parts.
- c. In either of the standard or short tests, the dimensional variations of machine parts are brought out by different causes. The principal causes are:
 - i. Operational scatter of the machine
 - ii. Adjustment and measurement uncertainty of the machine
 - iii. Trend due to tool wear, thermal aspects, etc.
- d. The normal process capability involves both machine related and process related variation. One can study the actual process only if the machine parameters are considered and is designated as C_m or C_{mk} . Process capability study involving both machine and process parameters (such as inherent a drift, tool wear, measurement error etc.) is designated as C_p or C_{pk} . In machines where adjustment may be possible both for position setting and cutting parameter selection, and is targeted for manufacturing component of specific nature having both upper and lower tolerance limits, index C_m or C_p is used to denote the machine or process capability. This is without influence of the mean dimension. In this case it has been assumed that middle value of the tolerance band and production dimension mean is identical and any deviation that occurs during production can be adjusted easily and hence need not be considered

- e. In this case, machine capability index C_m or process capability index C_p is given by:

C_m or $C_p = T/6s$ Where,

T = component tolerance limit

S = standard deviation of the dispersion of the observed values.

- f. Any machine which has its production dimension mean not easily suitable or changeable will have shifted of the production dimension mean with respect to the required tolerance band during changeovers of tools, jobs, etc. In such a case, one has to consider the effect of these deviations obtained during process on production dimension mean. This effect is shown in an equation below, wherein a value D is specified which is the minimum of the dimension between tolerance limits and the production dimension mean. Now, the overall machine process capability is defined by:

C_{mk} or $C_{pk} = D/3s$ where

D = minimum distance between a tolerance limit and the average of the produced parts

S = standard deviation

- g. For instance, in the case of turning centres and machining centres, all the CNC programmes are aimed at the nominal of the dimensional specifications, whereas in the conventional work centres like gear hobbling and grinding, there are chances that the specifications are not held at the nominal due to differences in tools and job setting. Generally, for machines and processes, which are not adjustable to the required mean value setting during production, machine or process evaluation is done through the capability index C_{mk} or C_{pk} .
- h. The important factors necessary to be considered while evaluating process capability ratios are as follows:
- i) Machine related:
 - (a) Workpiece mounting spindle rigidity and repeatability
 - (b) Machine positional repeatability
 - (c) Machine form errors
 - (d) Spindle thermal drifts
 - ii) Process related:
 - (a) Tool wear
 - (b) Tool-to-tool variation
 - (c) Work-piece clamping deformation
 - (d) Variation in incoming material stock and type
 - (e) Measurement error
- i. The process capability ratios are tests to determine out-turn quality in a long run of production and can be adapted to process plants. In quite a few occasions this technique is used to test conformance to the specification of the machine parameters.

12.7 Inspection of Imported Items

(a) The excerpt of the recommendations of the 'Expert Committee to Streamline the Procedure of Import of Defence Equipments' has been communicated to OFB. The recommendations of the Committee have been accepted by the Govt. and an excerpt of the report is as follows:

“Considering the high stakes involved in large value equipment imports, it shall normally be obligatory to depute our inspection teams to the seller’s premises for purposes of carrying out acceptance inspection. The Committee observed that import Contracts generally contain this stipulation. At the same time, it is conceivable that our inspectors are not fully versed in carrying out inspection of complex state-of-the art equipment/systems being imported. This would require a certain training effort before the inspection organisation feels reasonably well equipped to carry out such inspections. Consequently, it would be desirable to incorporate a proper provision in the contract for imparting training to our inspectors together with the provision for training users/operators and maintenance personnel. It would be desirable to synchronize such that training effort is accomplished at the point of time when the system is being offered for inspection”.

(b) Normally, PDI shall be restricted at the firm’s premises. For cases where PDI is to be carried out at multiple locations for same P&M, the same shall be brought by the bidder in technical bid. Accordingly, S.O. should clearly indicate the location where the PDI shall be carried out.

12.8 Outside Testing Laboratories

(a) Sometimes it becomes necessary for the purchase organization to conduct type test, acceptance test or special test at outside laboratories, when facilities for these tests are not available in-house with the supplier or carrying out of confirmatory tests is considered desirable before accepting the goods. It should be ensured that such tests in reputed NABL accredited laboratories.

(b) In cases where the samples are to be tested at supplier’s cost on account of non-availability of their own testing arrangements, the responsibility of depositing the testing fee, etc. would rest with the supplier.

12.9 Handling of Inspection Stamps/Inspection Documents

Each Inspecting Officer shall be supplied with Acceptance stamps, Lead Seals, Pliers, Rubber Stamps, Stencils, Labels, Stickers, Holograms etc. according to the requirements, for sealing and marking the inspected goods in terms of the contract. He will be responsible for safe keeping of these articles and shall ensure that they are not misused by unauthorized persons.

12.10 Acceptance of Goods against Supplier’s In-house Inspection Report and Warranty

(a) In case of goods to be imported from abroad, pre-despatch inspection of goods at supplier's premises involves considerable expenditure to the purchaser. In such a situation, the purchaser may substitute pre-despatch inspection by its own inspector with manufacturer's in-house inspection report and warranty.

(b) However, before adopting this procedure, the nature and cost of the goods ordered, the reputation of the supplier, etc. should also be kept in view and appropriate decision taken.

12.11 Purchaser's Right of Rejection

Purchaser has the right to reject the goods on receipt at site during final inspection though the goods have already been inspected and cleared at pre-despatch stage by the purchaser's inspector. However, such rejection should be strictly within the contractual terms & conditions and no new condition should be adopted while rejecting the goods during final inspection.

12.12 Acceptance of Goods vis-à-vis Warranty Provisions

Inspection by purchaser's representatives at various stages would not relieve the supplier of his obligations under the warranty.

CHAPTER- 13

RECEIPT, ERECTION & COMMISSIONING

13.1 Receipt of machines:

(a) Machines are either received through road or by sea, as per contractual conditions. It may be transshipped from the port or supplier's works and in exceptional circumstances due to urgency may also be air-lifted.

(b) On receipt of machine, the packages are to be inspected. The package can be opened if no outward damage is observed. Often the base plank of the package is supported with cross pieces and provided with anchor bolts for the purpose of slinging and shifting. They shall be generally used for shifting of the package. Wire ropes of suitable size, depending upon the gross weight can also be used for lifting and shifting by crane. Rollers and trailers may also be used. Base plank with lifting devices are kept with the machine until dismantled for putting the machine in its proper place for erection.

(c) Application of excessive force on the package and shifting it by weak members, will not only damage the package, but also the contents as well. The packages shall therefore be opened systematically at the points tightened with bolts, steel strips or nailed. In case of any doubt that the contents may not be in good condition or with the observation of damage on the package, the supplier's representative may be called to witness the opening. If the consignment is with separate transit insurance, the representative of Insurance agencies may also be informed. Depending upon contractual condition with transporter they also may be informed to witness the opening. It is a good practice therefore that information on opening schedule, for costly machines, is given to suppliers.

(d) The contents of the package shall be tallied with the packing slip/packing note/copy of invoice with the package. Packing note/invoice shall contain the cost of individual items in the package, for claiming recovery if any of it is found lost or damaged. A joint statement is made in case any damage is observed with the carrier's representatives and with the Insurance representatives. On making a joint signed statement claim is lodged with Railways/Insurance Agencies/Carrier. The firm may pursue the matter with carrier agencies to recover the loss. Therefore, the supplier is often contracted to effect door delivery at the factory even though the title of the machine may have passed on to the purchaser.

13.2 Civil Works for Erection:

(i) General-purpose machine tools are generally grouted on shop floors constructed to bear the working load of the machine. They are grouted with the help of anchor bolts. For special purpose and heavy-duty plant and machinery like presses, high-speed blowers, compressors and machines requiring vibration free foundation special foundations are necessary. The foundation shall not only bear the working load, but dampen the vibration being transmitted to nearby machines, without affecting the rigidity of its own support. The supplier is required to furnish

foundation diagram that will meet their design operational conditions. The requirement shall be a part of the contract. To enable designing the foundation required, soil test reports at various depths shall be kept ready to be furnished to the supplier. With the estimated design load, the supplier shall be able to make a safe design of the foundation details, and furnish it to the purchaser as per the agreed schedule.

- (ii) Often erection needs underground chambers to accommodate electrical equipment and lift out cylinders of hydraulic presses. This may need sheet piling to protect column foundations.
- (iii) Underground cellars and foundations may need water proofing, if guniting is required all supports, protrusions, castings are to be completed before hand.
- (iv) In air conditioning plants, enough headspace is to be left even after laying the ducting.
- (v) Special lead lining is laid around x-ray room. This requires special anchorage to lead.
- (vi) The traverses around the explosive buildings do not permit cuttings later to lay piping. It is a good practice therefore to insert hollow pipes to leave an opening for the purpose.

13.3 Services / Utilities for Erection:

(a) **Battery Limits:** The technical specification to the tender shall specify the supply of services at required points. The quality of water, steam and air, pressure and volume required by the machine will have to be specified by the supplier. The points at which such of the services are required are generally pre-decided and the supplier is generally advised to furnish these details, known as battery limits, in advance of the actual delivery of the equipment. The purchaser has to lay the necessary power and services network in advance, to be in readiness; so as to adhere to the time frame required for erection and commissioning.

(b) **Power Supply:**

- (i) The type of load and diversity are important in designing electrical distribution system, panel boards and isolation equipment. Equipment with heavy electrical load at the end of the bus shall in general be avoided. Overhead or underground power distribution shall be decided in advance.
- (ii) Unacceptable harmonics in the electrical circuits would cause perpetual problems for the maintenance of the equipment. Care shall be taken to suppress it.
- (iii) CNC machines are to be connected to panels with steady power requirement and preferably with separate earthing to prevent data corruption.

(c) **Water :**

Water conservation is ensured through re-circulation of water. Sometimes emergency water supply is provided for cooling water for induction heating furnaces to meet the contingencies of power failure. Since the discharge pressure of different equipment is different, it is common to have sumps and pumps with pressure reduction valves to ensure proper distribution of water. The scheme is to be integrated with the erection of plant and machinery.

(d) **Steam:**

It shall provide for the peak loads. The piping size shall limit pressure drops. Steam lines shall have good slopes, lagging, steam traps and to the extent possible low pressure piping (outside IBR) within the building. The road crossings shall have enough clearance.

(e) **Air Conditioning:**

Since the buildings where such machines would be positioned would need to have false ceilings, the equipment will have to be erected before the roofing is done.

(f) **Compressed Air:**

It shall be free of moisture, oil and of adequate pressure. The air filters shall be housed close to the equipment. Separate layout shall be made for high pressure duty and low pressure lines.

(g) **Fuel Oil:**

It is often necessary to store enough oil to run boilers and heating furnaces without interruptions. They are to be stored in conditions recommended by the oil companies. Adequate fire fighting facilities are to be provided. Stem tracings may be provided from service tanks to the boilers, in cold climates to avoid pumping difficulties. Bulk storage shall follow safety regulations, especially in explosive units.

(h) **Miscellaneous:**

(i) In case instrumentation, cables and piping require a separate structure, it shall also be decided in consultation with supplier.

(ii) Safety and pollution control requirement, drain pits, and sometimes cooling towers for coolant, local water treatment and refrigerant system etc are required to be set up for the machine exclusively. These will require additional Civil Works. They are to be ascertained from the machine layout diagram and erected as soon as the equipment arrives. They do not need special foundation generally.

(iii) The erection may be departmentally executed or through contract. The vendor shall understand the intricacies of the erection process. He shall have approved welders and fitters. There shall be enough space for erection. It is a good idea to insure the equipment from store yard till the completion of erection.

(iv) It is necessary therefore, that the supplier shall furnish the services requirements and structurals much ahead of the delivery of the equipment, at least as per the agreed schedule.

(v) Civil works require long execution time and is often on the critical path.

13.4 Responsibility of Erection:

- (i) Unless otherwise specified, the purchaser's liability is to the extent of supply of labour, tools and tackles as mutually agreed. The erection is done under the supervision of the supplier and he remains responsible for satisfactory erection.
- (ii) The supplier therefore has to inspect the erection work and advise any rectification if any. He has to supply all special equipment required to erect and assemble the plant. Detailed stage-wise assembly and inspection schedule has to be furnished by supplier with diagrams. The wiring and piping will be labeled and identified by the supplier to facilitate easy identification during erection.
- (iii) Generally, however, suppliers do not engage their skilled workmen or claim any remuneration for these services.
- (iv) At the end of the Erection therefore, it is necessary to check the following:
 - (a) P&I diagram and ascertain its conformance to the firm's requirement.
 - (b) Machine layout, its accessories and auxiliaries including operator's and swarf space.
 - (c) Proper alignment of machine components. The method for checking alignment, references used and permissible error, level of machine, its bed, reference surfaces etc so as to avoid excessive wear and tear is to be informed by the firm. The purchaser shall ensure compliance of the above features within limits and prepare a joint statement with firm's representative.

13.5 Obligations of Purchaser for Erection & Commissioning:

The purchaser has to offer the following facilities for erection and commissioning of the equipment:

- (i) To provide suitable storage space to all supplies made by the supplier. If the supplier has effected supplies as laid down in the contract, the title passes on to the consignee and the purchaser, in his own interest must provide proper storage till erected at site.
- (ii) Supply different utilities free of cost to the supplier during erection and commissioning.
- (iii) Work areas shall be illuminated.
- (iv) Provide lodging, on chargeable basis, to the supplier's engineers for supervision of erection and commissioning.
- (v) Security of material if within the factory premises.
- (vi) Construction of various foundations as per supplier's drawings.
- (vii) First aid, emergency medical attention if required.
- (viii) To provide access for supplier's material handling equipment and transport for equipment.

- (ix) Allow the supplier's personnel to enter the factory and work at the site of erection and commissioning as per the security procedures.
- (x) Supply skilled workmen, as available and agreed to, with tools and tackles for erection and commissioning trials.
- (xi) Ensure the coordination and dovetailing of all requirements so that no delay takes place.

13.6 Obligations of Supplier for Erection & Commissioning:

As contractual obligation, the supplier has to tender the following services:

- (i) Firm will detail competent persons to identify supplies and advise and oversee the erection work being undertaken by the purchaser. They shall also confirm satisfactory completion.
- (ii) They will make available consumables, commissioning spares, perishables for trial runs; special tools and tackles etc as and when necessary to facilitate unimpeded progress of erection and commissioning.
- (iii) Their personnel will follow STEC/IE rules/ other safety guidelines, apprise themselves of it and will not jeopardize theirs and other's safety while working.
- (iv) Pay for any supply required over and above mutually agreed free supplies. The material consumed/rejected during supplier's rectification trials or beyond agreed quantities for acceptance trials will have to be paid for if not agreed for free supplies earlier.
- (v) Arrange / assist in obtaining clearance from statutory bodies like Pollution Control Boards, Electricity Departments, CFEES, etc.
- (vi) Train purchaser's personnel to a reasonable competence in handling, operating and maintaining the equipment. If any period has been laid down in the contract, it shall be the minimum duration of training to be imparted for the purpose of certification of its contractual completion.
- (vii) The firm will be liable for the conduct of its personnel, and shall deploy those who have not participated in anti-national activities.
- (viii) Contractor's personnel shall abide by the norms of security of the factory. Contractor will be liable to obtain their PVR cleared if so required.
- (ix) Notwithstanding stagewise inspections being done by the purchaser's representative, it shall not relieve the contractor from his obligations of satisfactory erection and performance trials or warranty and guarantee.
- (x) Unless the full supply is made as per contract, any part supply kept in the custody of the purchaser is at the risk of the supplier. The supplier shall send his representative for survey within 48 hours of receiving any intimation on arrival of consignments in damaged condition.
- (xi) The supplier will pursue/assist in pursuance of any claim by the purchaser upon the carriers for damage/loss in transit cases.

13.7 Maintenance of daily logs for Erection & Commissioning:

A 'Work Diary' or 'Log Book' containing record of daily progress of activities, schedule of erection, planning, etc will be jointly maintained and signed by supplier's and purchaser's representatives daily. The authority to sign the daily logs kept for the purpose shall be vested in authorized representatives only. Any excess material supplied, remaining unused at site after due erection and commissioning and which do not form a part of supplies under the supply contract, remain as supplier's property and shall be removed within three months from the factory's premises by the supplier.

13.8 Erection testing and Taking Over:

- a. Before undertaking commissioning, the purchaser shall be fully satisfied that the erection is complete in all respects. The supplier representative shall inspect and confirm that the plant and machinery has been delivered completely. The items shall also be tallied consignment-wise with the invoices/packing slips to ascertain that no further shortages remain to be recovered within the Contract price.
- b. The purchaser shall then undertake erection testing to check that the equipment has been completely supplied, properly erected and it is fit to be operated/taken over by the Purchaser. The erection testing will include the following steps:
 - i. Prima-facie get satisfied that the erection is complete. It could be a joint inspection with the supplier depending on the size, volume and complexity.
 - ii. Check all alignments of the equipment.
 - iii. Make sure that there is no foreign material in vessels, pipes, pumps etc. Erection materials like welding rod stubs and nuts may remain in the equipment. Similarly sand, concrete fallen during the concreting the foundation bolts shall be removed.
 - iv. Clean the hydraulic tanks with cloth or other suitable material before the oils are filled.
 - v. Make sure the electrical connections are dressed up and tagged for easy identification.
 - vi. Using megger, do insulation resistance testing for motors before starting to ensure there is no deterioration in storage.
 - vii. Fill all gearboxes with initial fill. Also grease all the bearings and sliding surfaces.
 - viii. Functionally test the individual equipments like pumps and the instruments.
 - ix. Run the machines dry. Watch for unusual sounds, vibrations, heating and any other unusual occurrences. Rectify if necessary and run again to satisfaction.
 - x. If any defaults or deficiencies are noticed which do not allow the start up, the party responsible for such deficiencies shall remedy them within the shortest possible time, and a new inspection shall be carried out.
 - xi. The plant/machine is now ready for run with actual materials and components. It is therefore taken over by the purchaser. If stipulated in the contract, a 'Taking Over

Certificate' (TOC) may be issued at this stage that the plant/equipment is erected and found satisfactory in preliminary checking. A specimen format for TOC is given in the Appendices. Minor defaults or deficiencies that do not hinder the start up shall not delay the issue of TOC, but they shall be mentioned in the TOC, together with the indication of the deadlines and actions that the defaulting party will take to remedy them.

13.9 Water run or dummy run for plants:

In addition to the above, water run or dummy run is done for chemical plants as part of erection testing. The following are done in this regard.

- i. Run the plant with water, dummy materials, acids, etc as mutually agreed in the contract. Also admit service items like steam keeping one end open to purge all the foreign materials, rust and mulch that may be in the pipelines.
- ii. Close all openings and make the plant ready for run.
- iii. Set controls of pressures, temperatures, levels and other parameters.
- iv. Run the plant idle without actual raw materials to ensure that the individual equipments are running on load without exhibiting any unusual phenomenon.
- v. Ensure that all required test facilities are available to test the raw materials as well as intermediates and final product.

13.10 Start Up Runs or Trial Runs:

(a) Commissioning of the equipment will be carried out immediately after erection. It is the supplier's responsibility to satisfactorily prove to the purchaser, the conformance to the performance parameters of the plant delivered.

(b) Unless otherwise agreed, the supplier remains responsible for supply of the equipment with the first fill of lubricants, oils, refrigerants, coolants etc, which however shall be mentioned in the general conditions to the tender. Tools including perishable tooling are to be ordered.

(c) The supplier shall apprise the purchaser about consumption of tools for trials, testing and for the normal operational consumption rates for purchase, in advance, for a reasonable period to be decided as per the technical assessment of the purchaser. The purpose of asking for consumables and tooling either as a part of the equipment cost or paid for separately, as the case may be, is to ensure that the plant is received in ready to operate condition.

(d) During commissioning, the plant / machine is operated by purchaser's personnel under the supervision and control of supplier's personnel. The purchaser shall supply services for operating the machine as a part of their own obligations. The purchaser shall also supply consumables, during operation of the plant by the purchaser, free of cost. All raw material and services shall be strictly to the specifications to avoid controversy in running the plant or in obtaining the outputs as per the assured quality, capacity, production cycle time and utilities consumption.

(e) A '**protocol**' for undertaking start up runs and performance test runs should be prepared first and signed by both the purchaser and the contractor. Further action should be taken as per this protocol. The plant is run initially to adjust all parameters of operation. When the operating conditions are adjusted, the plant is run continuously for a period mutually agreed to, in the steady condition of the plant. The operators also will get a feel of the plant during this period.

(f) The supplier remains responsible to supply free of cost, all components, parts etc damaged/broken during the erection and commissioning of the equipment done under overall supervision of the Suppliers' representative. The replacements will be carried out at site. However, if the equipment is in normal use by the factory, before furnishing an acceptance certificate and the period of warranty has expired, where consumption or damage is attributable to normal wear and tear due to prolonged use, free replacements cannot be insisted upon.

13.11 Guarantee Run for Final Acceptance:

(a) After the trial runs are over, the plant is run for the plant supplier to demonstrate the product, its quality, capacity and the consumption of raw materials and utilities. If these are satisfactory the supplier can offer to run the plant for the guarantee run for final acceptance of the plant. Guarantee run is also called Performance Testing or Performance Test Run (PTR).

(b) All the periods of runs (demonstration and guarantee) should be agreed in advance taking into account the amount of raw materials required to be provided and its cost, utilization of the product produced. For instance, if one produces large quantities of explosives with no immediate consumption it could be problem to store these. Similarly, if the product is not meeting the specifications, disposal could be a problem.

(c) Once the guarantee run is taken, the results are tabulated to compare the results with the guaranteed performance parameters as per the contract for taking over the plant. Training of the personnel can be undertaken thereafter. Generally, the supplier prefers to train the people after the guarantee run as he feels more relaxed and concentrate to the demand of the customer personnel after the plant is accepted.

(d) It is essential that all the set parameters and settings are recorded for future reference. If such records are not maintained when a plant is opened for maintenance it would be time consuming to get to the original parameters and operating conditions.

(e) The Final Acceptance Tests, in addition to above, will also include accuracy tests, generally measured in terms of process capability ratio. During long trial production runs as above, out-turns components are measured and either accepted or rejected. During measurement of dimensional values, the C_{pk} or C_p ratios are estimated. From the measurements of dimensions or features of the samples, the percentage rejection can be assessed statistically, which should conform to process capability ratios stipulated in the Contract.

(f) The equipment will be certified to have been commissioned if it has satisfactorily complied with the stipulated performance parameters. A specimen format for 'Final Acceptance Certificate' (FAC) is given in the Appendices.

(g) Deficiencies or shortcomings in the plant, that can be rectified by means of minor adjustments or additions or replacements and do not hinder the plant from being operated in accordance with the contract, shall not constitute any due reasons for not issuing the FAC. However, the deadlines for rectifying such deficiencies shall be recorded in the FAC.

13.12 Repeated Performance Testing:

(a) If performance test run reveals that the plant does not meet the 'guaranteed performance' i.e. the performance parameters to be achieved in the plant as specified in the contract, the contractor shall at his own cost and expenditure carry out rectification, modification, replacements and effect additional supplies to achieve the guaranteed performance. Subsequently, a second guarantee run will be carried out to achieve the contracted figures. The cost of maintenance of the establishment of the contractor will be borne by the supplier himself.

(b) In any case, the Performance Testing or repeated PTR must be completed within period stipulated in the contract, or such other period as may be agreed in writing by the Parties, from the date on which start up commenced.

(c) The equipment will be certified to have been commissioned if it has satisfactorily complied with the prescribed performance standards.

(d) In some cases, the contract has provision for 'minimum performance levels' i.e. the minimum performance parameters below which the plant shall not be accepted. It is also agreed and laid down in the contract conditions that for every 1% shortfall performance from the guaranteed levels (e.g. capacity and consumption figures), the contractor will pay back 1% of contract cost, to the purchaser for compensating the losses, and not by way of penalty, subject to a maximum of 5% / 10% of total contract price. This is in addition to any other damage being recovered like recovery for delay in supplies.

(e) In case the shortfall in capacity and/or other performance figures is above 5% / 10% (as stipulated in the contract), the purchaser shall have the right to reject the plant.

(f) If the contractor fails to abide by the agreed time schedule of erection and commissioning, the purchaser will have the right to erect the plant as per guidelines in technical documentation furnished by supplier and start the plant. This will however require issue of formal notice to the firm, intimating them about the breach in agreement. The trial run will be completed at the risk of the supplier.

13.13 Permission for visits of foreigners to factories / OFB Hqrs:

(a) In the course of erection and commissioning of plant and machinery, it may become contractually obligatory to invite foreign nationals to purchaser's premises. The proposal to engage foreigners inside the Ordnance Factory premises is guided further by security considerations, for which permission of OFB is required.

(b) Ministry of Defence have issued instructions vide M of D ID No 31(11)/85/VS/D (Fy-II) dated 2nd May 1986 for grant of permission to visit Ordnance Factories by Indian Nationals,

wherein the power to permit Indian citizens coming in connection with contractual business with factory (e.g. execution of works, tender opening) vests with the General Manager.

(c) As per MoD O.M. No 13(33)/90/US/D(Fy-II) dated 23.05.1991, concerned Members of OFB have been delegated powers to grant permission to visits of foreign nationals/representatives of foreign firms to OFB Hqrs and Ordnance Factories which are in pursuance to Defence contracts and where the duration of visit is shorter than three months.

(d) As per MoD O.M. No 13(33)/90/US/D(Fy-II) dated 25.05.1992, concerned Members of OFB have also been delegated powers to grant permission to such visits of foreign nationals to non-strategic areas (Administrative Block, factory estate area, etc) even at pre-contract stage in connection with export efforts, subject to certain conditions laid down therein.

(e) As per MoD O.M. No. 13(33)/90/US/D(Fy-II) dated 25.03.98 and dated 26.03.98 (circulated vide OF Cell letter No. G.16/Policy/Admin/OFC dated 16.04.1998), further powers have been delegated to Addl. DGOF / Members concerned in the OFB to permit visits of foreign nationals/representatives of foreign firms to non-strategic areas of Ordnance Factories and OFB Hqrs, in connection with procurement of plant and machinery, provided that such visits are in response to specific enquiries against global/limited tenders floated by Ordnance Factories/OFB and MoD instructions in regard to agents of foreign suppliers issued from time to time are strictly adhered to. This covers visits of foreign suppliers/manufacturers or their representatives for technical discussions, witnessing tender openings, price negotiations, etc which are of recurring nature and very often planned at short notice.

(f) In cases other than above, OFB will have to obtain prior clearance from concerned departments (MHA and MEA) through OFB New Delhi office.

(g) Conduct of such foreign nationals within the factories shall be regulated by the principles of 'need to know' and 'need for minimum exposure'. They shall be accompanied at all times by gazetted officers. They shall be screened so that no view of strategic/sensitive areas is allowed other than the permitted area.

(h) Request for grant of permission for visits of Foreign Nationals is to be made in specified formats, circulated by OFB (*given in the Appendices of this Manual*).

13.14 Time frame for commissioning:

a. It is essential to ensure commissioning of Plant & Machinery in a time bound manner. For this purpose, factory shall give responsibility to the same team of officials which were involved in PDI of the P&M. In addition to the PDI team, Group officers of Production and Maintenance shall be included in the commissioning team and sign the final acceptance report. Based on the report, GM or CO/GO of Engineering office would issue FAC/commissioning certificate.

b. The Plant and machinery shall be commissioned as per time frame indicated in the contract agreement/supply order. If the time frame for commissioning is not complied with by the supplier due to their own failure, L.D. shall be levied as per terms and conditions of the contract.

13.15 Failure to Commission the Machines:

a. No machine or equipment should be accepted unless performance tests and acceptance tests are conducted and machines satisfy these tests. In case, any plant or machinery fails these tests the GMs should use their discretion and if the failure is to a major extent, the plant / machinery should be rejected and the rejection communicated to all concerned. This procedure is required to be scrupulously followed as otherwise it is observed that the firms after supply of Plant & machinery/equipment, keep on dilly dallying till the warranty period is over and then escape any penal provision of the contract. No informal understanding with the firm should be encouraged and if there is any meeting held with firm's representative or any tests conducted, the Minutes of the meeting and the results of the test should be recorded under the signature of the firm's representative as well as factory representative and the copy of the minutes of the meeting or results of the test should be sent to OFB Headquarters as well.

b. In case where the firm has failed to commission an equipment and factory is confident of commissioning the equipment due to their own experience of working with similar equipment, the factory may try to commission the equipment at firm's risk & cost. The purchaser should seek legal advice to suitably protect the Govt. interest.

(Ref: OFB letter no. 122/E/M dated 09.10.1987)

CHAPTER – 14

SETTLEMENT OF DISPUTES

14.1 General

Normally, there should not be any scope of dispute between the purchaser and the supplier after entering into a mutually agreed valid contract. However, due to various unforeseen reasons, problems may arise during the progress of the contract leading to disagreement between the purchaser and the supplier. Therefore, the conditions governing the contract shall contain suitable provision for settlement of such disputes / differences binding on both the parties.

14.2 Mode of Settlement

(a) Mode of settlement of such disputes/differences shall be through Arbitration. However, when a dispute/difference arises, both the purchaser and the supplier shall first try to resolve the same amicably by mutual consultation. If the parties fail to resolve the dispute by such discussions within a reasonable period or twenty-one days, then, depending on the position of the case, either the purchaser or the supplier shall give notice to the other party of its intention to commence arbitration. Factory shall write to OFB for appointment of an arbitrator by the DGOF. The option of approaching Ministry of Law for appointment of Arbitrator can also be exercised. The standard Arbitration clauses are given below.

(b) There may be situations when either party approaches a court of law for appointing an independent arbitrator. Factories shall consult the Legal Advisor (Branch Sectt. of Ministry of Law) and Government counsel in such court cases.

14.3 Venue of Arbitration

The venue of arbitration shall be the place from where the contract has been issued or New Delhi, as agreed and stipulated in the contract.

14.4 Applicable Law

The contracts shall be interpreted in accordance with the laws of the Union of India.

14.5 Legal Advice

Factories shall consult the Legal Advisor (Branch Sectt. of Ministry of Law) and Government counsel in all cases of arbitration.

14.6 Standard Clauses of Arbitration:

(A) FOR INDIAN SUPPLIERS (OTHER THAN PUBLIC ENTERPRISES/ GOVT. DEPARTMENTS):-

(a) All the disputes and differences arising out of or in any way touching or concerning this agreement (except those for which specific provision has been made therein) shall be referred to Sole Arbitrator to be appointed by Director General Ordnance Factories, Government of India. The Arbitrator so appointed shall be a Government servant who had not dealt with the matters to which this agreement relates and in course of his duties had not expressed views on all or any of the matter in disputes or differences. for the time being or a Govt. Servant appointed by him the appointee shall not be Govt. Servant who had dealt with the matters to which this agreement relates and that in the course of his duties as Govt. Servant he had not expressed views on all or any of the matter in dispute or difference. The Award of the Sole Arbitrator shall be final and binding on the parties.

(b) The Arbitration shall be as per Arbitration Act 1996 or any statutory modification thereof.

(c) The venue of Arbitration shall be (place of factory)

(B) FOR PUBLIC ENTERPRISES/ GOVT. DEPARTMENTS:

In the event of any dispute or difference relating to the interpretation and application of the provisions of this contract, such dispute or difference shall be referred by either party for Arbitration to the Permanent Arbitration Machinery set up in the Department of Public Enterprises i.e. to the sole Arbitrator in the Department of Public Enterprises to be nominated by the Secretary to the Govt. of India in-charge of the Department of Public Enterprises. The Arbitration and Conciliation Act, 1996 shall not be applicable to arbitration under this clause. The award of the Arbitrator shall be binding upon the parties to the disputes to the disputes, provided however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law and Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary/ Additional Secretary, when so authorized by the Law Secretary, whose decision shall bind the Parties finally and conclusively. The Parties to the dispute will share equally the cost of arbitration as intimated by the Arbitrator.

(Ref- Min. of HI & PE OM No. 1(24)/ 2005-DPE (PMA) dt. 22/01/2004)

(C) FOR FOREIGN SUPPLIERS (for FOB Suppliers):-

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

(b) Any dispute, disagreement or any question arising out of or relating to the Contract or relating to the construction or performances (except as to any matters the decision or determination whereof is provided for by these conditions) which cannot be settled amicably shall within 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 still exists will be referred to the Arbitration Tribunal consisting of three Arbitrators.

(c) Within 60 (Sixty) days of the receipt of the notice, one Arbitrator shall be nominated in writing by the SELLER and one Arbitrator shall be nominated in writing by the BUYER.

(d) The third Arbitrator, who shall not be citizen or domicile of the country of either of the parties or of any other country unacceptable to any of the parties, shall be nominated by mutual consent of the parties within 90 (Ninety) days of the receipt of the notice mentioned above failing which the third Arbitrator may be nominated under the provisions of UNCITRAL by the President of the International Chamber of Commerce at the 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 above from being so nominated. The Arbitrator nominated under this clause shall not be regarded nor would act as Umpire.

(e) 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.

(f) The Arbitration proceedings shall be conducted in India in English language under the Indian Arbitration and Conciliation Act, 1996 and the award of such Arbitration Tribunal shall be enforceable in Indian Courts only.

(g) The decision of the majority of the Arbitrators shall be final and binding on the parties to this contract.

(h) 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.

(i) The event of a vacancy caused in the office of any 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.

(j) In the event of one of the parties failing to nominate its Arbitrator within 60 (Sixty) days as above or if any of the parties does not nominate another Arbitrator within 60 (Sixty) days of the place of Arbitrator falling vacant, then the other party shall be entitled after due notice of at least 30 (Thirty) days to request the President of the International Chamber of Commerce to nominate another Arbitrator as above.

(k) If the office of the third Arbitrator falls vacant, his substitute shall be nominated according to the provisions herein above stipulated.

(l) 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.

14.7 Additional Guidelines:

a. It is necessary that in cases of all contracts, the firm should agree to the stipulated arbitration clause.

b. In some cases, notice under CPC 80 is issued by the contractor to enable the Union/Purchaser to make amends and settle disputes amicably, to avoid litigation proceedings. The purchaser, in accordance with instructions of Min. of Law, will examine all facts under dispute, prepare parawise comments and obtain comments of Min. of Law. Further course of action shall be taken as advised.

c. In the case of PSUs, all instances of disputes between Govt. department and PSUs will be referred to the permanent arbitration machinery set up under Department Of Public Enterprises. In the event of non-settlement, the matter will be referred to Cabinet Secretariat vide their note No: 53/3/91-Cab dated 31.12.1991. The committee at the Cabinet Secretariat will examine and accord clearance for litigation.

d. Appointment of Arbitrator:

i. By request of firm: When a contractor makes a request to refer any dispute to Arbitration, the Purchase officer will make a self contained note explaining each points put forward by the contractor, as well as all doubtful points that might affect the course of proceeding and seek legal advice from Min. of Law or its offices in whose jurisdiction the establishment falls. As per then advice the matter may be proceeded with for arbitration and appointment of Arbitrator.

ii. By the Purchaser: If the purchaser feels that a case should be referred for arbitration, a summary of the case will be prepared and advice of Min. of Law obtained. In case it is advised that a case fit for arbitration exists, case can be processed for appointing on arbitrator. It is the responsibility of the purchase officer however to ensure that the firm has adequate financial standing to pay the dues, if the claim is less than Rs. 5000.00. The verification of financial standing of the firm can be additionally done from Bankers. Income Tax Officers, Registrar of Companies, Wealth Tax Officers and District Administration etc. The details will be required to be filed in Courts of Law for execution proceedings.

e. Pleadings before Arbitrators:

f. Where govt. is the complainant, the purchase officers will prepare a self contained document giving reference to relevant records and quantify the amount to be claimed. Particulars will also be collected from C of A and inspection establishments, as required. The list of officers who have dealt with such cases will also be prepared.

g. Where Govt. is the respondent, the purchase officer has to explain every point brought out, denying or admitting each point categorically. The documents submitted will also be examined.

h. The claims or counter claims will be submitted to Govt. counsel, who makes the counter statement. The Govt. counsels are appointed from the panel of Min. of Law, but they are to be

formally appointed by competent authority. The Affidavits are to be sworn by officers who are acquainted with the facts of the case.

- i. The Awards in Arbitration could be as follows:
 - i. Declaratory Awards: - Only declares an interpretation of Contract but awards no sum of money either by cost or otherwise.
 - ii. Speaking Award: - The Arbitrator gives a reasoned award. This is applicable for claim of more than Rs 1 Lakh.
 - iii. Non speaking Award: - It does not give reasons for admission or rejection of claim.
- j. The awards are examined to find infirmities and defects for obtaining approval of Competent Authority to accept the Award. Request for correction, interpretation can be made within 30 days of receipt of award, unless another period is accepted.
- k. Follow up in awards in favour of Govt.:
 - i. In case the Award is fully in favour of Govt. or in case where Arbitrator dismisses the plea of contractor without any counterclaims by Govt. question of challenging does not arise and no reference is made to Min of Law. If the Award is accepted, the court is moved to convert the Award to a rule of Court within 30 days. Where the parties have made the Award after the mutually accepted period, application is made to convert the Award to a rule of Courts.
 - ii. If an Award is sought to be set aside, an application will be made by the party making the application within 3 months of receipt of Award.
- l. The Purchase Officer will serve a notice on the Contractor for recovery of the amount under Award. It may also be explored if such recovery can be made from pending bills. In case no payment is made within 30 days, investigations are to be made through Civil Authorities to locate and identify moveable and immovable assets of the defaulter. On conversion of the Award to a Court decree, Execution proceedings can commence for attaching properties of the Contractor, with details of such properties listed in the Execution petition itself.
- m. In the case of pronouncement in favour of Govt., efforts are made to recover the amount from pending bills. If it does not materialize or the firm does not respond to demands then proceedings can be initiated in Courts of Law, in consultations with Min of Law for committing the debtor to prison without any prejudice to subsequent recoveries. The time for recovery of decreed amount is for 12 years and execution proceedings may be initiated at suitable intervals for recovery of the amount due to Govt.
- n. Awards not in favour of Govt.:
 - i. When an award is made not entirely in favour of Govt., and the parties accept it, payments

are made and received and accepted without reference to the Courts.

- ii. In case of award in favour of the contractor, it may be ascertained if such funds are available against pending bills or withheld amounts available to the purchaser. Or else, funds are to be provided against charged expenditure. Since in many cases, such payments are made with interests, even when decision is made to appeal against the award, funds are to be kept ready for payment when asked for. The arbitration award will be charged to Consolidated Fund of India. Sanction for the amount should be obtained and bill prepared by the purchase will be submitted to the Controller of Accounts, who will effect payment through a crossed cheque in favour of the party. In the event of a court decree, the payment will be made out in favour of court and the purchase will deposit it in the court. Where payment of interest is involved, case shall be progressed on priority.
- o. Legal Proceedings: Section 84 of Civil Procedure Amendment Act 1976 provides that there is no right to the defendant to defend the suit unless; (i) He enters appearance within 10 days of service of notice in the suit and (ii) Applies for leave to defend the suit within 10 days of service of summons for judgment served on the defendant after he enters/appears. Therefore, the purchaser should appropriately brief the counsel to act promptly in the manner, or else the court may make ex-parte decision on such matter against the purchaser.
- p. The purchaser may initiate the following legal proceedings:
 - i. Institute suits on behalf of Government for recovery of any amount due from the Contractor. The Min of Law and integrated Finance are to be consulted before institution of such proceedings.
 - ii. Defence of legal proceedings and appeals brought against Govt. of India which Govt. is to defend, and
 - iii. Appeals against court verdicts for which necessary approval is to be obtained from Govt. and Min of Law should be consulted.
- q. Privileges regarding production of official documents:
- r. Production of official documents before Arbitrator/Court are governed by Sections 123 and 124 of Indian Evidence Act, 1872. Section 123 says that nobody shall be permitted to give evidence from unpublished official records relating to the state except with permission of Head of the Department concerned who may give or withhold such permission. Section 124 lays down that no officer can be compelled to disclose communication made to him in official confidence when he feels that public interest would suffer because of it. It is also laid down that any witness, in possession of any document may bring it to the court, notwithstanding any validity to its production and the court may decide upon the validity of such objection. All communications other than those correspondences made with firms or received from them are categorized as

"unpublished records".

s. If privilege is to be claimed, it should be informed to the court in advance. An affidavit should be made in the form prescribed by Min of Law. The officer may seek permission of Head of Department, if he feels that public interest would be affected by such disclosure. If only production of document is concerned, a subordinate officer may be sent with the document in a sealed cover. In case the claim for privileges is rejected after the court inspects the documents, time may be sought for moving High Courts while the document is submitted in sealed cover to the Court. In so far it is a matter related to state, the court is not entitled to inspect the document though the Court may take recourse to other means to decide the nature of the document. The witness is free to decline to answer questions related to his knowledge based on unpublished official records. He may claim privileges and unless the production of such document is ensured, he may decline to answer such questions.

t. On receipt of Courts decree, further action will be taken by the purchase officer in consultation with the Govt. counsel, Min of Law and integrated finance.

CHAPTER-15

DISPOSAL OF PLANT & MACHINERY

15.1 Declaration of Surplus:

15.1.1 **Obsolete:** Equipment will be treated as obsolete on the following grounds:

- (a) Technical inefficiency to carry out its required and intended role and non justification for its retention in service.
- (b) Its required role has disappeared and it is not in use for any other role.
- (c) It has been completely superseded by improved equipment.

15.1.2 **Serviceable:** Any equipment that can be used for the purpose for which it is intended or any other alternative purpose is classified as serviceable.

15.1.3 **Repairable:** Any equipment which has been rendered unserviceable for use in its present form but can be used after economical repair.

15.1.4 **Unserviceable:** The condition of the plant/machinery/equipment has deteriorated to such an extent that it can not be used either for the purpose for which it is intended or for any other alternative purpose economically. The vehicles declared unserviceable are categorized as Class VI, as per MVR 1965 and the inspection report of technical board is as per the form IAF(EME)-E-03(Rev).

15.1.5 **Declaration of surplus:** Identification and classification of machinery and equipment is a continuous process. This is done so that the capacity for production of the factory is maintained. Any large scale de-rating of equipment can be detrimental to the unit's production efforts. A technical Board of Officers, associating representative of Local Accounts Office, will examine the condition of Plant and Machinery and declare them as :

(i) Serviceable (ii) Repairable (iii) Beyond Economical Repair and (iv) Unserviceable.

15.1.6 True Surplus:

- (i) The serviceable/repairable surpluses so identified are circulated among sister factories under Mutual Aid Scheme. Simultaneously, they are also circulated to Defence indentors. If no response is received within six weeks of circulation, it is presumed that the equipment is no longer required. The true surplus is the quantity, which is surplus to the total requirement of all the branches of the organization. Therefore, the equipment found surplus to the requirements of Ordnance Factories and priority defence indentors can be taken up for the purpose of disposal in the open market. **The machine declared Beyond Economical Repair or Unserviceable shall be disposed off and need not be circulated under Mutual Aid Scheme.**

- (ii) On meeting of the requirements of sister factories only, the requirements of defence indentors are to be considered.
- (iii) Serviceable/Repairable surplus plant & machineries and vehicles are required to be referred to E/M Section of OFB together with the specified questionnaires. The proforma shall be duly completed and signed by the technical board, including LAO. Requirements of sister factories and Defence indentors will also be informed to OFB. After scrutiny, OFB may issue orders for issue of machines and vehicles to priority indentors, welfare/philanthropic institutions. The remaining items may be ordered for disposal. On receipt of OFB's instructions, factories may proceed with disposal of said surpluses.
- (iv) All Plant & Machineries declared unserviceable and Beyond Economical Repair with book value of less than Rs. 5 lakhs each case, may be disposed off by the General Managers under their own powers. Beyond it, approval of OFB will be obtained for its disposal.
- (v) Once approved for disposal by OFB, no P&M can be withdrawn from disposal. Therefore factory may withdraw any machine from surplus list with the sanction of OFB before final list is approved. As soon as the replacement of P&M is taken on charge, the condemned machine shall be removed from the Shop Floor and disposed off within a period of 6 months. In exceptional cases, a condemned P&M may be retained upto a maximum period of 3 years duly justifying the necessity for such retention with the approval of Member of Concerned Operating division of OFB.

15.2 Issues to Indentors/Organizations:

The release of plant & machinery to priority indentors is generally done at the book value with packing and incidental @ 5% of sale value charged extra. To this cost, actual cartage charges are also levied. On all such costs, taxes will be paid extra by the indentors, as leviable. The indentors would undertake that such items are not to be resold within 2 years from the date of purchase and the debit would be realized in the same financial year in which the material is being released. Universities, PSUs and Local bodies, etc may be asked to get their demands sponsored by their respective Department/ Ministries, for their demands to be considered.

15.3 Disposal through MSTC:

Disposal of unserviceable P&Ms beyond economical repair can also be done by Open Tender/e-auction through MSTC (an Agent) as per the Selling Agency Agreement between MOD, Govt. of India and MSTC Ltd., a Govt. of India Enterprise as per the terms and conditions of the agreement.

15.4 Disposal at scrap value or by other modes:

If a factory is unable to sell any surplus or obsolete or unserviceable item in spite of its attempts through advertised tender or auction, it may dispose off the same at its scrap value with the approval of the competent authority in consultation with Finance. In case it is unable to sell the item even at its scrap value, it may adopt any other mode of disposal including destruction of the item in an eco-friendly manner. (GFR Rule 200)

15.5 Disposal through tender:

While disposing the goods through advertised tender, the following aspects shall be kept in view:-

- (a) The principle for sale of such goods through advertised tender is ensuring transparency, competition, fairness and elimination of discretion. Wide publicity shall be ensured of the sale plan and the goods to be sold. All the required terms and conditions of sale are to be incorporated in the bidding document comprehensively in plain and simple language. Applicability of taxes, as relevant, shall be clearly stated in the document.
- (b) The bidding document shall also indicate the location and present condition of the goods to be sold so that the bidders can inspect the goods before bidding.
- (c) The bidders shall be asked to furnish bid security along with their bids. The amount of bid security shall ordinarily be ten per cent of the assessed or reserved price of the goods. The exact bid security amount shall be indicated in the bidding document.
- (d) The bid of the highest acceptable responsive bidder shall normally be accepted. In this regard, OFB (MM) Circular no. 14/4/LP/Policy/MM /Stores dt 12-05-2008 shall be followed mutatis mutandis **for P&M also**.

Item	Authority and nature of Power
Unserviceable stores / Vehicle	Sr GM/ GM of the Fy can accept bids upto 50% below the reserve/ guiding price.

- (e) Full payment, i.e. the residual amount after adjusting the bid security shall be obtained from the successful bidder before releasing the goods.
- (f) In case the selected bidder does not show interest in lifting the goods, the bid security shall be forfeited and fresh actions shall be initiated.

- (g) Tender forms are issued in specified format. The tender form may be priced at Rs.100/- (the price may be amended from time to time). Tender fee is non-refundable and may be received in the form of cash, DD, or IPO only.
- (h) NIT shall be issued to DGCIS and DAVP under registered post. Simultaneously prospective bidders, who participated in similar disposal, may also be informed. Wide publicity may be ensured.
- (i) A minimum of two weeks will be allowed from issue of tender notice to the publisher and five weeks be allowed from the date of publication for tender opening. The notices shall appear sufficiently in advance of the tender opening date. Any extension of tender opening date will also be notified through newspapers. No tender shall be opened on Saturday, Sunday or a holiday or a day preceded by a holiday.
- (j) Offers received through Dak, fax quotations etc will be sealed and put inside tender box.
- (k) The sale of bids shall stop one day ahead of tender opening. Proper account shall be kept of sale proceeds. Tender forms will not be sold beyond the cut off date.
- (l) Late bids/delayed bids will not be considered for disposal. They will be entered in red ink in the CST. Bidders will be opened in the manner specified for opening of bidders for procurement of machines. They are normally required to stay valid for sixty days.
- (m) Immediately after opening, a spot CST will be prepared. Thereafter, a regular CST will be prepared in the form of a ranking statement. The bidders will be decided within the validity period of offers.
- (n) Reasonableness of offers may be examined with reference to market prices, last sale price, condition and quality of equipment etc.
- (o) Before submission of offers, the intending bidders may inspect the lots of the machines put up for sale.
- (p) The bids shall be accompanied with Earnest Money Deposit to the extent of 5% without fail from prospective bidders. This may be in the form of Deposit-at-call receipt on any scheduled bank. Offers without Earnest Money will be rejected. Security deposit will accordingly be called for performance of contract. EMD of successful bidder may be adjusted against Security Deposit.
- (q) The purchaser may be called upon to deposit sale value and forward Treasury challan/MRO receipt/DACR for release of SRO. In the case of DACR, however, the guideline that may be issued to the purchaser shall require that the full sale value may be deposited in SBI or any other scheduled bank and purchaser obtain a DACR in favour of

General Manager and forward the same along with the purchaser's specimen signature on a separate sheet to reach the factory by a cut-off date.

15.6 Matters incidental to disposal:

- (a) **Lots on Sale:** The lots of surplus machinery on disposal through auction or sale shall form convenient lots. Materials of similar/identical quality shall be grouped in one or more lots. It shall be the endeavour to ensure that the items under disposal get the best price obtainable. For chemical plants having auxiliaries and piping connections etc may be disposed off in one lot. This may add value to the lot in consideration of subsequent use. However, in case of P&M identified for potential misutilisation after disposal, such P&Ms are required to be damaged before disposal action and disposed off as per existing guidelines as scrap. Identification of such P&Ms for potential misutilisation after disposal may be declared by condemnation committee as sensitive duly recording so after due diligence.
- (b) Once a lot has been identified and formed, care shall be taken to ensure that the components and accessories do not deteriorate to reduce its sale price. It is necessary that the stockholder takes care to see that the lots presented to the bidders are maintained intact. Marking on the lots could be adopted to identify and segregate each lot and its constituents.
- (c) **Ground rent:** The seller has the right to recover a charge for the storage space at @ 2% of the cost of material uncleared, per week or part thereof, with maximum ceiling of 25% of auction price. After lapse of 3 months, if it is found that bidder has not taken any action for lifting of goods, full amount shall be forfeited after sending a notice and giving 7 working days time to the bidder. GMs can waive Rs 10000/- towards ground rent, but beyond it the case will have to be referred to OFB.
- (d) When the buyer fails to pay the sale value within the prescribed period, the seller is entitled to recover the difference between original sale value and earnest money paid and in addition all incidental expenses and the ground rent due.

CHAPTER- 16
PROJECT PLANNING, MONITORING & CLOSURE

16.1 Introduction:

(a) There are four categories of Projects:

- (i) Setting up of Greenfield Project for new product/stores.
- (ii) Setting up of capacities for new stores in the existing factories.
- (iii) Augmentation of existing capacities.
- (iv) Modernization of existing facilities with state-of- the art technologies.

(b) The broad activities involved in a Project are:

(i) Site selection based on availability of land, water, power supply and logistics infrastructure of Rail and Road connectivity. If proposed Project is of Chemical/Explosives in nature, CEEFS clearance is to be obtained.

(ii) Preparation of Feasibility Report based on the following:-

- (a) Clearance from Environment Authorities for setting up the Plant
- (b) Approval from State Authorities;
- (c) Approval from Forest Authorities;
- (d) Rapid Environment Impact Assessment study.

(iii) The concerned GM/Project Officer must exercise utmost care to make realistic assessment of the load requirement after taking into account all relevant factors i.e. time for procurement of plant and machinery, progress of civil works including accommodation and foundation, necessity of services, prospects of trained man-power and raw-materials etc. to arrive at the peak demand to be attained in a phased manner.

(iv) Preparation of Preliminary Project Report (PPR)

(v) Preparation of Detailed Project Report (DPR) and obtaining Project sanction. Consultancy firms like MN Dastur & Co and EPIL Ltd may be engaged through normal tendering procedure (EOI+RFP) for preparation of DPR for green field projects. The Terms of Reference (TOR) for consultancy should include technical assessment and identification of facilities required in factory and township and detailed cost estimation. Generally, payment is made to such consultants in two stages, 50% after submission and approval of Draft DPR and 50% after submission of Final DPR.

(vi) Project planning related to project establishment matters i.e. sanction for staff and officers, budget, submission of periodical returns, procurement of raw materials, answering audit queries.

(c) DPR shall include the following:

- i. Detailed process layout for each item of store.
- ii. Finalisation of list of Plant and Machinery with estimated cost and procurement thereof.
- iii. Preparation of layout of shops and other works required and execution of the same.
- iv. Bar Chart related to completion of Civil Works and procurement of P&M in consonance with the date of sanction of the project.

16.2 **Preparation of Detailed Project Report (DPR):**

The Detailed Project Report spells out in detail capacity planned, the requirement of P&M and Civil Works required for execution of the Project. It amplifies the projection made in Preliminary Project Report and Feasibility Report. It lists out the requirements of outlays in Capital Expenditure for P&M and Civil Works, Land and Rehabilitation package requirement if any, Deferred Revenue expenditure, approximate time frame, essential raw material required and external assistance if any. It may also contain requirement for engagement of consultant and agency for construction of civil works. It contains projected requirement of manpower and justification for services, energy and water requirements, need for infrastructural requirements etc.

16.3 In order to make uniform DPRs, the following general guidelines may be adopted.

(A) **Introduction:**

- (i) Background leading to setting up of the capacity
- (ii) Vetted capacity requirements from Ministry of Defence
- (iii) Justification for the project with reference to the requirement
- (iv) The basis on which the Capacity parameters have been worked out
- (v) Technical feasibility for setting up such facility explaining the technologies involved and available competence
- (vi) Financial appraisal of the Project based on estimated cost of production at peak capacity. If the production is based on strategic requirement, it may also be spelt out.
- (vii) Collaboration if required and the extent of collaboration required.
- (viii) Whether the Project is against TOT

(B) Summary of Project proposals and Cost thereof:

- (i) Capacity parameters detailing monthly and annual capacities and the number of shifts proposed per day;
- (ii) Financial highlights - cost of production, IRR, Pay-back period
- (iii) Summary of Cost under various heads of accounts i.e P&M, Civil Works, Services, Railway works, Land acquisition and Rehabilitation package, Deferred Revenue, contingencies, escalations etc.,
- (iv) Summary of Deferred Revenue to cover payment of wages during the project execution stage, ad-hoc requirement of site cleaning, soil testing, project planning, manpower training, Preliminary expenses for setting up of the Project Office.

(C) Assumptions made during formulation of the project:

- (i) Existing capacities, if any, assumed for arriving at the net requirements of Capital assets;
- (ii) Realistic assessment of the reasonability of the cost estimate depending upon the project sanction time frame and the subsequent date of Govt. sanction;
- (iii) Requirement of raw materials and technology, plant and machinery through import to enable establishment of final product.
- (iv) Availability of indigenous raw materials and technology, plant and machinery to establish manufacture of the desired final product.

(D) Site selection of the Project:

- (i) Site selection will require justification by a Competent Committee formed by DGOF & Chairman/OFB with final approval by MOD.
- (ii) Basis of choice of site-selection explaining availability of suitable land including private and Government, sufficient source of water and power supply, availability of Logistics infrastructure like Rail/Road services and clearance from Forest and Environment Authorities and CFES in case of Chemical and Explosives Factory.
- (iii) If the project is for augmentation of existing product or setting up new product in the existing factory, a schematic layout of the existing factory including the proposed site of new project including the requirement of existing infrastructure available like water, steam and power supply, movement of raw-material from one section to another to be indicated.

(E) Civil Works:

Civil Works requirement assessment covering the following subheads:

- (i) The Civil works requirement for Production buildings depending upon the plinth area requirements, foundation for plant and machinery and type of structure will have to be projected. The DPR shall also give a list of plant and machinery with associated facilities to justify the

plinth area requirements. In case of chemical or explosive production/inter-stage storage buildings, the detailed requirement of safety distance and other requirements are to be indicated as per STEC/CEEFE guidelines.

(ii) Civil works of Non-Production buildings, consisting of Stores (both Main and inter-stage Stores), Inspection, Inspectorates and Maintenance buildings etc has to be included in the DPR. The main Office area, as per authorized scales along with change room for DB workers and security office in the case of chemical and explosive buildings shall be also contained in the DPR. The requirement of site Office also shall be included.

(iii) Civil Works required for residential buildings to cover the requirements of Allied establishments, as per authorized scales shall be mentioned in the DPR. The number of quarters as per Govt. scale to be built shall be supported by the number of employees estimated for the factory and authentic data collected for the Allied establishments.

(iv) Amenity buildings to cover shift rooms, Canteens etc within the factory and requirement of facilities within the estate viz. Market place, Co-operative stores, hospital, schools, recreation clubs, children park, stadium, bus stops, etc., (as per authorized scale wherever applicable) will have to be planned and catered for in the DPR. There shall be provisions in the Project to cater for Post Office, Kendriya Vidyalaya Building, Bank with ATM facilities, Police Out-Post etc. Also, service stations are to be provided if the factory estate is in the remote area beyond 20 km from the nearby township.

(v) The requirements for fire-fighting facilities will have to be met from the Civil works as assessed and approved by the Fire Advisor of Ministry of Defence. This will consist of Static tanks, fire hydrants, main and sub-fire stations, and the water distribution systems, both in the factory and the Colony.

(vi) The requirements of Security, consisting of Security Offices, Perimeter wall, bastions, accommodation for DSC platoons, and their Offices, Security check posts etc will have to be envisaged at the time of project planning and have to be catered for in the DPR.

(vi) The basis of cost estimation will have to be defined in the DPR itself. The cost estimate received from MES/other agency, needs to be enclosed in the estimate. Assumptions made in regard to the time frame of completion of the buildings need to be brought out along with the escalation of costs in case of delay in completion.

(vii) Though not compulsory, it is preferable to hold Siting Board for getting RIC (Rough Indication of Cost) from MES/other agency. It has been experienced that if RIC is obtained without holding siting board, significant increase in the cost may occur due to changes in the scope of work after citing board is held.

(F) Justification for investment of P&M covering the following areas:

The investment for P&M shall be justified based upon the data given in the DPR as follows:

- (i) The requirements of plant and machinery along with the support data and cycle time calculation, in respect of production machines.
- (ii) The existing capacity assumptions while calculating the additional requirements.
- (iii) The basis of assumptions of existing capacities.
- (iv) The plant and machinery under replacement which will need to be reinstated for meeting the project capacities giving their year of purchase, their register no, cost of their requirements of machines/equipment for service sections like Tool Room, Surface Treatment Section, Quality Sections, Mechanical/Electrical/Civil/Estate Maintenance and other services like Hospitals, Industrial Canteens etc.
- (v) Transport requirements during the project implementation and production stage
- (vi) Requirement of tools, gauges and equipment for production.
- (vii) Mechanical handling equipment for project execution and production.
- (viii) Inventories like stores rack and bin, furniture for Offices, production and other miscellaneous inventory items.
- (ix) A summary of cost separately for capital expenditure for P&M and Civil Works for production and maintenance required to be explained with the basis of realistic cost estimates. Cost estimates in RE and FE to be summarized, with the basis of estimation, the factor of escalation depending upon the time frame of completion and other contingencies are to be indicated.
- (x) Wherever imported plant and machinery is absolutely necessary, the same may be explained in the Project Report with detailed justification of economies of using imported machines vis-a-vis, indigenous machines in terms of productivity, quality, and reliability. The source of origin and the exchange rates assumed while computing the rupee value ought to be brought out.

(G) Utilities required for the Project:

The utilities form a major consideration while assessing the Project investment and implementation. The assessment of requirements shall be in consultation with the plant suppliers. The DPR shall contain the following relevant details:

(i) The requirements will include water for process, fire fighting and drinking purposes; bulk and distributed power supply and their cabling; compressed air, steam; chilled water, air conditioning; railway lines, loading and unloading platforms; telephones and communication networks; sewage treatment plants and effluent treatment plants conforming to the local environmental control norms, drainage systems etc which will need detailed planning. Measures to conserve energy, with its cost, shall also form a part of the utilities. Conservation in the use of water including recycling shall be considered.

(ii) Estimated cost of the utilities and the basis thereof.

(iii) Availability of power and water and their augmentation, contracts to be entered into with State Governments/supply agencies.

(iv) Roads, culverts and bridges etc required for the project area for enabling purposes and for the factory shall be planned.

(H) Deferred Revenue Expenditure:

Deferred Revenue Expenditure constitutes an essential part of project execution. Detailed assessment of the expenditure has to be made in the DPR. Some aspects are listed below:

(i) Requirements of training including foreign training have to be foreseen and spelt out.

(ii) Requirements of raw materials, components and Completely Knocked Down and Semi Knocked Down items (CKDs & SKDs) both indigenous and imported with cost assessments.

(iii) A separate Annexure detailing the Deferred Revenue Expenditure need to be enclosed.

(I) Time Frame:

The report shall also give brief outline of the envisaged time frame of completion. Implication on the cost in case of delay may also be brought out.

(J) Capital and Revenue Expenditure

The anticipated cost of Capital and Revenue Expenditure will have to be shown. It shall also highlight the phasing of cash flow both in FE, RE separately for plant and machinery giving the phasing of the project. It shall also phase out the FE commitment yearwise.

(K) Manpower:

The Manpower requirement is an essential addendum in any project report. It shall be given in the following formats:

(i) Requirement of manpower at the site and in the Headquarters, during the planning and execution stages, category wise and the phasing thereof shall be contained in the report.

(ii) Requirement of IEs in the production and phasing thereof.

(iii) There shall be adequate justification in the report itself and net year wise requirement shall be annexed as an Annexure.

(iv) In case manpower will be organized from the existing strength of factory/sister factories, the same may be indicated.

(L) Economics of the Project

The Economics of the Project shall form an integral part of the project report. It may have the following:

- (i) Comparison with a known cost from outside source, indigenous or foreign.
- (ii) If the project is required on strategic requirements and the economies are of secondary considerations, it shall be brought out clearly.
- (iii) If the project is for balancing the capacities for manufacturing end products for civil trade, cost benefit analysis, justifying investment is essential.

(M) Special requirements:

The Project Report may recommend the following special sanctions, if required, for speedy implementation of the project.

- (i) Special powers, if any, for procurement of plant and machinery, Contracts for erection and other services shall be delegated to the project implementation authorities.
- (ii) Special powers for engaging consultant agencies in connection with construction of Civil Works may be delegated to the Project authorities.
- (iii) Sanction of Officers and Staff along with the Govt. sanction for the project
- (iv) Requirements of Go-ahead sanction for preparatory works such as site cleaning, soil testing etc., before commencement of the civil works.

16.4 The DPR shall also cover the following points:

- (i) Project cost shall be worked out based on the latest available price.
- (ii) The exchange rate adopted shall be clearly spelt out
- (iii) Likely increase in cost due to price escalation formula due to expiry of time before project completion shall be indicated.
- (iv) A realistic time frame for completion of the project may be worked out.
- (v) The potential areas of diversification into civil trade or export shall be identified at the time of preparation of DPR and this shall be taken into account at the time of ordering P&Ms.
- (vi) The quantum of statutory levies like CD, ED shall be specified in the DPR.

(vii) Periodic mid-stream reviews may be carried out to ensure that the facilities created are commensurate with the actual requirements.

16.5 The cost of the projects which were referred to EFC and Public Investment Board (PIB) has to be assessed on realistic basis so that cases requiring large cost revision can be avoided. Therefore, inclusion of new items of work not provided in the original estimates and changes in the scope of the project shall be avoided at a later date and the provision for various elements shall be carefully made.

The format to be adopted for preparation of DPR is given as Annexure.

16.6 Summary:

As would be evident from above, the project report is a factual basis for the investment projected with envisaged outturn for setting up of fresh capacities. The Annexure to the report shall present a tabular/graphical statement of the contents of the report. The annexed statements shall therefore contain acceptance in principle by Min of Def for setting up the project. It shall also contain clearances accorded by other statutory authorities like Environmental bodies, State Electricity Boards, etc. It shall also enclose the details of plant and machinery with cost, support data for assessment of the requirement of P&M, machine layout, requirement of utilities, manpower requirement, training requirement, phased build up of manpower, estimated importation requirements of materials, cash flow yearwise etc. CPM network and key plan to factory and the township also add to the clarity in visualising the projected requirements. Schematic flow of material from one factory to another, measures to comply with anti-pollution norms and steps to conform to the requirements of energy conservation shall also be annexed.

(Ref Note 001/I&P/Proj(c) dated 7/15 -1-1980)

16.7 Provision of anti-pollution measures:

While preparing the DPR, Project Management may consider latest anti-pollution measures as per clearance from Environment Authorities and shall be an integral part in the costs of Project to safeguard environment. In this connection, the Notification issued by the Govt of India making environment impact assessment (EIA) statutory for twenty-nine different identified activities is to be studied and the EIA report is to be incorporated in the Project Report along with the cost impact. This EIA notification includes procedures for obtaining environmental clearance. (Ref. Hand book of Environmental Procedures and Guidelines, published by MOEF, Govt. of India, 1994)

16.8 Energy conservation in new project:

DPR of Greenfield Project, augmentation/inclusion of new projects in the existing factories shall have a chapter on energy conservation, where the implementation of energy efficient equipment and their comparison with the contemporary equipment is mentioned in terms of energy savings and their cost impact.

16.9 Measures for speeding up of decision making:

The following salient features are to be followed for speedy implementation of Project.

- (i) The services of Consultants may be availed to lay down specifications as complete as possible.
- (ii) Time limits may be fixed for drawing bidders and submission of bidders
- (iii) It would be useful to invite Expression of Interest in the case of complicated P&M and have Pre-bid discussions/presentation with prospective firms for finalizing firm specifications and then go for Two bids bidders with standard commercial terms. This will avoid post-tender queries and save time.
- (iv) The lowest priced tender satisfying the technical requirements shall be accepted.
- (v) All TECs/TPCs and finalization of the contract shall be made within a certain time-frame indicated in the tender to avoid further complications.
- (vi) The Project Management has to identify certain areas of slippages, if any, in the execution of projects, analyse and take recourse for corrective measures and maintain records.

16.10 Plant and machinery and Civil works:

- (a) Activities pertaining to Plant and Machinery for the projects are as follows:
 - (i) Preparation of Master List of P&M with basis of calculation with cycle times, estimated cost including budgetary offers
 - (ii) Preparation of detailed specifications of P&M
 - (iii) Issue of Tender Enquiries
 - (iv) Holding of TEC/TPC at Fy/OFB
 - (v) Obtaining financial concurrence and placement of Supply Order.
 - (vi) Approval of release of FE for imported plant and machinery may be deliberated upon and obtained in the concerned TPC itself.
 - (vii) The SO/Contract shall be detailed. The acceptance criteria, of machines/process plants, details of commissioning, building/foundation details, service requirements, technical assistance are all required to be well laid out.
 - (viii) Follow up of commercial aspects of S.O./Contracts, so far as purchaser's obligations are duly performed. LC opening and obtaining necessary statutory clearances is pursued.
 - (ix) Adequate pre-planning and contract planning to ensure timely delivery, erection and commissioning of P&M.
- (b) Some of the important aspects which need to be evaluated/followed for import of Plant & Machinery are:

- (i) Formulation of Qualitative and Quantity requirements in the specifications.
- (ii) Financial standing/soundness and reputation of the short listed suppliers.
- (iii) Provision of adequate safe-guards in the AT/Supply Orders for invoking of the same in case of failure of supplier of Plant and Machinery or default on his part.
- (iv) Responsibility of system integration shall be assured and reliability of all bought out vendor items, like components/sub-assembly/subsystems etc. is guaranteed by the seller and an appropriate provision is made in the contract.
- (v) Provision of training in usage, maintenance etc. in the contract.
- (vi) In case of complex chemical/metallurgical process plants, it is advisable to depute a team comprising reps. of users, maintenance and inspection to study various plants similar to the purchaser's requirements, installed by the manufacturers at sites in overseas or in India itself.
- (vii) The modalities of inspection shall be clearly and unambiguously set out in the contract.
- (ix) Provision for pre-dispatch inspection by the purchaser's inspection team.
- (ix) Sustained follow up and implementation of contracts.
- (x) The inspection team shall be well versed in carrying out the pre-dispatch inspection.
- (xi) If inspection of imported Plant and Machinery is to be done on receipt in India, availability of special test equipments/special test instruments and terms of payment to protect Government interest have to be ensured.
- (c) The related Civil Works in Project execution involves the following activities: -
 - (i) Obtaining various Civil Works data from plant suppliers. The schedule of receipt shall be pre-decided. The data would include dimension of machines, working area and the layout of plant, its auxiliaries, fixtures and fitments, material handling equipment and area for flow of men and components/processed items.
 - (ii) Convening of Siting Board.
 - (iii) Approval of Siting Board by Competent Authority.
 - (iv) Preparation of AE Part I & II by MES.
 - (v) Concurrence by Finance and issue of Administrative Approval by Competent Authority.
 - (vi) Prior to formal project sanction or approval of Civil Works, 'Go Ahead' approval may be accorded to compress time span.
 - (vii) Execution of Civil Works and its formal taking over by user factory.
 - (viii) Wherever Civil Works are executed by the department, the technical specifications and scope of works are to be finalized by the factory and vetted by CE (Civil) of OF Board.

- (ix) The works are estimated cost-wise and are concurred by Finance.
- (x) The works are tendered in a two-bid system - asking for technical and financial bid separately.
- (xi) All clarifications and discussions are held to ensure that conformity to specifications, as well as statutes and building codes are complied with. The competent financial authority shall accept the technically accepted offers.
- (xii) The price bids are opened thereafter and a ranking statement is made, for all offers which were accepted technically earlier.
- (xiii) The Contract is concluded by the Competent Authority in consultation with finance.

16.11 **Monitoring of Projects:**

- (a) The Project Monitoring is done with respect to both Plant and Machinery and Civil Works. It is done for both physical achievement and for financial progress. The basis of progress monitoring is done on the basis of preplanned schedules expressed as CPM networks, where landmarks and completion of designated tasks are scheduled realistically, depending upon data furnished by plant suppliers or construction agencies. Quite often they are laid down based on interaction with consultants or specialized agencies. They are periodically updated based on actuals. The activities are:
 - (i) Preparation of PERT/CPM networks.
 - (ii) Preparation of progress reports periodically, both for physical completion as well as for financial expenditures/cash flows.
 - (iii) Compressing the activities, removal of unwanted slack periods and even bunching of procurements so as to steer towards targetted dates of completion.
 - (iv) In some cases even preparing Exception Reports, compiling slippage against projections and planning for remedial steps.
 - (v) Preparation of Cash flow budgets for the year, for both commitment noting (for FE) and actual expenditure. This may be done for periods of one each for the entire project duration.
 - (vi) The funds are to be arranged for annual budget expenditure and slippages are to be formally analysed.
 - (vii) If different agencies are involved, compilation of cash flow from multiple sources, involving different plant suppliers is an essential task.
 - (vii) Taking care of excess requirement of funds as well as restricting slippages in Cash flow is an essential ingredient to project implementation.

(Ref: OFB R Note No 01/IMP/Proj(C) dated 06.03.1978)

(b) The progress monitoring can be done by use of application packages, which can be run even on PCs. Scheduling, and planning is done either based on single machine or a group of machines. The tasks in execution of a large project involving large number of activities or procurement of a small number of machines are identified by task nos., which links them to their originating major works. The task identification number uniquely establishes their linkages with groups/subgroup of activities. The dependencies and constraints are identified and defined. The resources are identified and their costs per time unit are defined with standard application software (PC based packages), the CPM network can be drawn and their modes are defined. Bunching/grouping of similar plants and machinery provides ease in progressing project execution.

(c) Project monitoring data in DPR: Each project proposal shall incorporate Pert Chart or Bar Chart for all important activities indicating the date of commencement of the project and the date of completion of the project after erection, commissioning and trial-run etc.

(d) The factory shall submit a Monthly Progress Report regarding the project to the concerned project group at OFB with a copy to the Operating Division. The various levels of reporting and monitoring the progress of projects are:-

- i. Monthly report from factory to OFB Headquarters
- ii. Project Review in DDG Networking meeting at OFB
- iii. Monitoring at Board Level on quarterly basis
- iv. Monitoring at Ministry Level through Monthly, Quarterly and Half-yearly Reports.

(e) In case of big projects (setting up new factory), MoD generally constitutes a Steering Committee and a Project Monitoring Board (PMB) to monitor and review the progress of the project.

(f) The Steering Committee is headed by Chairman/OFB. Its composition generally includes concerned Member/OFB, Member/Finance, Joint Secretary/MoD for OFB, Addl Financial Adviser/MoD(Fin), Director(P&C)/MoD, GM of the Project Factory, COS/OFB, DDG (Project)/OFB and Reps of DRDO, DGQA, MES, Army HQ, CFEES, etc. Its functions include:

- i) Review technical and financial progress of the project.
- ii) Coordinate and interact with other Departments and Services.
- iii) Formulate agenda for PMB with specific items for approval.

(g) The PMB is headed by Secretary(DP). Its members include SA to RM, Secy (Def Fin), DGOF (Chairman, Steering Committee), DGQA, Addl Secy (DP), concerned Member/OFB, JS for OFB, Rep/MES, Rep/AHQ, etc. Its functions include:

- i) To monitor/review the progress of the project.
- ii) To provide policy decisions/directions.

iii) To lay down guidelines to remove bottlenecks in the implementation of the project.

(h) Annual Budget projections for projects (NC) are made and reviewed as per the following Reports/Schedule:-

Name of Report	Due Date
i) Forecast Estimate (FE)	25th July of preceding year
ii) Budget Estimate (BE)	25th Sep of preceding year
iii) Preliminary Report (PR)	25th June of current year
iv) Preliminary Revised Estimate (PRE)	25th July of current year
v) Revised Estimate (RE)	25th Sep of current year
vi) Final Modification Report/(FMR)/ Modified Appropriation (MA)	10th Feb. of current year

NOTE: PRE for current year and FE for the next year are to be sent together as per latest instructions.

16.12 Physical Closure of the Projects:

- (a) On physical completion of all activities of the project, GM/Project officer at site in consultation with LAO will certify that all the plant & machinery envisaged in the Project have been received, erected and commissioned. Also all items of Civil Works including services have been completed and taken over. These have been posted and accounted for in the respective block register of the Factory. Production achievement shall also be highlighted with respect to the capacity created.
- (b) On receipt of these details, the project officer in the OFB HQ will prepare a Board Memorandum regarding physical closure of the project highlighting the position of completion of physical activities viz. procurement of plant and machinery, construction of civil works, services etc. as well as the latest position of financial expenditure vis-à-vis project sanction. The Board Memorandum with the comments of Finance Division and their replies after approval of concerned Member/OFB shall be put up in the Board meeting for consideration. After approval by the Board, the project shall be deemed to be physically closed. The same will be discontinued from the next Half Yearly Progress Report on Projects. The concerned project group shall apprise the same to Ministry of Defence.

16.9 Financial Accounting of Expenditure against the Project:

Considerable difficulties have been noticed in the Financial Closure of Projects. It must be ensured by the Project officer at site/factory and the local accounts officer that the expenditure against Plant and Machinery, services and civil works envisaged in the project are properly accounted for against the relevant code head of the project. Also monthly expenditure and

cumulative expenditure shall be reconciled every month and corrective action taken for any anomalies/discrepancies.

16.10 Financial Closure of the Projects:

Soon after the physical closure of the project, the Project Officer at site would take necessary action towards financial closure of the project.

(i) He would prepare a statement showing the Regd. No., Receipt Voucher No. & date, description of plant and machinery and civil works (separately under P&M head and CW head) and send it to the LAO who would put the value and vet the statement with a comparative table showing the amount of sanction under each head and expenditure incurred under each item.

(ii) The statement duly vetted by LAO will be sent back to the project officer at site/GM who in turn will send it to the project officer at OFB HQrs. for preparation of Board Memorandum for financial Closure.

(iii) Project office at OFB HQrs will prepare draft Board Memorandum (format given in the Appendices) and put up to OFB/Finance Division for concurrence. The Board Memorandum duly concurred by Finance division and approved by concerned Member/OFB will be put up to the Board for decision on financial closure of the project. On receipt of the decision of the Board, the same will be intimated to the Ministry of Defence.

CHAPTER- 17**DGS&D RATE CONTRACTS****17.1 Nature of Rate Contract:**

- (a) For common user items, DGS&D Rate Contracts continue to be the mode for procurement of Capital items.
- (b) Rate Contract is an agreement between the supplier and purchaser to supply items at specified prices during the period covered under the contract without any quantity for minimum drawal in the contract. The rate contract (RC) is in the nature of a standing offer by the supplier, the legal contract would be in place only after placement of an order.
- (c) The contract is binding upon the Contractor, and any order placed during the currency of the contract is due to be executed. The Supply Orders can be placed even on the last date of RC, but not beyond it. No extension of delivery date is required, even if the supplies continue even beyond the period under Rate Contract.
- (d) Rate contract being standing offers made by suppliers, they can be revoked anytime by the suppliers. Moreover there is no commitment to quantity to be purchased. DGS&D can also exercise reciprocal rights. DGS&D fulfils its obligation by purchasing all its requirements through suppliers of Rate Contracts.
- (e) The decision to include or delete an item in the list of Rate Contract is taken by the Standing Review Committee of DGS&D. They are generally concluded for items of general purpose and common use, following specified standards. There shall be stable market conditions, where drawal is likely to exceed Rs.25 Lakh in a year. In some cases Rate Contracts with market fluctuations of price are also concluded. In such of rate contracts with price variations, the base price on which such variations are dependent may also be specified in the tender and also in Rate contract, giving the formula for price variation. However with decontrol of many items, which were with administered price mechanism, numbers of Rate Contracts with price variations have been brought down.

17.2 Payment Terms:

- (a) Payment terms of DGS&D Rate contract shall be applicable.
- (b) Normally the period of RC is for one year.
- (c) In cases wherever required, DGS&D Rate Contracts are concluded for purchase of spares. They can be RCs with original manufactures for OEM indigenous spares, indigenous spares manufactured by established manufacturers, OEM imported spares with primary manufacturers or secondary agents. As per DGS&D practice, spares for imported and indigenous plant and machinery are to be purchased from OEM, or OEM approved units

and establishment or manufactured products from reputed organizations with guarantee of fitments. Similarly spares for indigenous and imported engines are procured from OEMs and OEM approved manufacturers and other units with due approval certificates from certifying agencies.

- (d) The copies of all Rate Contracts concluded can be had from complaints and Public Grievances Cell of DGS&D.
- (e) Declaration of DDOs (Direct Demanding Officers): DDOs are declared by DGS&D based on fact that they have large and recurring demand of stores. The Director of Supplies enlists all DDOs who are eligible for it.
- (f) The DDOs operate such contracts and draw their requirements through R.C. They shall not purchase same material elsewhere, when R.C. exists. One DDO cannot place Supply Order on behalf of others. The authorization is made individually and not collectively. When there is one DDO from one department he may cover all requirements of all departmental consignees.

17.3 **Placement of Supply Order:**

- (a) Since Rate Contracts are approved standing offers of the suppliers the contract once entered into through SO placed, is operated between the DDO and the supplier. Thus the first item to be entered in the SO is the R.C. number based on which the Contract is being concluded.
- (b) The Order shall bear the name of the supplier as mentioned in the Rate Contract.
- (c) The description of store shall be as described in the Rate Contract complete including BIS specification number mentioned.
- (d) The quantity required shall be entered and the basic rate shall be arrived at.
- (e) The Excise duty both basic and surcharge shall be entered and calculated on the basic price. Cost of nonreturnable packing, if added separately, is also dutiable and added to the costs. The sales tax as applicable is also added to arrive at the total cost. Sometimes freight is charged extra. For equipments, cost of installation per piece, is also allowed in the cost of S.O. For vehicles a mark up price is charged, which is added. The net price is arrived at by adding all cost elements.
- (f) The Inspection Authority is generally mentioned in Rate Contracts. For Ordnance Factories purchasing stores DGS&D perform the role of Inspection agencies.
- (g) The mode of transport is also agreed to in the Rate Contract. Such terms are mentioned in R.C. and have to be quoted in the S.O.. Supplier shall arrange to deliver P&M at the factory.
- (h) The Delivery period is as allowed in the Rate Contract. The Code Head of booking is also required to be mentioned in the S.O. The LAO of DGS&D on releasing payment debits

the amount to the respective code head and informs C of F& A (Fys) for booking the expenditure. Incorrect code head only results in wrong booking of expenditure.

- (i) Copies of SO are distributed to C of F&A (Fys), Inspectorates and Inspection Authority apart from DGS&D.

17.4 **Post Supply Order Monitoring:**

- (a) The supplier may accept the Order or point out discrepancies. If the discrepancies are supported by the contents of the R.C. the SO may be amended. Otherwise the supplier may be asked to comply with the R.C. agreement with DGS&D.
- (b) In the event of delay in supplies, the DP may be extended in the standard formats with all denial clauses. If there are bonafide reasons for delay in supplies, the same may be considered by purchaser, in accordance with the Force Majeure conditions, contractually agreed to. If delay is due to placement of SO beyond R.C. period, the SO may be withdrawn and demanded against any other R.C. However, in case the supplier defaults in supply, DGS&D may be kept informed about the poor performance of the supplier.

17.5 **Payment:**

- (a) DGS&D Rate Contract allows advance payments in keeping with progress of the S.O. Generally 98% payment is allowed on inspection, acceptance and proof of despatch/delivery. In case it is despatched by Railways, the supplier will submit the number and date of RR, references of letter under which such RR has been sent to the consignee to the paying authority. Accounts copy of Inspection Note will also be deposited. For despatch by road, the supplier has to deposit the Provisional Receipt Certificate from the consignee for claiming 98% payment.
- (b) The format of Provisional Receipt Certificate is “This is a Provisional Certificate. It is only a token of receipt of stores by the consignee and is without prejudice to his rights of inspection and rejection under the General Conditions of Contract. It is issued on “said to contain basis”, the Contractor remaining responsible for proving the total quantities actually delivered.” The balance is paid on satisfactory inspection and acceptance by the Consignee.

17.6 **Inspection Notes:**

The Inspection notes are disposed as follows:

- (i) Copy Nos.1 and 2 are marked for Accounts Office. Copy No.1 is used for Provisional receipt and Copy No.2 is issued by the consignee after the machine is accepted in final inspection. Copy No.3 is Contractor’s Copy. Copy No. 4 and 8 are Consignee’s Office copies. Copy no 6 is Purchase Officer’s Office copy. Copy No 7 is the Inspector’s Office copy.
- (ii) Copy No. 2 and 5 submitted at the end, with or without discrepancies endorsed by the consignee is required for final payment.

CHAPTER- 18
FINANCIAL APPRAISAL OF INVESTMENTS

18.1 Introduction

While delegating enhanced/additional financial powers to Ordnance Factory Board, Ministry of Defence has laid down broad guidelines for procurement of Plant and Machinery. These guidelines emphasized on the need to have a mechanism for careful appraisal of proposed investments in Ordnance Factories. To this end in view, OFB engaged M/s AF Fergusson & Co (AFF) as Consultant to develop the best possible economic criteria/methodology or combination of both to be adopted for investment appraisals in Ordnance Factories. After thorough study of the existing procedures for investment appraisals and in order to overcome the anomalies/shortcomings, AFF submitted its recommendations in the form of guidelines on 'Methodologies for Investment Appraisal in OFB' vide letter dated 18/04/2002. These guidelines as outlined below are to be followed in all OFs. Formats to be used as per AFF report are given in the Appendences.

18.2 Financial appraisal of Capital Investment:

(a) A capital investment proposal will require financial appraisal which would involve the following sequence of steps:-

- (i) Estimation of the initial capital investment and the timing of cash out flow.
- (ii) Estimation of the production level at the time of full production.
- (iii) Estimation of future cash out-flows considering various production factors.
- (iv) Estimation of future in-flows based on the estimated volume of production and prices etc.
- (v) Working out the net in-flows.
- (vi) Evaluation of the proposals through Payback and IRR techniques.

(b) Exclusions:

Investment appraisal need not be done for following:

- i. All investments below Rs 50 lakhs.
- ii. Cases where there is no direct nexus between investment and inflows e.g. Inspection, Quality Control, Services, Tool Room machinery and equipment.
- iii. Machineries required to meet Safety, Environment and Statutory obligations.

However, for such of the above types of plant & machinery which form part of a green field project or large scale modernization, the investment shall be included in the total investment of the project for financial appraisal.

(c) For financial evaluation of investments valuing between Rs. 50 lakhs and Rs. 2 crore, simple evaluation techniques detailed below are to be adopted:-

- (i) **Investment/Turnover Ratio:** This is calculated by dividing the incremental value of issues by the cost of investment. The value should be greater than or equal to 1.
- (ii) **Payback Period:** This shall be calculated by dividing the investment value by the estimated savings for a particular year at full production level. The Payback should be within the life of the machine as per relevant depreciation policy. This method favours investment which generates sufficient cash inflow in initial years. However, it fails to consider time value of money. Since the life of most machines is taken as 20 years, the Payback should be within that period. It is emphasized that the factory has to carry out the estimate for one year only.
- (d) For investment proposals valuing more than Rs. 2 crore, the financial evaluation is to be done by Internal Rate of Return (IRR) method. IRR is the discounted rate at which the net cash-flow from operations will equate the initial capital outlay over a certain period. IRR method takes into account time value of money. IRR can however, be misleading when choosing between mutually exclusive projects that have substantially different out-lays. Mathematically, the value of IRR is determined with the solution of the following equation through iterations.

$$\sum_{T=1}^n A_t / (1+r)^T = 0$$

Where **n** = Total period in years in which cash flow is expected

T = Time under consideration

A_t = Net Return in the year

r = Internal Rate of Return

In practice, IRR is to be computed by filling in the data and using spreadsheet software like Microsoft Excel.

18.3 General Points related to IRR Calculation

- (a) **Cash Flow:** IRR shall be calculated considering the net cash flow, i.e. sum of cash inflow (+ve cash flow) and cash outflow (-ve cash flow), for a period of 10 years. Net cash inflow in real terms is computed first and inflation is applied on that to arrive at net cash

inflow in nominal terms for all the 10 years, which is finally used in IRR calculation. The year of first output from the new investment is to be treated as Year1 (Y1) and subsequent years as Y2, Y3 and so on. The investment (cash outflow) may occur either in a single year or in a period of two or more years. The year prior to Year1 is considered as Year-1 (Y-1), the year prior to Y-1 as Year-2 (Y-2) and so on.

- (b) **Rate of Inflation:** The annual rate of inflation based on monthly Wholesale Price Index (WPI) for 'All Commodities' as reported by the Economic Adviser, Ministry of Commerce and Industry is to be considered as the rate of inflation in the calculations. The rate as prevailing in the month of January is to be used in the next financial year beginning from April. For example, the inflation percentage for January 2013 is used for all proposals in the year 2013-14. This is computed by taking monthly WPI (all commodities) indices for Jan '13 & Jan '12 from the website <http://www.eaindustry.nic.in>.
- (c) **Hurdle Rate:** The IRR should be equal to or more than the 'hurdle rate' i.e. the minimum acceptable rate of return. As recommended by AFF, the hurdle rate for OFB will be prevailing benchmark rate of interest plus 1% (100 basis points) to take into account a risk premium. The benchmark rate to be considered is the interest rate on government's short-term borrowing from the RBI or the Ways and Means Advances (WMA), which in turn is equal to the RBI's 'repo rate' (also called 'bank rate'). The repo rate is revised by RBI from time to time and can be ascertained from internet. For example, the repo rate was 9.5% in March 2012 and 7.5% in March 2013. The repo rate as on 1st April is to be used for the all proposals in that financial year. Thus, hurdle rate is equal to 1% above the repo rate as on 1st April of the year.
- (d) **Strategic Investments:** A proposal whose IRR is below the hurdle rate should normally be rejected. However, where for strategic considerations a proposal needs to be cleared, the same should be clearly stated along with the specific strategic issues. In cases where the demand for the final product is less than the machinery is capable of producing or does not cover the span of 10 years and IRR so calculated is below the recommended hurdle rate, the investment may be evaluated on strategic considerations. Strategic defence considerations do play a very important role for some investments in OFB. The possible strategic considerations can include:
 - (i) Strategic significance of the product
 - (ii) End User Requirement
 - (iii) Item having constant threat of import ban / sanctions
 - (iv) Balancing facilities
 - (v) Manpower availability
 - (vi) Assured load over a long period of time

- (vii) Latest technology that improves quality, reduces unit cost and opens possibilities of future load.
 - (viii) Item with long lead time
- (e) The calculation of IRR considers many cost related data while assessing the viability of investment in future. The Value of Issues approximates the sale price of items when issued to the sole customer. In the assessment of net cash in flows and cash out flows therefore various working data are used, assuming that the trends projected during the product cycle based on past experience would follow a stable and consistent pattern. Therefore, anticipated load based on long-term plan and its dependability are important for IRR assessment.
- (f) Investments above Rs 1 crore fall under two broad categories:
- Category I:
- Renewals and Replacements involving a single machine or a cluster of machines, investments in intermediate product or operation or for import substitution.
- Category II:
- The following types of investments are covered in this category:
- Modernization involving purchase of a new plant (e.g. explosive production plant) or replacement of a large number of machines with one or more technically advanced machines having significant impact on production
 - Capacity augmentation of an existing product
 - A new product line
 - Greenfield projects

18.4 Methodology for Category I:

- (a) Under this method, the savings in costs will be considered as cash in-flows. The key cost elements that need to be considered in projecting savings are - Manpower, Material, Energy, Consumables including Tools & Fixtures, Repairs & Maintenance, Rejection, Rework.
- (b) **Savings:** Savings under the above heads will have to be considered taking into the account the future output/ production level. For working out the savings, the cost factors where significant shall only be considered in real terms.
- (c) **Projected Output and Product Mix:** While estimating future output, the constraints, if any, in terms of production or demand should be considered. If the demand for a final product is less than the capacity of the new machinery, the estimated output should not exceed the projected demand. In case an item is to be produced in more than one factory, the proportionate production to be undertaken in the factory, as decided by OFB, shall only be taken. If investment will lead to change in product mix, savings for each product need to be added finally in the calculations.

- (d) **Manpower:** While assessing saving in manpower, the concept of SMH shall, as far as possible, be avoided. Effort shall be made to project the saving in manpower in numbers. The gross change in manpower i.e. both industrial workers and other workers/staff is to be assessed. Factory shall then calculate unit manpower cost by dividing total expenditure in respective budget head with the number of employees in the last year and escalating by 5% to get the figure for current year. This is to be done for IEs and 'Other than IEs' separately. Multiplying the unit cost with decrease in number of manpower will give the saving in manpower.
- (e) **Material costs, Rejection, Energy, etc.:** Savings in material may be due to various reasons like reduction in rejection percentage, improvement in yield and usage of different material in the new machine. Rejection rate of new machine is to be ascertained. The difference between new and present rejection rates multiplied by projected output will give the quantity of rejection saved. The investment may also give higher yield percentage, especially in chemical and metallurgical plants. The change in yield rates multiplied by projected production will be an additional cash inflow. Where significant, savings in rework, energy (electricity & fuel), consumables, tools & jigs, repairs, etc expected to accrue due to the investment in new machines should similarly be taken into account in the calculations. However, care should be taken to avoid double accounting of benefits. For example, if savings in material is on account of reduction in rejection rate, it should not be shown as savings in any other head (say yield or rework).
- (f) FOH and Depreciation shall not be considered as elements of cost.
- (g) **Usable value:** Since the projections will be made for a ten-year period, it is necessary to arrive at a notional resale value of the machinery at the end of this period, although the machinery may have a much longer economic life. For this purpose, the Written down Value at the end of ten years, less 20% as obsolescence factor, may be considered as the notional resale value of the machinery sought to be purchased. This notional resale value will be an element of cash inflow. If the machine life is less than 10 years, only the scrap value has to be considered. The scrap value of the plant / machinery to be replaced will also constitute an element of cash inflow. **The scrap value is to be decided on the basis of market rate and past experience.**

18.5 Methodology for Category II:

- (a) Under this method, the cost of all plant and machinery irrespective of their category will form a part of the total investment cost i.e., outflow. The net inflow will be the differential of value of issues and cost of production for the period of forecast plus any notional resale value of investment. The value of issue will comprise of the cost of material, manpower, VOH and FOH. In case the product is available in the domestic market, the issue price for the purpose of computation will not exceed the domestic rate. Similarly in case of import substitution, the import price is to be considered as issue price if the same is lower than the proposed price.
- (b) Form 2A is the primary form and captures the volume, numbers and the rates. Form 2B works out the projected cash inflow in real terms. Form 2C calculates the IRR, using cash inflows in nominal terms.

- (c) The effect of increased/changed volumes of production over the years will be reflected for computation of inflows. After working out the year-wise net inflow in real terms, the same has to be escalated by the annual rate of inflation of 5% to arrive at the net inflow in nominal terms. The rate of discount, at which the Present Value of inflows equals the Present value of outflows, is the assessed IRR, found by solving the IRR equation, through iterations. The Payback period can also be worked out from the above data.
- (d) The forms for capture of data required for investment appraisal by IRR/Payback method as recommended by M/s. A.F. Ferguson are enclosed at Annexures of the report. Detailed methodology on Sensitivity Analysis is also given in the report.

18.6 Other aspects of Financial Appraisal:

- (a) Capital investment proposals need to enclose detailed analysis sheet. IRR calculation will be erroneous if the basic data for the various cost elements of the new machine or plant are not ascertained correctly from the prospective suppliers.
- (b) In order to assess the effect of variations in various assumed parameters on the project feasibility, **Sensitivity Analysis** of the project can be done. The key parameters on which sensitivity analysis is done shall include at least any/all of the following depending on the case/proposal: (i) Investment (ii) Price of the product (iii) Cost of the product (iv) Manpower numbers and savings (v) Rejection/rework percentages and savings (vi) Energy cost (vii) Raw material cost (viii) Demand.
- (c) Procurement of machines as a module shall be done taking into account the existing available capacities for OFB as a whole. The plan finalization committee shall keep this in view.
- (d) When a project is for a product in more than one factory, IRR is to be calculated product wise. For individual factories, turn-over investment ratios may be computed. OFB has the option of selecting factories from various competing factories. Sensitivity-analysis of the overall product related IRR be done by OFB with respect to various options available.

CHAPTER- 19

GUIDELINES FOR TRAINING

19.1 Introduction

A comprehensive guideline for training in supplier's premises during pre-despatch inspection and erection & commissioning of OFB personnel for operation and maintenance of critical Plant & Machinery of imported or indigenous origin has been laid down as under:

19.2 Thrust areas of training:

The thrust areas of training need in respect of various categories of P&M may vary based on criticality and familiarity of the technology involved. It would require careful analysing and firming up by a Competent Committee. However, the broad areas of training need would generally be on operation, process-control, and process-safety, maintenance consisting of mechanical, electrical, electronics, and hydraulics etc., based on the competency available within the Organization/Factory.

19.3 Training at manufacturer's premises during assembly of P&M:

- (a) The necessity of associating a training team at the time of machine building at Manufacturer's premises or at the premises of other firms as recommended by the supplier is essential for some of the P&M involving intricate assembly and interfacing of a variety of mechanical, electrical and electronics, hydraulic and pneumatic sub-systems to have first hand information and exposure. This would help the training team to effectively identify and rectify the problems likely to be encountered during operation/maintenance of P&M at the Factory. The category of machine under this group may be exclusive P&M viz. Extrusion Presses, ESR & LFVD Plants, Cold Swaging Plants, Plano Millers, Forging Presses, Nosing Press, complicated furnaces etc. and other complicated ammunition manufacturing and chemical (explosive) process-plants. Such training necessarily shall be arranged at the manufacturer's/similar plants supplied by the manufacturer in different places/premises for a period of 2 to 3 weeks for 3 to 8 personnel or as decided by the Competent authority, having sufficient experience in Maintenance, Production and Quality Control, possessing suitable technical qualifications with appropriate communication skill. The team shall be preferably headed by an officer not below the rank of DGM/JGM.
- (b) Depending on the complicity of the P&M, indenter may be required to include the above training schedule in the tender, so that the tenderer may be able to include the same in the tender along with the cost or free-of-cost. Once this has been done, further discussion may be made during the pre-bid conference with the manufacturer and after tender

opening, which may be recorded in the TEC/TPC regarding the composition of training team and the duration for consideration of MOD's approval.

19.4 Training of personnel during Pre-despatch inspection:

In this category, the training is meant for those machines which are already working in the Factories and the training team is already conversant about certain features of the previous models/technology. Therefore, the thrust of training would be generally to update the training cum pre-despatch inspection team on the new development/features of the machines before/while carrying out pre-despatch inspection of P&M. The training may be concurrently imparted along with trial, testing and proving of components at the supplier's premises, depending on the case. The duration of training cum PDI team may be for 3 to 5 days, whereas, the composition may vary from 2 to 4 persons depending upon the quantum of activities involved in PDI. The above training schedule must be indicated in the tender, so that the tenderer may be able to comply with the same in the tender along with cost or free-of-cost.

19.5 Training of personnel during commissioning at user's premises:

Training of this category is required for all types of P&M including those for which either exclusive/comprehensive training has already been catered or clubbed with PDI team or otherwise. The schedule of training and composition of team shall be spelt out specifically considering the type of P&M, technology etc. in the Tender/S.O. The trained personnel alongwith others may be associated at the time of erection and commissioning by the suppliers so as to acquainting themselves and gaining proficiency in the use of various systems/sub-systems of P&M. It helps in absorption of technology and spreading the knowledge gained during training to operatives at different levels.

19.6 Educational qualification & experience:

Persons selected for training on a particular discipline of a P&M shall necessarily have basic qualifications like degree or diploma in the relevant field along with past working experience of at least 2 to 3 years on a similar P&M or minimum 10 years of working experience on a similar plants in respect of others (high-skilled/master-craftsman) having ITI/NCTVT certificate.

19.7 Age-group of the persons selected:

- (a) Generally, the younger age-group employees having sufficient period of service left are to be selected for training abroad. However, in cases where there are no incumbents having experience in a similar field, persons having left-over service of **3-4 years** may also be recommended for training abroad.
- (b) In the case of Pre-Dispatch Inspection, the above criteria of personnel may be reviewed by the competent authority considering necessity of pre-dispatch inspection as it requires

highly experienced and competent personnel for certifying technical acceptability of the machines in terms of geometrical accuracies, proving of cycle-time and accepting the machine and product as per SO.

19.8 Training Report:

The trained persons shall furnish a Comprehensive Training Report on the areas of training received for reference and guidance which would be retained at the Factory concerned, also at NADP & relevant OFILs. Factory concerned shall also mark copy of the same to HRD/OFB for record.

19.9 Deployment of trained persons:

The trained persons shall be deployed for a minimum period of three years on the same P&M after completion of the training programme.

19.10 Methodology for dissemination of knowledge:

The methodology to be adopted for dissemination of knowledge acquired by the trained personnel to other members of Factories or sister Factories is as follows:

- (i) A comprehensive and self-contained report may be prepared by the persons after completion of training. A copy of report may be kept with production as well as maintenance group of the Factory. A copy may be also kept at the Technical Library of the Factory for reference.
- (ii) Training material in the form of hard-copy/soft-copy may be collected from the Suppliers by the team during the training at the Suppliers' premises and kept in the Technical Library for reference.
- (iii) The trained Officer/Staff shall be engaged as faculty on the relevant topic at NADP/ OFIL etc. to dissipate their knowledge to others.
- (iv) A presentation by trained personnel may be made to all the Officers of the Factory so that they can have an overall view about the operations, maintenance, technology, applications, safety etc. of the P&M. The same presentation may be made to the group of employees engaged in the operation, maintenance etc. of P&M.

19.11 Comprehensive Database on training of personnel:

A Compendium/Data-base on "Operation & Maintenance of Critical P&M" of trained personnel shall be made machine/technology/ discipline-wise and displayed on OFB Comnet for reference and sharing of knowledge with other Factories, NADP and OFILs, which will be formulated and coordinated by DDG/HRD. For this purpose all concerned may furnish the required data direct to DDG/HRD on the following aspects:

- (i) Name of P&M
- (ii) Name & designation of the person trained.
- (iii) Training date & period
- (iv) Complete details of training, place, firm etc.
- (v) Training report after completion of training
- (vi) Specific developments, if any, at the time of Commissioning, production & maintenance.

19.12 **Proposal for Training Abroad:**

a. The type of training, its location, composition of training team, qualification and experience of the team members, duration etc, shall be decided by relevant TPC based on the recommendation of the lower TPC which recommend the training and inspection and the supplier, if required.

b. Factory shall forward the proposal of foreign deputation for training abroad/pre-dispatch inspection as per contract agreement, along with the following documents, at least 8 weeks in advance for further processing the case with MEA for political clearance and subsequent approval of MOD.

- (i) Bio-Data of Individual
- (ii) Last 3 years details of training abroad
- (iii) Vigilance Clearance of individual from factory Vigilance Section,
- (iv) Copy of TPC Minutes and SO indicating the details of composition of training team and duration of training ;
- (v) To and fro Budgetary Quotation from Air India/Balmer-Lawrie/Ashok Tours and Travels for air fare for the destination.
- (vi) Duly filled-in foreign deputation format as circulated by MOD. (Details enclosed in Annexure)

CHAPTER-20

CVC GUIDELINES

20.1 CVC has compiled all the circulars issued by them and uploaded in their website. Besides, CVC has published a document titled “**Common Irregularities/Lapses Observed In Stores/Purchase Contracts And Guidelines For Improvement In The Procurement System**” highlighting the common lapses and the precautions to be taken in various stages of procurement. This is available in CVC’s website at “<http://cvc.nic.in/vscvc/purguide.pdf>”.

20.2 The main points to be kept in mind as per the CVC guidelines are given below.

1. Identification of Need

- Need inescapable?
- Factors to be taken into account:
 - Obsolescence
 - Shelf life
 - Life cycle period
 - Availability of existing stocks
 - Availability of substitutes which can be used in lieu
 - Availability of funds
 - Approval of Competent Authority

2. Technical Specifications

Do/Ensure	Don't/Avoid
Generic	Restrictive
Product available in market	Over specific-Best always not the best
Meets requirements	Superfluous and non-essential features

3. Estimation of Costs

Do/Ensure	Don't/Avoid
• Shall be based on the Standard Schedule of Rates as far as possible	• Inflated due to unjustified reasons
• Based on market survey	• Hypothetical budgetary quotes

4. Qualification Requirements

- Neither too stringent nor too lax
- Non restrictive
- Unambiguous/Objective
- Able to generate fair competition and attract established players

5. Preparation of Tender Document

Do/Ensure	Don't/Avoid
Order of precedence of tender documents clearly spelt out	Conditions conflicting with the existing rules/regulations/guidelines
Right Procedure for arithmetic corrections, difference in rates in figures and word etc.	Ambiguous price format or tax liabilities on either party to the contract
Complete and Unambiguous Evaluation criteria – take care of all foreseeable eventualities	Conditions difficult to implement at execution stage
Well defined Inspection Methodology	Instructions to Bidders ambiguous
Scope of work – Well defined	
Condition to prevent substantial post contract deviations/substitutions	
Type and Conditions of Contract, if contract concluded	

6. Pre-bid Conference:

- Representations critically examined-Ensure level playing field
- Amendments required notified to all bidders who purchased bid document and in subsequent copies to prospective bidders –Substantial amendments to be notified in press
- Decisions taken to be deliberated in evaluation report.

7. Bids Opening

- e-Tendering
- Sound methodology to prevent bid tampering, authenticate of corrections/overwriting, if bids received physically

8. Evaluation

- Transparent and time bound
- As per terms of tender document
- Well deliberated
- Reasonableness of rates ensured
- Time of delivery/Milestones/Quality aspects etc.

9. **Award/Contract**

- Acceptance within bid validity
- As per bid conditions and agreed changes, no unilateral clauses
- Signed by the competent authority

10. **Post Award**

- Quality as per contract specifications
- Effective supervision-Time essence of contract
- Proper accountability mechanism for delays
- Avoid large and avoidable deviations/substitutions
- Insurance/Guarantees/tax compliance as per contract

11. **Use of Integrity Pact as a Tool to build Transparency**

12. **Awareness of RTI Act, 2005.**

APPENDICES

APPENDIX 'A'**STEPS INVOLVED IN PROCUREMENT OF P&M:**

Sl	Single stage bidding (TE)	Two stage bidding (EOI + TE)
1	Review & finalize list of plants & machines for procurement annually or when asked by OFB for capacity creation / augmentation.	Review & finalize list of plants & machines for procurement annually or when asked by OFB for capacity creation / augmentation.
2	Prepare Demand/DPR with draft NIT, draft TE document and estimated cost.	Prepare Demand/DPR with draft PQ criteria, draft NIEOI, draft TE document and estimated cost.
3	Sanction of Demand/DPR by PFC/OFB or on file by concerned Project Section, OFB.	Sanction of Demand/DPR by PFC/OFB or on file by concerned Project Section, OFB.
4	Advertise NIT and upload TE in website.	Advertise NIEOI, upload EOI including the PQ criteria in website.
5	-	Receive applications, evaluate, shortlist prequalified firms, modify/broad-base tender specifications, issue TE documents.
6	Public opening of technical bids, prepare technical CST. Evaluate bids and select substantially responsive offers. TEC meeting.	Public opening of technical bids, prepare technical CST. Evaluate bids and select substantially responsive offers. TEC meeting.
7	Open price bids, prepare commercial CST, finalise L1 and get approval of CFA / TPC.	Open price bids, prepare commercial CST, finalise L1 and get approval of CFA / TPC.
8	Issue SO or Prepare draft contract agreement, send to supplier, discuss and sign.	Issue SO or Prepare draft contract agreement, send to supplier, discuss and sign.
9	Actions like export permit, PBG and advance payment for making contract effective.	Actions like export permit, PBG and advance payment for making contract effective.
10	Pre-despatch inspection, receipt, erection and civil works, commissioning, trial runs and performance testing.	Pre-despatch inspection, receipt, erection and civil works, commissioning, trial runs and performance testing.
11	Warranty bond receipt and final payment.	Warranty bond receipt and final payment.
12	Complaints in warranty period and settlement	Complaints in warranty period and settlement

APPENDIX 'B'**FORMAT FOR RR / NC DEMAND**

STATEMENT SHOWING DETAILS OF MACHINERY ITEMS DEBITABLE TO DEPRECIATION/ NEW GRANT FOR YEAR

PRODUCTION/TOOL ROOM/ MT VEHICLE/ MATERIAL HANDLING/ INSPECTION/ SERVICE/ FIRE FIGHTING EQUIPMENT

(STRIKE OUT WHICH ARE NOT APPLICABLE)

FORPRODUCTION/TOOL

DEMAND NO.

DATE:

LAO'S VETTING REFERENCE:

DATE:

ORDNANCE FACTORY,

SECTION:

CODE NO: (TO BE GIVEN BY OFB)

SL	REQD NO OF M/C TO BE REPLACED	FULL DESCRIPTION OF THE PROPOSED MACHINE	JUSTIFICATION

Vetted By

LAO

GENERAL MANAGER

COST DETAILS OF THE PROPOSED MACHINE

INDIGENOUS (RUPEES IN LAKHS)			IMPORTED (RUPEES IN LAKHS)		
SL NO.	DETAILS OF COST ELEMENT :	RE	DETAILS OF COST ELEMENT	FE	RE
1	BASIC MACHINE COST FOR 1 NO.				
2	COST OF ACCESSORIES & SPARES.				
3	COST OF TOOLING				
4	PACKINGS, FREIGHT FORWARDING ETC.				
5	EXCISE, SALES TAX, OCTROI				
6	ERECTION & COMMISSIONING				
7	ANY OTHER CHARGES				
8	TOTAL				

ESTIMATES ARE BASED ON:

A) BUDGETORY QUOTATION NO.

DATED.

B) IF NOT THE BASIS OF COST ESTIMATION

ESCALATION –

Annexure-A

1. Name of the Factory :
2. Demand No & Year :
3. Details of Machine under replacement :
- 3.1 Nomenclature of the M/c with Model No :
(if any) with Supplier's name
- 3.2 Registration Number :
- 3.3 Year of Purchase :
- 3.4 Original Cost :
- 3.5 Book Value (as on 31.3.2007) :
- 3.6 Whether Imported or indigenous :
- 3.7 Is it beyond economical repairs :
- 3.8 Is it General Purpose M/c (GPM) :
or Special Purpose Machine (SPM) or
Plant
- 3.9
- (a) The type of operation :
- (b) The components and end Stores for :
which used
- (c) The number of machine hours :
engaged/month
- (d) The number of setting hour required/ :
month
- 3.10 If SPM being used for production give :
- (a) Components to be manufactured :

- (b) End Store Nomenclature :
- (c) Components produced /8 hours shift :
4. Replacement Criteria :
- 4.1 Has the machine been utilized fully :
through life span
- 4.2 In case the replacement is premature :
indicate reason
- (a) Separate note may be attached :
- 4.3 Has the machine been examined by a :
Board of Examiners for condemning the
machine as BER (attach two copies of
the Board's proceeding duly accepted by
General Manager)
- 4.4 Whether the machine cannot be met out :
of any surplus available in other
Ordnance Fy or Govt Deptt
- 4.5 Estimate loss of production in financial :
and physical terms if the machine is
not replaced
- 4.6 What is the progressive total cost of :
machine demanded so far, indicate
separately in FE and RE
- 4.7 Whether the orders for the end store for :
which component is to be manufactured
on this machine would continue for the
next 5 years
- 4.8 State approximate life of other machines :
in years in the production line of which

the subject machine forms a part

4.9 Confirmation that there will not be any :
imbalance in capacity of various M/cs.
in the production line leading to under
utilization of the capacity of the new items

4.10 Whether the new machines will be capable :
of taking up production of futuristic items
in case the existing item becomes
obsolescent if so, details of the items

4.11 Whether any updation of technology is :
involved in the new machines, if so a
comparison from cost benefit angle eg.
cost of operation vis-à-vis higher cost
of procurement may added

4.12 Whether the concerned standard :
estimates will be revised in line with the
advantages of the updated technology
machines

5. Details of Machines Proposed for :
Procurement

5.1 Nomenclature :

5.2 Indigenous / Imported

5.3 Reference of Budgetary Quotations :
(in respect of high cost items efforts
should be made to obtain budgetary
quotations from 2-3 manufactures)

5.4 Estimated cost (in lakhs of Rs. FE/RE) :

5.5 Is the technology latest and most suitable? :

N.B. The estimated cost should be indicated
by taking into account of 10% escalation/

year as obtained from the least of the
Budgetary quotations as mentioned against 5.3

5.6 Likely sources of supply :

N. B. At least five sources to be indicated including
their models

5.7 Is the replacement on like to like basis :
as far as capacity is concerned

5.8 If the capacity is higher is there no :
lower capacity model available

5.9 Indicate capacity of the proposed :
machine is terms of components

5.10 In case the estimated cost of the :
proposed machines exceeds the original
cost of the machine by 10-15 times, the
reason of variation is to be indicated
(The reason of inflation is already accounted
for in the price increase of 10-15 times)

6. Civil Works :

6.1 Whether building/accommodation is :
available for erection of the proposed
machine

7. Disposal :

7.1 It is to be confirmed that the existing :
machine will be disposed off on receipt
and or successful commissioning of the
replacement

INFORMATION REQUIRED AGAINST REPLACEMENT / BETTERMENT DEMAND

1. Register No. of the Plant and Machine :
to be replaced together – with
- (a) Date of Original receipt :
- (b) Original Cost :
- (c) Book Value & Residual Value :
- (d) Condition (Whether Beyond Economical :
repair) may be stated
2. State if the demand cannot be met from :
- (a) German reparations machines offered :
or allocated
- &
- (b) Known surpluses in other factories of :
Govt. Departments
3. State with reasons if there is any urgency :
regarding delivery
4. Where the quantity is more than one state:
if purchase can conveniently be spared
over more than one financial year

FORMAT : FORWARDINGS LETTER FOR DEMANDS

To
The Secretary,
Ordnance Factory Board,
Section: E/M
10A, S.K. Bose Road,
Kolkata-700 001

Sub: Procurement of P&M under RR.

The following documents are submitted for your kind consideration and approval of the proposal for procurement.

1. RR Demand No :
2. Annexure-A & :
Annexure-B :

3. Justification :
4. LAO's concurrence :
No & Date
5. Budgetary Quotation :
6.
 - (a) Condemnation Report :
 - (b) Technical Inspection Report :
 - (c) Additional information required for :
processing of RR Demand of Vehicles
- (i) Authorised strength of MT vehicles :
including Staff Cars, Jeeps, Trucks,
Ambulances with Models and date
of purchase
- (ii) Number of MT Vehicles in the above :
category held at present by the factory
- (iii) Vehicles replaced in last 5 years and the :
details of disposal of BER vehicles
7. Cost benefit analysis and justification :
for costly machine
8. Specification :
9. List of likely suppliers :
10. Inspection / Trial Plan :

Encl: As sated above

FOR GENERAL MANAGER
ORDNANCE FACTORY.....

APPENDIX 'C'**PROFORMAS FOR SENDING RR PROPOSALS TO OFB****PROFORMA – 'A'**

**ITEMS DULY APPROVED IN THE RR PLAN OF PREVIOUS YEARS –
STATUS INDICATING SCHEDULE TILL RECEIPT OF MACHINE.**

Factory

Sl No	Year of plan	Ref. Sl. No.	Nomenclature & Quantity	Approved cost of replacement	Demand No	Cash-Flow Materialisation during	Present position indicating reasons for hold up, if any
1	2	3	4	FE(5) : RE(6)	7	(8a) (8b)	9

PROFORMA - 'B'

RR PLAN OF P&M DULY APPROVED BY PFC AT FY LEVEL DURING YEAR ...

FACTORY:

Rs: in lakhs.

Session & End store for which new m/cs are needed	Capacity to be achieved in terms of end-store based on	Description of machine proposed for procurement	Quantity	Nomenclature & Regd. No. of m/c to be replaced	End store against which existing m/c are used/purchased for	Cost (based on Budgetary cost) FF : RE : :	Remarks
1	2	3	4	5	6	7 : 8	9

Chairman/OFB

Member/PFC
Finance

Member/PFC

Member/PFC

PROFORMA - 'C'**ADDITIONAL INFORMATION IN RESPECT OF ITEMS
PROJECTED IN PROFORMA – 'B'**

FACTORY:

SL.no. of item as per 'A' & 'B'	Year of purchase	Residual value (Rs. in lacs.)	Whether reconditio ning/repai r possible	Possibility of resiting any other similar m/c from other shops to meet projected requiremen t	Cycle time for proposed operation on new m/c to justify the quantity of machines	Percenta ge of utilisatio n of m/cs with referenc e to producti on load	Confirmati on that capacity of new m/c is comparable with m/cs under replacemen t.
1	2	3	4	5	6	7	8

PROFORMA 'D'**BUDGET ALLOTMENT vis-à-vis UTILISATION PATTERN**
For last three years against RR GRANT

FACTORY:-

1. Total Assessed as on

- a) P & M :
- b) Civil Works/Buildings:

2. Details of Fund Utilisation:-

	Year1	Year2	Year3
Fund allotted at the beginning of Financial year			
Fund surrendered at the end of Financial year			
Fund utilised / expenses in the Financial year			

3. Fund needed for Year:-

- a) Committed liability as on
- b) Commitment likely to be made during the year
- c) Cash Flow expected: ...

APPENDIX 'D'

FORMAT FOR DPR

- 1.0 INTRODUCTION
- 2.0 PROCESS / TECHNOLOGY FEATURES IN BRIEF (EXISTING AND PROPOSED PLANT, POINTING OUT MAIN CHANGES AND BENEFITS)
- 3.0 PRODUCT SPECIFICATIONS
- 4.0 CAPACITY - EXISTING & PROPOSED WITH JUSTIFICATION
- 5.0 LOCATION AND LAYOUT
- 6.0 PLANT & MACHINERY
- 7.0 BUILDINGS / CIVIL WORKS
- 8.0 ANCILLARY FACILITIES
- 9.0 MATERIAL HANDLING EQUIPMENT
- 10.0 UTILITIES:
 - a. WATER
 - b. ELECTRICITY
 - c. STEAM
 - d. CHILLED WATER
 - e. COMPRESSED AIR
- 11.0 SAFETY
- 12.0 ENVIRONMENT PROTECTION
- 13.0 MANPOWER REQUIREMENT
- 14.0 TRAINING
- 15.0 PROJECT SCHEDULE

- 16.0 ESTIMATED COST OF THE PROJECT WITH BREAK-UP AND YEAR-WISE CASH OUT-GO:
- 17.0 FINANCIAL APPRAISAL (IRR)
- 18.0 MODE OF PROJECT EXECUTION AND SPECIAL STEPS NEEDED FOR SPEEDY COMPLETION

APPENDIX 'E'**INSTRUCTIONS FOR FRAMING TENDER ENQUIRY**

1. A format for TE was circulated by OFB (E/M section) in 2007. This has been replaced by a new format in line with that prescribed by MoD in DPM/DPP (which is in line with the provisions of GFR).
2. This new Format should now be adopted henceforth in all factories, especially for GTE cases. Suitable modifications may however be made for the particular case, as per the procedures contained in this manual.
3. The TE as per this new Format is divided into five Parts, each Part dealing with different aspects.
4. Part I contains General Instructions to the bidders. Generally, all these instructions should be mentioned as it is, though minor changes can be done to suit a particular case.
5. In Part II, the Technical Details would be different for various types of plant or equipment. As such only the broad guidelines for formulating this aspect have been stated here. The information may contain the following –
 - a. This should contain the purpose for which the plant or equipment is needed. It should be ensured that the requirements of the user as well as the maintenance sections are laid down in a comprehensive, structured and concrete manner in terms of functional characteristics and are broad-based.
 - b. Relevant technical parameters like performance, operating environment, etc can be specified as applicable. Examples are as under –
 - i. User requirements in terms of functional characteristics
 - ii. Specifications / Drawings, if applicable
 - iii. Technical details along with Essential Technical parameters
 - iv. Compliance chart for Technical evaluation
 - v. Requirement of training / on-job training
 - vi. Requirement of installation, Commissioning
 - vii. Requirement of Performance Test Run.
 - viii. Requirement of technical documentation.
 - ix. Type of future assistance on completion of warranty.
 - x. Earliest Acceptable Year of manufacture
 - c. In Para 5 pertaining to INCOTERMS, only the applicable Term of Delivery may be mentioned as decided for that particular case.
6. Part III contains Standard clauses which might have a legal implication. Therefore, no deviation from the text given in the clauses nor deletion of any of these clauses has to be allowed. In case a deviation from these clauses has to be considered/allowed due to insistence of the Seller, then approval of OFB will be required. Para 15 on Pre-Contract Integrity Pact clause may be included only in cases above Rs 100 crores.

7. Part IV contains several Commercial clauses, which may or may not be relevant for a particular type of TE. Hence the title is given as Special Conditions of Contract. A conscious decision may be taken to incorporate the relevant clauses from this list based on the guidelines given in the Manual. The wordings of these clauses can also be appropriately modified to suit a particular case.

8. In Part V, the Evaluation Criteria can be suitably amplified/ modified to suit the specific requirements of a particular case. Similarly, the Format of the Price Bid can be amended to include / exclude items as per requirements. Format of price bid is same as the template for price bid in e-procurement.

9. The draft TE applies both to indigenous and foreign procurement cases. The main difference will be in the selection of relevant 'Special Condition Clauses' from those given in Part-IV of the draft TE. This in turn will depend upon the guidelines contained in corresponding paras of various chapters.

APPENDIX 'F'

FORMAT FOR TENDER ENQUIRY

GOVERNMENT OF INDIA, MINISTRY OF DEFENCE

..... Factory,

Invitation of Bids for Supply of (Title of Tender Enquiry)

Tender Enquiry (TE) No _____ Dated _____

1. Bids in sealed cover are invited for supply of items listed in Part II of this TE. Please superscribe the above mentioned Title, TE number and date of opening of the Bids on the sealed cover to avoid the Bid being declared invalid.
2. The address and contact numbers for sending Bids or seeking clarifications regarding this TE are given below -
 - a) Bids/queries to be addressed to:
 - b) Postal address for sending the Bids:
 - c) Name/designation of the contact person:
 - d) Telephone numbers of the contact person:
 - e) E-mail ID of contact person:
 - f) Fax number:
3. This TE is divided into five Parts as follows:
 - a. Part I – Contains Instructions for Tenderers i.e. general information and instructions about the TE such as the time, place of submission and opening of tenders, Validity period of tenders, etc.
 - b. Part II – Contains the Technical Specifications of the items/services required, including all technical data, drawings etc.
 - c. Part III – Contains Standard Conditions of Contract, which will form part of the Contract with the successful Bidder.
 - d. Part IV – Contains Special Conditions of Contract applicable to this TE and which will also form part of the contract with the successful Bidder.
 - e. Part V – Contains Evaluation Criteria and Format for Price Bid.
4. This TE is being issued with no financial commitment and the Buyer reserves the right to change or vary any part thereof at any stage. Buyer also reserves the right to withdraw the TE, should it become necessary at any stage.
5. Formats for EMD bank guarantee, PBG, ABG, IPBG and Pre Contract Integrity Pact (as applicable) are enclosed.

General Manager
For and on behalf of President of India

Part I – Instructions for Tenderers

1. Last date and time for depositing the Bids:

_____ (Date to be mentioned in DD / MM / YYYY format)

The sealed Bids (both Technical and Price) should be submitted by the due date and time. The responsibility to ensure this lies with the Bidder.

2. Date and Time for opening of Bids:

_____ (Date to be mentioned in DD / MM / YYYY format)

(If due to any exigency, the due date for opening of the Bids is declared a closed holiday, the Bids will be opened on the next working day at the same time or on any other day/time, as intimated by the Buyer). Tenders received after the due time will not be opened.

3. Manner of submitting the Bids:

(a) For TEs issued by electronic mode:

- i. Bids shall be accepted by electronic mode through our website: “<https://ofbeproc.gov.in>”.
- ii. Tender fee and EMD, if applicable, should be submitted electronically. Till implementation of electronic payment system, they may be submitted at(Factory) on or before the tender opening date, but scanned copies must be attached with the online tender. The DD/Pay order should be in favour of "The General Manager," payable at
- iii. Corrigendum, if any, will be published on this website only, not in the news papers.
- iv. The e-tenders will be opened on the specified opening date after which Tenderers can see all the submitted tenders online through their account. The detailed help is available on the website.

OR

(b) For TEs issued by physical mode:

- i. Sealed Bids should be either dropped in the Tender Box marked as _____ or sent by registered post at the address given above so as to reach by the due date and time. Late tenders will not be considered. No responsibility will be taken for postal delay or non-delivery/ non-receipt of Bid documents. Bids sent by FAX or e-mail will not be considered (unless they have been specifically called for by these modes due to urgency).
- ii. Bids in double cover must be submitted in triplicate in Two parts (Technical Bid and Price Bid) in separate sealed covers (inner covers), super-scribing the Technical Bid or Price Bid, tender number and date of opening of tender on the covers. The outer cover should bear the address of the office issuing tender, tender number and date of tender opening. The tender shall be neatly arranged, plain and intelligible, typewritten with

consecutively numbered pages in solid binding. They should not contain any terms and conditions, printed or otherwise, which are not applicable to the tender.

- iii. Insertions, postscripts, additions and alterations shall not be recognized, unless authenticated by the tenderer's signature.
- iv. Only one tender should be included in one cover. When more than one tenders are included in one cover, all tenders so enclosed in one cover will be liable to be ignored.
- v. Tenders or modifications to tenders received after opening of tenders shall be called as Late Tender. Tenders or modification to it received after time fixed for receipt of tenders, though before time fixed for opening shall be called Delayed Tenders. Price bids received after opening of techno-commercial offer though before the time fixed for opening of Price bid will also be regarded as Late Offer. Such delayed/ late offers will not be opened.

i. **Location of the Tender Box:** _____

Only those Bids that are found in the tender box will be opened. Bids dropped in the wrong Tender Box will be rendered invalid.

ii. **Place of opening of the Bids:** _____.

The Bidders may depute their representatives, duly authorized in writing, to attend the opening of Bids on the due date and time. Rates and important commercial/technical clauses quoted by all Bidders will be read out in the presence of the representatives of all the Bidders. This event will not be postponed due to non-presence of your representative.

- 4. **Validity of Bids:** The Bids should remain valid till months from the last date of submission of the Bids.
- 5. **Bidding Procedure:** Bids are invited under single stage double cover bidding procedure. Only the Technical Bids would be opened on the time and date mentioned above. Price Bids of only those firms will be opened, whose Technical Bids are found compliant/suitable after technical evaluation is done by the Buyer. Date of opening of the Price Bids will be intimated in advance to the successful Bidders whose offers have been found technically acceptable.
- 6. **Forwarding of Bids** – Bids should be forwarded by Bidders under their original memo / letter pad with telephone numbers and complete postal & e-mail address of their office. Indian firms are required to furnish additional details like TIN number, VAT/CST number, Bank address with EFT Account, etc.
- 7. **Language of documents:** All Design Engineering Data, Drawings, Manuals, Literatures, Documents etc shall be in English/Hindi only and shall be as per standard engineering practice. If any other language is used along with English, the English version will be taken as authentic for any and all purpose. Only metric units and no other units shall be used in all drawing, documents etc.
- 8. **Clarification regarding contents of the TE:** A prospective bidder who requires clarification regarding the contents of the bidding documents shall notify to the Buyer in

writing about the clarifications sought not later than one month prior to the date of opening of the Bids. Copies of the queries and clarifications by the purchaser will be sent to all prospective bidders who have received the bidding documents.

9. **Pre Bid Conference (if planned by Factory):** A Pre Bid Conference shall be held at(venue) on(date) at(time), where bidders will be briefed about the tender conditions and issued clarifications.
10. **Modification and Withdrawal of Bids:** A bidder may modify or withdraw his bid after submission provided that the written notice of modification or withdrawal is received by the Buyer prior to deadline prescribed for submission of bids. A withdrawal notice may be sent by fax but it should be followed by a signed confirmation copy to be sent by post and such signed confirmation should reach the purchaser not later than the deadline for submission of bids. No bid shall be modified after the deadline for submission of bids. No bid may be withdrawn in the interval between the deadline for submission of bids and expiration of the period of bid validity specified. Withdrawal of a bid during this period will result in Bidder's forfeiture of bid security.
11. **Clarification regarding contents of the Bids:** During evaluation and comparison of bids, the Buyer may, at its discretion, ask the bidder for clarification of his bid. The request for clarification will be given in writing and no change in prices or substance of the bid will be sought, offered or permitted. No post-bid clarification on the initiative of the bidder will be entertained.
12. **Rejection of Bids:** Tender is liable to be ignored if complete information is not given therein or if the particulars and data (if any) asked for in the schedule to the tender, are not fully filled in. Conditional tenders will be rejected. Canvassing by the Bidder in any form, unsolicited letter and post-tender correction may invoke summary rejection with forfeiture of EMD.
13. **Right of Acceptance of Offer:** The purchaser reserves his right to accept or reject any offer without assigning any reason thereof. The purchaser does not pledge to accept the lowest or any tender and reserves the right of acceptance of the whole or any part of the tender or portion of the quantity offered and the tenderer shall supply the same at the rate quoted. Tenderer is at liberty to tender for the whole or any portion or to state in the tender that the rate quoted shall apply only if the entire quantity is taken from him.
14. **Earnest Money Deposit (Bid Security):-**
 - a. Bidders are required to submit Earnest Money Deposit (EMD) for amount of ____ along with their bids. Bids received without EMD shall be summarily rejected without technical evaluation. The EMD may be submitted in the form of an Account Payee Demand Draft, Fixed Deposit Receipt, Banker's Cheque or Bank Guarantee from any of the public sector banks as per Form enclosed. EMD shall be in favour of "The General Manager,".
 - b. EMD is to remain valid for a period of forty-five days beyond the final bid validity period. EMD of the unsuccessful bidders will be returned to them at the earliest after expiry of the final bid validity and latest within one month after the award of the contract. The Bid Security of the successful bidder would be returned, without any

interest whatsoever, after the receipt of Performance Security from them as called for in the contract.

- c. EMD is not required to be submitted by those Bidders who are registered with the Central Purchase Organization (DGS&D), National Small Industries Corporation (NSIC) or any Ordnance Factory in India.
- d. The EMD will be forfeited if the bidder withdraws or amends, impairs or derogates from the tender in any respect within the validity period of their tender.

15. Signing of tender:

- (a) The tender should be signed by a competent authority holding power of attorney to handle such job on behalf of tendering firm and this fact must be stated explicitly.
- (b) Individual signing the tender or other documents connected with a contract must specify whether he signs as:
 - (i) 'Sole Proprietor' of the firm or constituted attorney of such Sole Proprietor.
 - (ii) A partner of the firm, if it be a partnership, in which case he must have authority to quote & to refer to arbitration dispute concerning the business of the partnership either by virtue of the partnership agreement or a power of attorney;
 - (iii) Constituted attorney of the firm if it is a company.
- (c) In case of (a)(ii) above, a copy of the partnership agreement or general power of attorney, in either, case, attested by a Notary Public should be furnished or affidavit on stamped paper of all the partners admitting execution of the partnership agreement or the general power of attorney should be furnished.
- (d) In case of the partnership firms, where no authority to refer disputes concerning the business of the partnership has been conferred on any partner, the tender and all other related documents must be signed by every partner of the firm.
- (e) A person signing the tender form or any documents forming part of the contract on behalf of another shall be deemed to warrantee that he has authority to bind such other persons and if, on enquiry, it appears that the persons so signing had no authority to do so, the purchaser may, without prejudice to other civil and criminal remedies, cancel the contract and hold the signatory liable for all costs and damages.
- (f) In case of manual TE, each page of the tender, schedule to tender and Annexure, if any, should be signed by the tenderer.

16. Technical Bid

- (a) The tenderer shall carefully check the specifications and drawings and shall satisfy himself of the suitability of the equipment being offered and shall take full responsibility for the efficient operations and guarantee of specified output of the Plant and equipment offered.

- (b) The offer should be complete in all respects along with supporting documents and technical literature like catalogue, test charts, list of customers of similar m/c, performance feedback reports from users etc.
- (c) The tenderer is at liberty to offer alternative quotations for any modifications/ substitutes he considers advisable giving full reasons in support thereof. However, it will not be binding on purchaser to accept it in part or full.
- (d) The offer should conform to technical specifications and the conditions of contract. However, deviations, if any, should be clearly brought out by the tenderers.
- (e) The tenderer should invariably attach with their offer a clause-wise compliance statement against all the parts (I) to (V) of the TE, in the specified format (see para - **Compliance to Tender Clauses**), stating where they meet requirement in toto and where and how they deviate giving full details and remarks if any.
- (f) The tenderer should certify in the technical bid that the price-bid contains item-wise price as specified in Technical Specification.
- (g) In order that no clarification is needed after opening of Price Bid of technically acceptable offers, it is essential that the unpriced copy of the price bid (REPEAT UNPRICED) along with other terms & conditions should be enclosed with the Technical Bid.
- (h) The tenderer shall inspect the site if considered necessary and shall satisfy himself of site conditions and shall collect himself any other information which he may require before submitting the tender. Claims and objections due to ignorance of site conditions will not be considered after submission of the tender.
- (i) Incomplete quotations or quotations without toolings and fixtures in case of Tooled-up machines are liable to be ignored.

17. **Price Bid**

- (a) In the Price bid, the tenderer shall include all elements of cost of Plant and Equipment strictly as per the scope of supply & services specified in technical specification. The price shall be item wise in accordance with and as stated in the specification. If the work is of turn-key nature, the vendor will be responsible for complete execution of the plants including construction of buildings and civil/electrical/instrumentation/mechanical works as specified in the scope of work.
- (b) Rates for Spares should be quoted separately item-wise and not to be included in the price of the machine. The price quoted for spares by the firms will not be taken into account for deciding the ranking position of the firm.
- (c) For all plant and equipment, accessories, spares etc. of import origin from outside India, prices shall be quoted for delivery on FOB basis indicating the Port of shipment as well as for delivery on CIF basis indicating the port of entry i.e. ----- (in India) along-with the charges for transportation and insurance separately, directly by the Original Equipment Manufacturer (OEM) or the foreign supplier, if

authorised by the concerned Foreign Govt. However, order if any, will be on FOB basis only and all taxes, duties, fees or charges including Bank charges outside India for supplies, services and spares ex-import including transportation, seaworthy packing, preservation till FOB is the responsibility of the vendor.

- (d) In some cases, foreign plants suppliers stipulate that purchases can be made through their Indian counterpart/ collaborator (not agent). In such cases purchase can also be made against Rupee payment only for those plants/machines against offer from Indian tenderers, but the import clearance should be arranged by the tenderer and he should arrange inspection/ training in India and also provide after sale services.
- (e) For all plants, equipments, accessories, spares etc. of indigenous source, prices shall be quoted in Rupees for delivery ex-works. Statutory duties e.g. excise duty, VAT/sales tax, service tax etc. if applicable, should be indicated separately and distinctly. The freight charges, if any, shall be quoted separately. However, order if any, will be on Delivery at destination (DAP) basis wherein freight charges, insurance charges, taxes and duties etc. will be paid on actual against documentary proof.
- (f) In case of Global TE for turn-key supply of plants, bidding may be done by a foreign firm in collaboration with an Indian firm. However, if authorised by the foreign supplier (technology holder), an Indian firm may act as Prime Bidder in collaboration with the foreign firm. In case of collaboration for bidding, a copy of collaboration agreement or MOU is to be submitted, clearly defining the responsibility for the scope of work with reference to NIT/TE and subsequent liabilities of the contract. The foreign supplier (technology holder) shall have to be responsible for design, engineering and supply of imported equipments, quality certification for indigenous equipments, supervision of erection & commissioning and process guarantee of the whole plant. Payment can be made in foreign exchange to foreign firms only and in Indian Rupees to Indian firms, as per respective share of works.

18. Technical Capacity:

- (a) The tenderer shall satisfy the purchaser that he possesses the necessary technical experience and qualification and that he has at his disposal suitable modern facilities and staff of specialized nature to ensure that his contract work is of best quality and workmanship, according to the latest engineering practice. The tenderer shall furnish necessary particulars in this behalf with the tender.
- (b) In this regard the tenderer shall submit a detailed statement of similar plants/ machines built by him at least during the last 5 years and name and full address of the customers with order No., date of supply and performance report thereof.

19. Financial Capacity:

- i. The tenderer shall produce satisfactory proof that he is financially in a position to fulfill the contractual obligations offered to be undertaken by him, e.g. showing

average annual turnover during last three years, values of orders executed during the past seven years, etc.

- ii. In the case of Indian tenderer, the following shall also be submitted with their technical bid.
 - (a) Copies of last three years annual report indicating profits and losses.
 - (b) Copies of Partnership deeds.
 - (c) Copy of certificate of incorporation and Articles of Association.
 - (d) Copies of ownership documents in respect of manufacturing plant.
 - (e) General power of attorney in favour of any signatory, other than the owner/head of the firm.
 - (f) Affidavit that the firm has never been banned.

20. Legal Capacity:

The tenderer shall satisfy the purchaser that he is competent and authorized to submit tender and/or to enter into a legally binding contract with the purchaser. To this effect, any person giving a tender shall render documentary evidence that his signature on the tender, submitted by him is legally binding upon himself, his firm or company as the case may be.

21. Compliance to Tender Clauses:

Bidders are required to furnish clause by clause compliance of TE clauses / specifications bringing out clearly the deviations from TE, if any. The Bidders are advised to submit the compliance statement in the following format along with Technical Bid –

Sl	Para of TE clauses / specifications	Details	Compliance: Yes / No	In case of non-compliance, deviation to be indicated

Part II – Technical Specifications

A. Schedule of Requirements:

- i. Short description (Name) of Plant / Machine:
- ii. Detailed description and quantity:

.....

B. Technical Details of the Plant / Machine Required:

- (a) Specifications, drawings, material of construction, capacity, etc as applicable
- (b) Requirement of installation/commissioning
- (c) Requirement of foundation/civil works
- (d) Requirement of training/on-job training
- (e) Requirement of Technical documentation
- (f) Requirement of Pre-Despatch Inspection (PDI)
- (g) Requirement of Performance Test Runs (PTR) for Final Acceptance
- (h) Any other details, as considered necessary, e.g. battery limit, contour map, soil study report, climate conditions, STEC rules, etc. to be furnished for the guidance of the Bidders in case of plants.
- (i) Requirement of redundancy at each stage/operation, supply of connected standby pumps, etc in case of plants.
- (j) Scope of Works / Responsibility of the Supplier (for turn key projects)
- (k) Scope of Works / Responsibility of the Purchaser (for turn key projects)

General guidelines on technical specification are given in the Chapter – “Framing of Specifications”. Factories may also ask for some extra details specifically for a plant/machine from the Bidders. Following is an example in case of procurement of a big plant.

C. Documents /details to be submitted by the Bidder with Technical Bid:

- (a) *Process description for the offered plant as a whole.*
- (b) *Special features and advantage of the offered plant.*
- (c) *Process flow diagrams.*
- (d) *Layout of all buildings along with major activities in each building. Each building shall be numbered for easy reference.*

- (e) *Building wise layout of all major equipments and instruments.*
- (f) *Line plan drawing of all individual buildings to be designed and supplied by the vendor showing dimension, wall thickness and roof structure, details of road with illumination details, etc.*
- (g) *List of major equipments, service requirements, controls and indicative list of equipments. Each of the above should be numbered.*
- (h) *The cycle time of processing at each stage / operation. Bidder should clearly indicate the redundancy in capacity and the availability of standby equipments like pumps at each stage/operation.*
- (i) *List of all major instruments along with brief description of their utilization and effectiveness in process and process control. This list should be enumerated process-wise as far as possible so as to facilitate a comparison with the layout of the plant and utilities showing general arrangement of the plant, equipment and also the periodicity desired for calibration.*
- (j) *List of spares with part no. and quantity used in entire plant.*
- (k) *Safety features process wise and plant as a whole.*
- (l) *Requirement of manpower for operating the plant as a whole per shift and per day. Requirement of operating, maintenance and supervisory personnel to be mentioned separately.*
- (m) *Descriptive flow diagram showing the links between the above numbered plant/equipments etc as well as the instrument layout.*
- (n) *Quantitative flow diagram describing consumption of raw material and also for utility items separately.*
- (o) *Guaranteed consumption of raw material and utilities i.e. steam, water, electricity, etc for processing one Metric Ton of output.*
- (p) *Requirement of steam, cooling water and process water (average and maximum)*
- (q) *Installed electric power load; average and maximum demand of power separately for ancillary facilities for generation of utilities like compressed air, instrument air, chilled water/ brine etc. for the plant.*
- (r) *Pollution control measures indicating the composition and quantities of effluents and waste per MT output from the plant along with scheme for treatment and disposal including air pollutants.*
- (s) *List of specific exclusion from scope of supply.*

Part III – Standard Conditions of Contract

The Bidder is required to give confirmation of their acceptance of the Standard Conditions of the Tender Enquiry mentioned below which will automatically be considered as part of the Contract concluded with the successful Bidder (i.e. Seller in the Contract) as selected by the Buyer. Failure to do so may result in rejection of the Bid submitted by the Bidder.

1. **Law:** The Contract shall be considered and made in accordance with the laws of the Republic of India. The contract shall be governed by and interpreted in accordance with the laws of the Republic of India.
2. **(i) Effective Date of the Contract:** The contract shall come into effect on the date of signatures of both the parties on the contract (Effective Date) and shall remain valid until the completion of the obligations of the parties under the contract. The delivery of the goods and performance of the services shall commence from the effective date of the contract.

(ii) Commencement Date: In case of imported items, the delivery obligations of the supplier shall start with reference to the Commencement Date (instead of the effective date), which will be the date on which the latest of the below mentioned events has occurred.

- i. Submission of export licence from foreign government by the supplier.
- ii. Submission of Performance Bank Guarantee by the supplier.
- iii. Other event(s) as mutually decided.

(iii) Non-occurrence of the Commencement Date: If the Commencement Date has not occurred, within six (6) months from the date of signature (or within such other period as may be agreed between the Parties), the purchaser may terminate the Contract by written communication to the supplier.

3. **Arbitration:** All disputes or differences arising out of or in connection with the Contract shall be settled by bilateral discussions. Any dispute, disagreement or question arising out of or relating to the Contract or relating to construction or performance, which cannot be settled amicably, may be resolved through arbitration. The standard clause of arbitration will be applicable, depending on the type of Seller, as given below.

(A) FOR INDIAN SUPPLIERS (OTHER THAN PUBLIC ENTERPRISES/ GOVT. DEPARTMENTS):-

(a) All the disputes and differences arising out of or in any way touching or concerning this agreement (except those for which specific provision has been made therein) shall be referred to Sole Arbitrator to be appointed by Director General Ordnance Factories, Government of India. The Arbitrator so appointed shall be a Government servant who had not dealt with the matters to which this agreement relates and in course of his duties had not expressed views on all or any of the matter in disputes or differences. for the time being or a Govt. Servant appointed by him the appointee shall not be Govt. Servant who had dealt with the matters to which this agreement

relates and that in the course of his duties as Govt. Servant he had not expressed views on all or any of the matter in dispute or difference. The Award of the Sole Arbitrator shall be final and binding on the parties.

(b) The Arbitration shall be as per Arbitration Act 1996 or any statutory modification thereof.

(c) The venue of Arbitration shall be (place of factory)

(B) FOR PUBLIC ENTERPRISES/ GOVT. DEPARTMENTS:

In the event of any dispute or difference relating to the interpretation and application of the provisions of this contract, such dispute or difference shall be referred by either party for Arbitration to the Permanent Arbitration Machinery set up in the Department of Public Enterprises i.e. to the sole Arbitrator in the Department of Public Enterprises to be nominated by the Secretary to the Govt. of India in-charge of the Department of Public Enterprises. The Arbitration and Conciliation Act, 1996 shall not be applicable to arbitration under this clause. The award of the Arbitrator shall be binding upon the parties to the disputes, provided however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law and Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary/ Additional Secretary, when so authorized by the Law Secretary, whose decision shall bind the Parties finally and conclusively. The Parties to the dispute will share equally the cost of arbitration as intimated by the Arbitrator.

(Ref- Min. of HI & PE OM No. 1(24)/ 2005-DPE (PMA) dt. 22/01/2004)

(C) FOR FOREIGN SUPPLIERS:-

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

(b) Any dispute, disagreement or any question arising out of or relating to the Contract or relating to the construction or performances (except as to any matters the decision or determination whereof is provided for by these conditions) which cannot be settled amicably shall within 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 still exists will be referred to the Arbitration Tribunal consisting of three Arbitrators.

(c) Within 60 (Sixty) days of the receipt of the notice, one Arbitrator shall be nominated in writing by the SELLER and one Arbitrator shall be nominated in writing by the BUYER.

(d) The third Arbitrator, who shall not be citizen or domicile of the country of either of the parties or of any other country unacceptable to any of the parties, shall be nominated by mutual consent of the parties within 90 (Ninety) days of the receipt of the notice mentioned above failing which the third Arbitrator may be nominated under the provisions of UNCITRAL by the President of the International Chamber of Commerce at the 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 above from being so nominated. The Arbitrator nominated under this clause shall not be regarded nor would act as Umpire.

- (e) 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.
- (f) The Arbitration proceedings shall be conducted in India in English language under the Indian Arbitration and Conciliation Act, 1996 and the award of such Arbitration Tribunal shall be enforceable in Indian Courts only.
- (g) The decision of the majority of the Arbitrators shall be final and binding on the parties to this contract.
- (h) 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.
- (i) The event of a vacancy caused in the office of any 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.
- (j) In the event of one of the parties failing to nominate its Arbitrator within 60 (Sixty) days as above or if any of the parties does not nominate another Arbitrator within 60 (Sixty) days of the place of Arbitrator falling vacant, then the other party shall be entitled after due notice of at least 30 (Thirty) days to request the President of the International Chamber of Commerce to nominate another Arbitrator as above.
- (k) If the office of the third Arbitrator falls vacant, his substitute shall be nominated according to the provisions herein above stipulated.
- (l) The parties shall continue to perform their respective obligations under this contract during the pendency of the Arbitration Proceedings except in so far as such obligations are the subject matter of the said arbitration proceedings.

Note - The provisions with regard to appointment of an Arbitrator by the International Chamber of Commerce, Paris shall only be resorted to in cases of International Commercial Arbitration. Similarly, the UNCITRAL provisions will only apply with regard to appointment of Arbitrator and fixation of fees of the Arbitrator. The procedure to be adopted during arbitration will be as provided in the Indian Arbitration & Conciliation Act, 1996.

4. **Penalty for use of Undue influence:** The Seller undertakes that he has not given, offered or promised to give, directly or indirectly, any gift, consideration, reward, commission, fees, brokerage or inducement to any person in service of the Buyer or otherwise in procuring the Contracts or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the present Contract or any other Contract with the Government of India for showing or forbearing to show favour or disfavour to any person in relation to the present Contract or any other Contract with the Government of India. Any breach of the aforesaid undertaking by the Seller or any one employed by him or acting on his behalf (whether with or without the knowledge of the Seller) or the commission of any offers by the Seller or anyone employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act, 1986 or any other Act enacted for the prevention of corruption shall entitle the Buyer to cancel the contract and all or any other contracts with the Seller and recover from the Seller the

amount of any loss arising from such cancellation. A decision of the Buyer or his nominee to the effect that a breach of the undertaking had been committed shall be final and binding on the Seller. Giving or offering of any gift, bribe or inducement or any attempt at any such act on behalf of the Seller towards any officer/employee of the Buyer or to any other person in a position to influence any officer/employee of the Buyer for showing any favour in relation to this or any other contract, shall render the Seller to such liability/ penalty as the Buyer may deem proper, including but not limited to termination of the contract, imposition of penal damages, forfeiture of the Bank Guarantee and refund of the amounts paid by the Buyer.

5. **Agents / Agency Commission:** The Seller confirms and declares to the Buyer that the Seller is the original manufacturer of the stores/provider of the services referred to in this Contract and has not engaged any individual or firm, whether Indian or foreign whatsoever, to intercede, facilitate or in any way to recommend to the Government of India or any of its functionaries, whether officially or unofficially, to the award of the contract to the Seller; nor has any amount been paid, promised or intended to be paid to any such individual or firm in respect of any such intercession, facilitation or recommendation. The Seller agrees that if it is established at any time to the satisfaction of the Buyer that the present declaration is in any way incorrect or if at a later stage it is discovered by the Buyer that the Seller has engaged any such individual/firm, and paid or intended to pay any amount, gift, reward, fees, commission or consideration to such person, party, firm or institution, whether before or after the signing of this contract, the Seller will be liable to refund that amount to the Buyer. The Seller will also be debarred from entering into any supply Contract with the Government of India for a minimum period of five years. The Buyer will also have a right to consider cancellation of the Contract either wholly or in part, without any entitlement or compensation to the Seller who shall in such an event be liable to refund all payments made by the Buyer in terms of the Contract along with interest at the rate of 2% per annum above one-year LIBOR rate. The Buyer will also have the right to recover any such amount from any contracts concluded earlier with the Government of India.
6. **Access to Books of Accounts:** In case it is found to the satisfaction of the Buyer that the Seller has engaged an Agent or paid commission or influenced any person to obtain the contract as described in clauses relating to Agents/Agency Commission and penalty for use of undue influence, the Seller, on a specific request of the Buyer, shall provide necessary information/ inspection of the relevant financial documents/information.
7. **Non-disclosure of Contract documents:** Except with the written consent of the Buyer/ Seller, other party shall not disclose the contract or any provision, specification, plan, design, pattern, sample or information thereof to any third party.
8. **Pre-Contract Integrity Pact Clause:** An “Integrity Pact” would be signed between the Buyer and the Bidder for purchases exceeding Rs100 crores. This is a binding agreement between the Buyer and Bidders for specific contracts in which the Buyer promises that it will not accept bribes during the procurement process and Bidders promise that they will not offer bribes. Under this Pact, the Bidders for specific services or contracts agree with

the Buyer to carry out the procurement in a specified manner. The Pre-Integrity Pact will be as per Format enclosed. The essential elements of the Pact are as follows:

- A. A pact (contract) between the Government of India (General Manager,) (the authority or the “principal”) and those companies submitting a tender for this specific activity (the “Bidder”);
- B. An undertaking by the Principal that its officials will not demand or accept any bribes, gifts etc., with appropriate disciplinary or criminal sanctions in case of violation;
- C. A statement by each Bidder that it has not paid, and will not pay, any bribes;
- D. An undertaking by each Bidder to disclose all payments made in connection with the Contract in question to anybody (including agents and other middlemen as well as family members, etc., of officials); the disclosure would be made either at the time of submission of Bids or upon demand of the Principal, especially when a suspicion of a violation by that Bidder emerges;
- E. The explicit acceptance by each Bidder that the no-bribery commitment and the disclosure obligation as well as the attendant sanctions remain in force for the winning Bidder until the contract has been fully executed.
- F. Undertaking on behalf of a Bidding company will be made “in the name and on behalf of the company’s Chief Executive Officer”.
- G. The following set of sanctions shall be enforced for any violation by a Bidder of its commitments or undertakings:
 - i. Denial or loss of contracts;
 - ii. Forfeiture of the Bid security and performance bond/warranty bond;
 - iii. Liability for damages to the principal and the competing Bidders; and
 - iv. Debarment of the violator by the Principal for an appropriate period of time.

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

9. **Liquidated Damages (LD):**

- (a) In the event of seller’s failure to have the plant / machines or any part/installment thereof delivered by the date/dates specified in the contract, the buyer may at his discretion withhold any payment until the whole of the plant / machines have been supplied and the buyer may also deduct from the seller as agreed, Liquidated Damages and not by way of penalty, the sum of 0.5% of the contract price of the delayed supplies for each week or part of a week for which the delay has occurred, subject to maximum of 5% of the value of delayed supplies.
- (b) For delay in completion of any works or services attributable to the supplier, which leads to delay in commissioning and final acceptance of the plant / machines, LD will be imposed @ 0.5% of the full contract price of the plant / machines for each and

every week and part of a week of delay in commissioning and final acceptance, subject to maximum of 5% of the full contract price. This LD will be in addition to the LD against delay in delivery of supplies.

- (c) The sum of LD for (i) and (ii) above, i.e. for delays in supplies as well as works & services, will be subject to overall ceiling of 5% of full contract price.
 - (d) LD will be calculated on the basis of total value of goods, including elements of statutory duties and levies viz VAT/sales tax, excise duty, etc as indicated in the contract.
 - (e) LD shall be levied for the period for which the supplier was responsible for the delay in delivery/execution i.e. LD shall be waived if the reasons for delay are not attributable to the supplier.
10. **Termination of Contract:** The Buyer shall have the right to terminate this Contract in part or in full in any of the following cases :-
- (a) The Seller has failed to perform a substantial obligation under the Contract after having been served a notice of failure and make good by Purchaser within a reasonable period, or the delivery of the material is delayed for causes not attributable to Force Majeure for more than six months after the scheduled date of delivery.
 - (b) The Seller is declared bankrupt or becomes insolvent.
 - (c) The delivery of material is delayed due to causes of Force Majeure by more than six months, provided Force Majeure clause is included in contract.
 - (d) The Buyer has noticed that the Seller has given or offered to give, directly or indirectly, to any person any bribe, gift, gratuity, commission or other thing of value as an inducement or reward for doing or forbearing to do any action in relation to this Contract, e.g. if the Seller has utilised the services of any Indian/Foreign agent in getting this contract and paid any commission to such agent.
 - (e) As per decision of the Arbitration Tribunal.
11. **Notices:** Any notice required or permitted by the contract shall be written in the English language and may be delivered personally or may be sent by FAX or registered mail/airmail, addressed to the last known address of the party to whom it is sent.
12. **Transfer and Sub-letting:** The Seller has no right to give, bargain, sell, assign or sublet or otherwise dispose of the Contract or any part thereof, as well as to give or to let a third party take benefit or advantage of the present Contract or any part thereof.
13. **Patents and other Industrial Property Rights:** The prices stated in the present Contract shall be deemed to include all amounts payable for the use of patents, copyrights, registered charges, trademarks and payments for any other industrial property rights. The Seller shall indemnify the Buyer against all claims from a third party at any time on account of the infringement of any or all the rights mentioned in the previous paragraphs, whether such claims arise in respect of manufacture or use. The Seller shall be responsible for the

completion of the supplies including spares, tools, technical literature and training aggregates irrespective of the fact of infringement of the supplies, irrespective of the fact of infringement of any or all the rights mentioned above.

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

15. **Taxes and Duties:**

- (i) **In respect of Foreign Bidders:** All taxes, duties, levies and charges which are to be paid for the delivery of goods, including advance samples, shall be paid by the parties under the present contract in their respective countries.
- (ii) **In respect of Indigenous bidders:**
 - i. **General**
 - (a) If Bidder desires to ask for excise duty or Sales Tax / VAT extra, the same must be specifically stated. In the absence of any such stipulation, it will be presumed that the prices include all such charges and no claim for the same will be entertained.
 - (b) If reimbursement of any Duty/Tax is intended as extra over the quoted prices, the Bidder must specifically say so. In the absence of any such stipulation it will be presumed that the prices quoted are firm and final and no claim on account of such duty/tax will be entreated after the opening of tenders.
 - (c) If a Bidder chooses to quote a price inclusive of any duty/tax and does not confirm inclusive of such duty/tax so included is firm and final, he should clearly indicate the rate of such duty/tax and quantum of such duty/tax included in the price. Failure to do so may result in ignoring of such offers summarily.
 - (d) If a Bidder is exempted from payment of any duty/tax upto any value of supplies from them, he should clearly state that no such duty/tax will be charged by him up to the limit of exemption which he may have. If any concession is available in regard to rate/quantum of any Duty/tax, it should be brought out clearly. Stipulations like, the said duty/tax was presently not applicable but the same will be charged if it becomes leviable later on, will not be accepted unless in such cases it is clearly stated by a Bidder that such duty/tax will not be charged by him even if the same becomes applicable later on. In respect of the Bidders, who fail to comply with this requirement, their quoted prices shall be loaded with the quantum of such duty/tax which is normally applicable on the item in question for the purpose of comparing their prices with other Bidders.
 - (e) Any change in any duty/tax upward/downward as a result of any statutory variation in excise taking place within contract terms shall be allowed to the extent of actual quantum of such duty/tax paid by the supplier. Similarly, in case of downward revision in any duty/tax, the actual quantum of reduction of such duty/tax shall be reimbursed to the Buyer by the Seller. All such adjustments

shall include all reliefs, exemptions, rebates, concession etc. if any obtained by the Seller.

ii. Customs Duty –

- (a) For imported stores offered against forward delivery, the Bidder shall quote prices thereof exclusive of customs duty. The Bidder shall specify separately the C.I.F. prices and total amount of customs duty payable. They will also indicate correctly the rate of customs duty applicable along with Indian Customs Tariff Number. Customs duty as actually paid will be reimbursed on production of necessary documents i.e. (i) Triplicate copy of the bill of entry; (ii) copy of bill of lading; (iii) a copy of foreign principal's invoice. However, if the Bidder imports the stores in question against his own commercial quota Import Licences, he will also be required to submit in addition the triplicate copy of bills of entry etc. a certificate from his Internal Auditor on the bill itself, to the effect that the following items/quantity in the bill of entry related to the stores imported against Defence Buyer contract number..... dated.....
- (b) Subsequent to the reimbursement of customs duty, the Bidder will submit to the concerned Payment Authority a certificate to the effect that he has not obtained any refund of customs duty subsequent to the payment of duty to the Customs authority by him. In addition, he shall also submit to the Paying Authority concerned a certificate immediately after a period of three months from the date of payment of the duty to customs authorities to the effect that he has not applied for refund of the customs duty subsequent to the payment of duty to the customs authorities by him.
- (c) In case the Bidder obtains any refund of customs duty, subsequently to the payment of the same by him to the customs authorities and reimbursement of the customs duty to him by the Payment Authority, he should forthwith furnish the details of the refund obtained and afford full credit of the same to the Buyer.

iii. Excise Duty

- (a) Where the excise duty is payable on ad-valorem basis, the Bidder should submit along with the tender, the relevant form and the Manufacturer's price list showing the actual assessable value of the stores as approved by the Excise authorities.
- (b) Bidders should note that in case any refund of excise duty is granted to them by Excise authorities in respect of Stores supplied under the contract, they will pass on the credit to the Buyer immediately along with a certificate that the credit so passed on relates to the Excise Duty, originally paid for the stores supplied under the contract. In case of their failure to do so, within 10 days of the issue of the excise duty refund orders to them by the Excise Authorities the Buyer would be empowered to deduct a sum equivalent to the amount refunded by the Excise Authorities without any further reference to them from any of their outstanding bills against the contract or any other pending Government Contract and that no disputes on this account would be raised by them.

- (c) The Seller is also required to furnish to the Paying Authority the following certificates: Certificate with each bill to the effect that no refund has been obtained in respect of the reimbursement of excise duty made to the Seller during three months immediately preceding the date of the claim covered by the relevant bill. (b) Certificate as to whether refunds have been obtained or applied for by them or not in the preceding financial year after the annual Audit of their accounts also indicating details of such refunds/applications, if any. (c) A certificate along with the final payment bills of the Seller to the effect whether or not they have any pending appeal/protest for refund or partial refund of excise duties already reimbursed to the Seller by the Government pending with the Excise authorities and if so, the nature, the amount involved, and the position of such appeals. (d) An undertaking to the effect that in case it is detected by the Government that any refund from Excise Authority was obtained by the Seller after obtaining reimbursement from the Paying Authority, and if the same is not immediately refunded by the Seller to the Paying Authority giving details and particulars of the transactions, Paying Authority will have full authority to recover such amounts from the Seller's outstanding bills against that particular contract or any other pending Government contracts and that no dispute on this account would be raised by the Seller.
- (d) Unless otherwise specifically agreed to in terms of the contract, the Buyer shall not be liable for any claim on account of fresh imposition and/or increase of Excise Duty on raw materials and/or components used directly in the manufacture of the contracted stores taking place during the pendency of the contract.

iv. Sales Tax / VAT

- (a) If it is desired by the Bidder to ask for Sales tax / VAT to be paid as extra, the same must be specifically stated. In the absence of any such stipulation in the bid, it will be presumed that the prices quoted by the Bidder are inclusive of sales tax and no liability of sales tax will be developed upon the Buyer.
- (b) On the Bids quoting sales tax extra, the rate and the nature of Sales Tax applicable at the time of supply should be shown separately. Sales tax will be paid to the Seller at the rate at which it is liable to be assessed or has actually been assessed provided the transaction of sale is legally liable to sales tax and the same is payable as per the terms of the contract.

v. Octroi Duty & Local Taxes

- (a) Normally, materials to be supplied to Government Departments against Government Contracts are exempted from levy of town duty, Octroi Duty, Terminal Tax and other levies of local bodies. The local Town/Municipal Body regulations at times, however, provide for such Exemption only on production of such exemption certificate from any authorized officer. Seller should ensure that stores ordered against contracts placed by this office are exempted from levy of

Town Duty/Octroi Duty, Terminal Tax or other local taxes and duties. Wherever required, they should obtain the exemption certificate from the Buyer, to avoid payment of such local taxes or duties.

- (b) In case where the Municipality or other local body insists upon payment of these duties or taxes the same should be paid by the Seller to avoid delay in supplies and possible demurrage charges. The receipt obtained for such payment should be forwarded to the Buyer without delay together with a copy of the relevant act or bylaws/notifications of the Municipality of the local body concerned to enable him to take up the question of refund with the concerned bodies if admissible under the said acts or rules.

Part IV – Special Conditions of Contract

The Bidder is required to give confirmation of their acceptance of Special Conditions of the TE mentioned below which will automatically be considered as part of the Contract concluded with the successful Bidder (i.e. Seller in the Contract) as selected by the Buyer. Failure to do so may result in rejection of Bid submitted by the Bidder.

1. Performance Security / Security Deposit:

- a. Successful tenderer irrespective of their registration status with DGS&D or KVIC or OFB will be required to submit performance security within 30 days of contract for due performance of contract. The amount of performance security will be 5% of contract value in Indian Rupees or Foreign Currency stipulated in contract. Performance Security will be forfeited and en-cashed by the Buyer in the event of breach of contract by the Seller.
- b. Failure to submit performance security may entail cancellation of contract and EMD will be forfeited for unregistered firms, whereas in case of others the concerned registering agency will be informed for appropriate action. SSI Units registered under NSIC will be exempted from submission of PS/SD up to the monetary limit for which the unit is registered as per Development Commissioner, SSI, Min. of Small Scale Industries, Govt. of India letter vide F. No. 22(1)/ 2003/ EP&M dt. 29/7/2003.
- c. **Indigenous suppliers:** The performance security will be in the form of demand draft or fixed deposit receipt or bank guarantee on non-judicial stamp paper in the specified format. The Performance Bank Guarantee (also called Performance Bond) shall be submitted from a public sector bank and should be valid up to 60 days beyond the contract period.
- d. **Foreign suppliers:** The Seller will be required to furnish a Performance Security by way of a Bank Guarantee from Seller's Bank through an internationally recognised first class Bank in favour of the General Manager, to be confirmed by an Indian public sector bank. Performance Bank Guarantee should be valid up to 60 days beyond the contract period. The Performance Bank Guarantee shall be considered open upon receipt by the Buyer's Bank.
- e. In case any claims or any other contract obligations are outstanding, the Seller will extend the Performance Bank Guarantee as asked for by the Buyer till such time as the Seller settles all claims and completes all contract obligations. The Performance Bank Guarantee will be subject to encashment by the Buyer, in case the conditions regarding adherence to delivery schedule, settlement of claims and other provisions of the contract are not fulfilled by the Seller. The format of PBG is enclosed.

2. **Payment Terms for Indigenous Sellers:** It will be mandatory for the Bidders to indicate their bank account numbers and other relevant e-payment details so that payments could be made through ECS/NEFT mechanism. The payment will be made as per the following terms, on production of the requisite documents:

- a. 90% value of material plus 100% Taxes, Duties if any, will be paid after acceptance in Pre-Despatch Inspection of machine at Firm's works and on receipt of machine in safe condition by consignee against submission of PBG / Warranty Bond amounting to 5% of contract value in the stipulated format. Freight charges will be payable on actual against documentary evidence but not exceeding as quoted by the firm and accepted by purchaser.
- b. Balance 10% value of material plus 100% Erection & Commissioning (E&C) charges after commissioning of machine.

3. **Payment terms for Foreign Sellers:**

- (a) For machines for which functional PDI at Firm's premises is possible:

(v) Payment will be made through irrevocable Letter of Credit only for 100% value of the order established on a public sector bank in India. In case of payment through confirmed LC, the charges of confirmation will be borne by the contractor. Purchaser will establish LC only three months prior to the actual date of delivery/ shipment. In case contractor insists on establishment of LC immediately after conclusion of contract/ placement of order irrespective of delivery/ shipment schedule, LC will be established by the purchaser immediately after conclusion of contract for a period of three months with a provision in LC that cost of further extension of validity of LC will be borne by the beneficiary and the issuing bank will be advised accordingly while amending the LC.

(vi) If any extension of the Letter of Credit (LC) is required due to the fault of the supplier, the supplier will have to pay for such extension.

(vii) 90% payment for supply and services including training charges at firm's premises, if any, will be paid after acceptance in Pre Despatch Inspection (PDI) of machine at Firm's works against dispatch documents i.e. bill of lading / airway bill, acceptance certificate by PDI team, etc. against submission of PBG / Warranty Bond amounting to 5% of contract value in stipulated format.

(viii) Balance 10% value of supply and including training charges at firm's premises, if any, plus 100% Erection & Commissioning (E&C) supervision charges after commissioning and final acceptance of machine at purchaser's end.

OR

- (c) For machines like furnaces, heavy duty presses and plants, for which functional PDI at Firm's premises is not possible:

The payment terms at sl (a) above will be modified to the extent that 80% payment shall be made against firm's Guarantee Certificate and self inspection certificate for equipments, systems, subassemblies, etc instead of PDI certificate and balance 20% after commissioning and final acceptance.

OR

(d) For contracts involving Turnkey projects where stage payments are contemplated:
 (To be defined as per complexity of case, by the Fy TPC or as per OFB's guidelines.)

4. **Advance Payments:** Advance payments may be made upto 15% against appropriate Bank guarantee for 110% of advance amount. In lieu of bank guarantee, Indemnity bond for equivalent amount is acceptable for Autonomous Bodies under administrative control of Government of India.

5. **Documents for releasing Payment:**

a. **Indian Sellers:** The payment of bills will be made on submission of the following documents by the Seller to the Purchaser along with the bill:

- i. Ink-signed copy of Commercial invoice / Seller's bill.
- ii. Acceptance certificate in Pre-Despatch Inspection.
- iii. Claim for statutory and other levies to be supported with requisite documents / proof of payment such as Excise duty challan, Octroi receipt, proof of payment for EPF/ESIC contribution with nominal roll of beneficiaries, etc as applicable.
- iv. Exemption certificate for Excise duty, if applicable.
- v. Warranty Bond (Bank guarantee).
- vi. Details for electronic payment viz Account holder's name, Bank name, Branch name and address, Account type, Account number, IFSC code, MICR code (if these details are not incorporated in supply order/contract).
- vii. Any other document / certificate that may be provided for in the Supply Order / Contract.
- viii. Provisional certificate of receipt by Purchaser.

(Note – From the above list, the documents that may be required depending upon the peculiarities of the procurement being undertaken, may be included in TE.)

b. **Foreign Sellers:** Paid shipping documents are to be provided to the Bank by the Seller as proof of despatch of goods as per contractual terms so that the Seller gets payment from LC. The Bank will forward these documents to the Buyer for getting the goods/stores released from the Port/Airport. Documents will include:

- i. Clean on Board Airway Bill/Bill of Lading
- ii. Original Invoice
- iii. Packing List
- iv. Certificate of Origin from Seller or Seller's Chamber of Commerce.
- v. Certificate of Quality and current manufacture from OEM.
- vi. Insurance policy of 110% if CIF / CIP contract
- vii. Certificate of Conformity & Acceptance at PDI, if any.
- viii. Any other document / certificate that may be provided for in the Supply Order / Contract.

6. Risk Purchase clause:

- a. Should the stores or any installment thereof not be delivered within the time or times specified in the contract documents, or if defective delivery is made in respect of the stores or any installment thereof, the Buyer shall after granting the Seller 45 days to cure the breach, be at liberty, without prejudice to the right to recover liquidated damages as a remedy for breach of contract, to declare the contract as cancelled either wholly or to the extent of such default.
- b. Should the stores or any installment thereof not perform in accordance with the specifications / parameters provided by the SELLER during the check proof tests to be done in the BUYER's country, the BUYER shall be at liberty, without prejudice to any other remedies for breach of contract, to cancel the contract wholly or to the extent of such default.
- c. In case of a material breach that was not remedied within 45 days, the BUYER shall, having given the right of first refusal to the SELLER be at liberty to purchase, manufacture, or procure from any other source as he thinks fit, other stores of the same or similar description to make good:-
 - i. Such default.
 - ii. In the event of the contract being wholly determined the balance of the stores remaining to be delivered there under.
- d. Any excess of the purchase price, cost of manufacturer, or value of any stores procured from any other supplier as the case may be, over the contract price appropriate to such default or balance shall be recoverable from the SELLER. Such recoveries shall not exceed ____% of the value of the contract.”

7. Force Majeure clause:

- a. Neither party shall bear responsibility for the complete or partial nonperformance of any of its obligations (except for failure to pay any sum which has become due on account of receipt of goods under the provisions of the present contract), if the non-performance results from such Force Majeure circumstances as Flood, Fire, Earth Quake and other acts of God as well as War, Military operation, blockade, Acts or Actions of State Authorities or any other circumstances beyond the parties' control that have arisen after the conclusion of the present contract.
- b. In such circumstances the time stipulated for the performance of an obligation under the present contract is extended correspondingly for the period of time of action of these circumstances and their consequences.
- c. The party for which it becomes impossible to meet obligations under this contract due to Force Majeure conditions, is to notify in written form the other party of the beginning and cessation of the above circumstances immediately, but in any case not later than 10 (Ten) days from the moment of their beginning.

- d. Certificate of a Chamber of Commerce (Commerce and Industry) or other competent authority or organization of the respective country shall be a sufficient proof of commencement and cessation of the above circumstances.
 - e. If the impossibility of complete or partial performance of an obligation lasts for more than 6 (six) months, either party hereto reserves the right to terminate the contract totally or partially upon giving prior written notice of 30 (thirty) days to the other party of the intention to terminate without any liability other than reimbursement on the terms provided in the agreement for the goods received.
8. **Export License:** The Bidders are to confirm that they have requisite export license from their Government to export the specified goods to India or shall be able to obtain the same within reasonable time (say three months).
9. **Delivery Period:**
- a. Time is the essence of the contract. The tenderer shall quote his best and earliest delivery so that machine is available at site at the earliest. The time schedule for the delivery of the plant and equipment, civil works, engineering erection and putting into commission as specified in technical specification should be indicated suitably in the tender.
 - b. Tenderer will submit a BAR CHART in this regard, showing detailed activities for execution of the order and their time schedule, for consideration of the purchaser. The tenderer will be responsible for co-ordinated delivery and erection of the complete plant, equipment and materials both from outside India and from indigenous sources and he shall ensure deliveries in the sequence in which they will be required for erection at site.
 - c. Delivery quoted should be guaranteed. The 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.
10. **Terms for Delivery:**

The applicable rules & regulations for transportation of goods will be as per the contemporary version of International Commercial Terms (INCOTERMS) evolved by International Chamber of Commerce, Paris. Delivery Date is defined by the delivery terms as given below:

Sl	Terms of delivery	Date of delivery
a	By Post Parcel	The date of postal receipt.
b	Dispatch by Air	The date of Air-way Bill.
c	FOB Port of Shipment	The date on which the Seller delivers the goods on vessel's board at the specified port of shipment. This date is reflected in Bill of Lading.

d	FCA Port of shipment	The date on which the Seller delivers the goods to the buyer-designated carrier at the named place.
e	DAP Destination /	The date on which the delivery is made at the destination mentioned in the contract.
f	Delivery at Site / OF....	The date on which the delivery is made at the site / OF.... mentioned in the contract.

11. **Consignee details:**

- a. Indigenous item: General Manager,(Factory's name)
- b. Imported item:
 - i. Port Consignee:(Address of EHQ)
 - ii. Ultimate consignee:(Address of Factory)

12. **Transportation:** The following Transportation clause will form part of the contract placed on successful Bidder –

- a. Indian firms: The stores shall be delivered DAP,(Factory's name)
- b. Foreign firms:

CIF/CIP: The stores shall be delivered CIF/CIP _____(Port of destination) (INCOTERMS 2010, or latest version). Seller will bear the costs and freight necessary to bring the goods to the port of destination. The Seller also has to procure marine insurance against the Buyer's risk of loss of or damage to goods during the carriage. The Seller will contract for insurance and pay the insurance premium. Seller is also required to clear the goods for export. The date of issue of the Bill of Lading shall be considered as the date of delivery. No part shipment of goods would be permitted. Trans-shipment of goods would not be permitted. In case it becomes inevitable to do so, the Seller shall not arrange part-shipments and/or transshipment without the express/prior written consent of the Buyer. The goods should be shipped by Indian vessels only (or, if not available, by vessels belonging to the conference lines in which India is a member country). However, the Seller can still utilize the services of the Govt of India Freight Forwarding Agent details for which will be provided by the Buyer. Seller will be required to communicate the following information invariably by telex/fax/signed to Port Consignee well in advance before the Ship sails the port of loading:

- i. Name of the Ship
- ii. Port of Loading and name of Country.
- iii. ETA at port of Discharge.
- iv. Number of Packages and weight.
- v. Nomenclature and details of major equipment.
- vi. Special instructions, if any stores of sensitive nature requiring special attention.

OR

FOB: The stores shall be delivered FOB (INCOTERMS 2010, or latest version). The stores shall be delivered to the Buyer by Indian Ships only. Shipping arrangements shall be made by the Chartering Wing, Ministry of Shipping,

New Delhi, India. Notice about the readiness of Cargo for shipment shall be given by the supplier from time to time at least 6 (six) weeks in advance for finalizing the shipping arrangement, through Fax/Telex and courier, to the Chief Controller of Chartering (the head of Chartering Wing). Within 3 (three) weeks of receipt of the advance notice, as above, the said Chief Controller of Chartering / Shipping Coordination Officer will advise the supplier, through Fax/Telex and courier when and on board what vessels, these goods or such part thereof are to be delivered. If the advice for shipping arrangement is not furnished to the Seller within 3 (three) weeks as aforesaid or if the vessel arranged is scheduled to arrive at the specified port of loading later than 15 (fifteen) days of the date of readiness of cargo, as aforesaid, the Seller may arrange for such transport on alternative carriers with the prior written consent of the Buyer. Where the Seller is required under the contract to deliver the goods on FOB basis and to arrange on behalf and at the expense of the Buyer for ocean transportation on Indian flag vessels or vessels of conference lines in which India is a member country, the Seller may arrange for such transportation on alternate carriers if the specified Indian flag vessels or conference vessels are not available to transport the goods within the time period(s) specified in the contract, with the prior written consent of the Buyer. Should the goods or any part thereof be not delivered on the nominated vessel (except in case where prior written consent of the Buyer was obtained), the Seller will be liable for all payments and expenses that the Buyer may incur or be put to, by reason of such non-delivery including dead and extra freight, demurrage of vessels and any other charges, whatsoever incurred by the Buyer. The date of issue of the Bill of Lading shall be considered as the date of delivery. No part shipment of goods would be permitted. Trans-shipment of goods would not be permitted. In case it becomes inevitable to do so, the Seller shall not arrange part-shipments and/or transshipment without the express/prior written consent of the Buyer. The contact details of Chief Controller of Chartering are: Ministry of Shipping, Chartering Wing, Transport Bhavan, Parliament Street, New Delhi-110011 (Telegraphic Address: TRANSHART, NEW DELHI-1, Telex "VAHAN" In 31-61157 OR 31-61158, Phone +91 11 2371 9480, Fax +91 11 2371 8614).

OR

FCA - The delivery of the goods by air transport shall be FCA _____ Airport (INCOTERMS 2010, or latest version). The despatch of goods shall be made through Air India to port consignee. The Buyer shall advise full details of its freight forwarder to the Seller no later than 60 days prior to the delivery of the first consignment; otherwise the Seller may nominate the freight forwarder which shall be at the Buyer's expense. Any delay in advising or delay by the freight forwarder shall be at the responsibility of the Buyer. The date of issue of the Air Way Bill (AWB) shall be considered as the date of delivery.

13. **Air lift:** The following Airlift clause will form part of the contract placed on successful Bidder –

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

14. **Packing:** The following Packing and Marking clause will form part of the contract placed on successful Bidder –

- a. The Contractor shall provide packing and preservation of the equipment and spares/goods contracted so as to ensure their safety against damage in the conditions of land, sea and air transportation, transshipment, storage and weather hazards during transportation, subject to proper cargo handling. The Seller shall ensure that the stores are packed in containers, which are made sufficiently strong, and with seasoned wood. The packing cases should have hooks for lifting by crane/fork lift truck. Tags with proper marking shall be fastened to the special equipment, which cannot be packed.
- b. The Contractor must ensure that sturdy packing is used to withstand rough handling during transit by rail/road. In case the contractor fails to meet the qualitative requirements for packing, he must make good all losses arising out of his failure to meet contractual obligations. The contractor will be responsible for internal damages if any, when outwardly there is no damage to the package.
- c. For imported machines, the packing must be such that it is able to withstand the vagaries of weather, shipping and roughness of handling by port labour, cranes and fork-lifts. The consignments as far as possible must be shipped in containers (FCL/LCL).
- d. One copy of the packing list/ invoice in English and pre-despatch inspection certificate 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.

15. **Marking:**

- a. **Indigenous Supplies:** The following markings on two opposite faces and top side should be stenciled in legible ink on the packing cases containing the consignments at the time of dispatch:
 - i. Contract No & Date:
 - ii. Name of the consignee:
 - iii. Full address of consignee:
 - iv. Total No of packages & Sl No of package:
 - v. Up right arrow.
 - vi. Gross weight:
 - vii. Special marking for case.
 - viii. Brief nomenclature of equipment:
 - ix. Slinging position.
- b. **Imported Supplies:** The Seller shall mark each package with indelible paint in the English language as follows:-
 - i. EXPORT
 - ii. Contract No & Date:

- iii. Consignee:
 - iv. Port / airport of destination:
 - v. Ultimate consignee:
 - vi. SELLER:
 - vii. Total No of packages & Sl No of package:
 - viii. Gross/net weight:
 - ix. Overall dimensions/volume:
 - x. Up right arrow.
 - xi. Special marking for case.
 - xii. Brief nomenclature of equipment:
 - xiii. Slings position
- c. If necessary, each package shall be marked with warning inscriptions: <Top>, “Do not turn over”, category of cargo, etc.
16. **Pre-Despatch Inspection:** The following Pre-Despatch Inspection clause will form part of the contract placed on successful Bidder –
- a. The Buyer’s representatives will carry out Pre-Despatch Inspection (PDI) of the machines/equipment in order to check their compliance with specifications in accordance with its usual standard procedures. Upon successful completion of such PDI, the Seller and Buyer will issue and sign a Certificate of Conformity.
 - b. The Seller shall intimate the Buyer at least 45 days before the scheduled date of PDI. The time required for completing visa formalities by the Seller should not be included in this notice. The Buyer will send his authorised representative(s) to attend the PDI.
 - c. The list of Buyer’s representatives together with their particulars including name, title, date and place of birth, passport numbers including date of issue and date of expiry, address, etc. shall be communicated by the Buyer in advance to apply for the necessary authorisations and clearances to be granted.
 - d. The Buyer reserves the right not to attend the PDI or to request for postponement of the beginning of the PDI by a maximum of one month from the date fixed for such PDI in order to allow his representative(s) to attend such tests, in which cases he shall inform in writing the Seller within 15 days before the date of the beginning of the PDI. Should the Buyer request for such postponement, liquidated damages, if any, shall not apply. In case the Buyer informs the Seller within the period mentioned hereinabove that he cannot attend the PDI or in case the Buyer does not come at the postponed date requested by him for performance of the PDI as mentioned above, the Seller shall be entitled to carry out said tests alone as scheduled. The Certificate of Conformity and the Acceptance Test Report will be signed by the Seller’s QA representative alone and such documents bearing the sole signature of the Seller’s QA representative shall have the same value and effect as if they have been signed by both the parties. In case Buyer does not elect to attend the PDI, the Buyer shall intimate the Seller in writing that it does not wish to attend the PDI.

- e. The Seller shall provide all reasonable facilities, access and assistance to the Buyer's representative for safety and convenience in the performance of their duties in the Seller's country.
 - f. All costs associated with the stay of the Buyer's Representative(s) in the country where the PDI is to be carried out, including travel expenses, boarding and lodging, accommodation, daily expenses, shall be borne by the Buyer.
17. **Checking on Receipt:** When boxes or containers received by the Buyer are opened for assembly/installation, joint checking will be done by Buyer and Seller for conformance to quantity and description mentioned in the invoice. In case of any discrepancy, the Seller shall make good the same at his cost.

18. Insurance:

- a. Where delivery of imported goods is required by the purchaser on CIF basis, the supplier shall arrange and pay for marine/air insurance, making the purchaser as the beneficiary. The Insurance Policy shall be for 110% value of goods for coverage on "all risks" basis including war risks and strike clauses. The date of insurance should be dated prior to the date of shipment. The insurance policy should mention the name of ship, merchandise details, number of packages, name of vessel, number of voyages, port of shipment, port of destination/destination warehouse and the details on Insurance documents should not contradict the stipulation in Bill of Lading or Invoice. The insurance policy shall be forwarded to the purchaser sufficiently before despatch of the consignment.
- b. Where delivery is on FOB/FCA basis, marine/air insurance shall be the responsibility of the purchaser.
- c. In case of turn-key supply of plant/machines, if any supplies or part thereof are damaged during the process of erection and commissioning of the plant/machines until the final acceptance, the same will have to be replaced at site by the supplier free of all costs to the purchaser, including the erection and commissioning cost in the event of the plant/machines having been erected.
- d. In the above case, the supplier shall be responsible for insurance of the plant/machines during erection and commissioning. In this connection, the supplier shall arrange "Erection All Risks Insurance" of sufficient amount along with coverage for construction/erection equipment as well as third party claims in respect of property damage or bodily injury. The supplier shall also be responsible for insurance for personnel engaged by them in the erection work.

19. Guarantee:

The supplier shall guarantee among other things the following:

- a. Satisfaction of technical and other parameters mentioned in the specification and contract.

- b. Quality and strength of materials used in the manufacture of the equipment considering the applicable codes of practice and regulation.
- c. Adequate factors of safety for all parts of the equipment to withstand the mechanical and/ or electrical stresses developed therein under specific operating conditions.
- d. Performance data furnished/ specified for the equipment should be actually obtainable when the equipment is installed and tested at site.

20. **Warranty:**

- a. The supplier shall warrant that the plant/machine (including associated works constructed by the supplier) will be free from defects in design, material or workmanship. Supplier's obligations under the warranty shall involve repair, rectification and making good at site any defect, imperfection or fault attributable to defective design, material or workmanship. If the plant/machine is found to have a Defect that can be assumed to be present also in some other portion of the plant/machine, the Supplier shall investigate whether such further Defect is present, and shall make good any further Defects found.
- b. The supplier shall furnish PBG / Warranty Bond for 5% of contract price valid for two months after warranty period, as security for its warranty obligations.
- c. The following Warranty clause will form part of the contract with the successful bidder:

“

- 1. The contractor/seller hereby warrants that the plant/equipment sold/supplied to the purchaser under this contract shall be of the best quality and workmanship and new in all respects and shall be strictly in accordance with the specifications and particulars contained/mentioned in the said contract.
- 2. The contractor/seller further warrants that the plant/equipment would continue to conform to the specified description and quality and would be free from any non-conformity with the requirements of the contract (hereafter referred to as a 'defect') due to faulty design, materials or workmanship, for a period called 'warranty period' or 'defects liability period' as defined below:
 - 12 (twelve) months from the date of commissioning and acceptance of the plant/equipment at the purchaser's site, in case of turn-key supply contracts, or
 - 12 (twelve) months from commissioning and final acceptance of the plant/equipment at the purchaser's site or 18 (eighteen) months from the date of delivery for indigenous equipment or 21 months from date of delivery for imported equipments, whichever is earlier, in case of other contracts.
- 3. If the commissioning/acceptance of the plant/equipment is delayed due to fault of contractor/seller, the warranty period will automatically get correspondingly extended.

4. Notwithstanding the fact that the purchaser (or his representative) may have inspected and/or approved the plant/equipment, if any defect is discovered in the plant/equipment during the aforesaid warranty period and the decision of the purchaser in that behalf shall be final and binding on the contractor/seller, the purchaser shall be entitled to call upon the contractor/seller to rectify such defect.
5. Defects shall be notified by the purchaser to the contractor/seller in writing without undue delay after the defects are noticed, and in any event not later than thirty (30) days after the expiry of the warranty period.
6. Upon receipt of notice from the purchaser about any defect that occurs during the warranty period, the contractor/seller shall respond immediately and make good the defect within a reasonable period, or such specific period as may be allowed by the purchaser at the request of the contractor/seller, without any charges and costs to the purchaser.
7. If the plant/equipment is found to have a defect that can be assumed to be present also in some other portion of the plant/equipment, the seller/contractor shall investigate whether such further defect is present, and shall make good any further defects found.
8. If a defect appears, requiring immediate action due to the risk of resultant damage, and if the contractor/seller cannot make immediately good the defect, the purchaser is entitled to apply all necessary measures to prevent or limit damage.
9. This warranty is not applicable if the defect is attributable to normal wear and tear or incorrect operation or negligence or willful damage on the part of the purchaser.
10. Parts replaced or repaired under the above provisions shall be subject to the same warranty from the contractor/seller, and under the same conditions as apply for the rest of the plant/equipment, for a period of one (1) year after such replacement or repair has been effected. The warranty period for the rest of the plant/equipment shall be extended only by the time during which it was out of operation as a result of defects covered by the above provisions. Nothing contained in this clause shall however extend the warranty period by a period beyond two (2) years after the commissioning and acceptance of the plant/equipment.
11. Defective parts which have been replaced shall be made available to the seller/contractor without cost. However, the seller/contractor shall be responsible for lifting the defective parts and transporting the same at his cost from purchaser's place within mutually agreed time period.
12. In case of failure on the part of the contractor to fulfil any warranty obligations, the contractor/seller shall pay to the purchaser such compensation, as may arise from the breach of the warranty herein contained."

21. **After sales support:** The contractor shall provide after sales service of the equipments for at least ten years after the expiry of warranty period, which will comprise of the following:

-
- a. To render free technical advice on any matter of the equipment.
- b. To quote and supply all spare parts/accessories/sub-assemblies at a reasonable price and delivery schedule.
- c. To make available the services of suitable specialists on reasonable terms.

22. **Guarantee to provide Spares:**

- a. The Vendor shall be committed to make available the spares for 10 years period from the completion of the warranty period.
- b. Acceptance of tender for the supply of machine against this TE will be subject to tenderers certifying that they have adequate servicing and spare parts facilities in respect of the machine tendered for by them or that they shall arrange to provide such facilities simultaneously with the supply of the machine.
- c. Tenderers shall also undertake that supplies of necessary maintenance equipment and spare parts will be made available for life of the machine on a continuous basis.
- d. The successful tenderer shall warranty that before going out of production of the spare parts he will give adequate advance notice to the purchaser so that the later may order his requirements of spares in one lot, if he so desires.
- e. The successful tenderer shall further guarantee that if he goes out of production of spare parts, then he will make available blueprints, drawings of the spare parts and specifications of materials at no cost to the purchaser as and when required in connection with the machine to enable the purchaser to fabricate or procure spare parts from other sources.
- f. In case spares are also ordered with the machine, tenderer will undertake to offer spares for delivery along with the main equipment only and not before.

23. **Manufacturer's Recommended List of Spares (MRLS). –**

Bidders are requested to provide MRLS to sustain the equipment for a period of three years after warranty period in following format.

EQUIPMENT:

Original Equipment Manufacturer (OEM):

Manufa cturer's Part No	Sourc e of Suppl y	Nome n clatur e	Nos fitted in one equi pme nt	Spare Parts List (ISPL) as per TE	Unit Cost	Recommended scale for spare parts		Total Cost		R E M A R K S
						Unit	Cost	As per T.E.	As per Reccommen ded list of spares	
Total Cost										

Notes:

- Maintenance spares/stores like lubricants, sealing compound, gases should be given separately giving source of supply.
- In 'Remarks' column following information (if applicable) be given
 - If an item has a shelf / operational life it may be indicated.
 - Matching set of components be indicated.
 - Items which cannot be manufactured in India due to sophisticated design/technology may be indicated.
 - If a component/ assembly is common to other similar equipment offered by the OEM earlier these should be indicated.
- Modules / assemblies should be listed and their components should be included under them so as to relate each item of spare to their module / assembly.

Part V – Evaluation Criteria & Price Bid Format

1. **Evaluation Criteria** - The broad guidelines for evaluation of Bids will be as follows:
 - a. Only those Bids will be evaluated which are found to be fulfilling all the eligibility and qualifying requirements of the TE, both technically and commercially.
 - b. The Technical Bids forwarded by the Bidders will be evaluated by the Buyer with reference to the technical specifications of the plant or machine as well as the various clauses of the TE, including commercial terms, like delivery schedules, guaranteed performance, warranty provisions, acceptance criteria, after sales support, etc. A “Comparative Statement” shall be prepared based on the basis of compliance statement and other documents furnished by bidders for analysis of the discordance and the impact of the same. Comprehensive analysis of the techno-commercial offers will form the basis for subsequent decision.
 - c. The Price Bids of only those Bidders will be opened whose Technical Bids would clear the technical evaluation.
 - d. In cases where only indigenous Bidders are competing, all taxes and duties (including those for which exemption certificates are issued) quoted by the Bidders will be considered. The ultimate cost to the Buyer would be the deciding factor for ranking of Bids.
 - e. Total landed costs including duties and taxes will be considered for comparison, when tenders are received from consortia of foreign and Indian firms for turn-key supply of plants.
 - f. In cases where all the offers are from foreign suppliers, ranking will be assessed on CIF basis.
 - g. All the foreign quotes will be brought to a common denomination in Indian Rupees by adopting the exchange rate as BC Selling rate of the State Bank of India on the date of the opening of Price Bids.
 - h. In cases where both foreign and indigenous Bidders are competing, following criteria would be followed –
 - In case of foreign Bidders, the basic cost (CIF) quoted by them, after converting into Rupees, would be the basis for the purpose of comparison of various tenders.
 - In case of indigenous Bidders, the ex-works cost would be considered, after off-loading the excise duty on fully formed equipment and ignoring sales tax and other local levies i.e. octroi, entry tax, etc.
 - i. However, order if any, on foreign bidders will be on FOB basis and on indigenous bidders on DAP destination basis including Excise Duty, Sales Tax and other local levies, Transportation Charges etc.
 - j. For ranking of offers, price of complete scope of supply as detailed in technical specifications excluding the price of spares will be considered.

- k. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price will prevail and the total price will be corrected. If there is a discrepancy between words and figures, the amount in words will prevail for calculation of price.
- l. The Buyer reserves the right to evaluate the offers received by either loading offers appropriately or by using Discounted Cash Flow method at a discounting rate of 10%. In case cash flow involves more than one currency, the same will be brought to a common denomination in Indian Rupees by adopting exchange rate as BC Selling rate of the State Bank of India on the date of the opening of Price Bids.
- m. The Lowest Acceptable Bid will be considered further for placement of contract / Supply Order after complete clarification and price negotiations, if required, as decided by the Buyer. There will be no negotiation if price quoted is considered reasonable, else negotiation will be held only with the lowest (L1) bidder.
- n. The Buyer will have the right to award contracts to different Bidders for being lowest in particular items.
- o. The consideration of taxes and duties in evaluation process will be as follows:
 - i) The Bidders are required to spell out the rates of Customs duty, Excise duty, VAT, Service Tax, etc in unambiguous terms; otherwise their offers will be loaded with the maximum rates of duties and taxes for the purpose of comparison of prices.
 - ii) If reimbursement of Customs duty / Excise Duty / VAT is intended as extra, over the quoted prices, the Bidder must specifically say so. In the absence of any such stipulation it will be presumed that the prices quoted are firm and final and no claim on account of such duties will be entrained after the opening of tenders.
 - iii) If a Bidder chooses to quote a price inclusive of any duty and does not confirm inclusive of such duty so included is firm and final, he should clearly indicate the rate of such duty and quantum of excise duty included in the price. Failure to do so may result in ignoring of such offers summarily.
 - iv) If a Bidder is exempted from payment of Customs duty / Excise Duty / VAT duty upto any value of supplies from them, they should clearly state that no excise duty will be charged by them up to the limit of exemption which they may have. If any concession is available in regard to rate/quantum of Customs duty / Excise Duty / VAT, it should be brought out clearly. Stipulations like, excise duty was presently not applicable but the same will be charged if it becomes leviable later on, will not be accepted unless in such cases it is clearly stated by a Bidder that excise duty will not be charged by him even if the same becomes applicable later on. In respect of the Bidders who fail to comply with this requirement, their quoted prices shall be loaded with the quantum of excise duty which is normally applicable on the item in question for the purpose of comparing their prices with other Bidders. The same logic applies to Customs duty and VAT also.
- p. Any other criteria as applicable to suit a particular case.

2. Price Preference Policy

The provision relating to price preference policy as per Govt. of India, Min. of Small Scale Industries, letter vide F. No. 22(1)/ 2003/ EP&M dt. 29/7/2003 and as amended up to date will be applicable to SSI units registered with NSIC. However, such a preference will be considered strictly on merit in such a manner as to discourage inflation and prevent profiteering and creation of sense of self complacency in economy.

3. Price Bid Format:

(A) The Price Bid Format is given below and Bidders are required to fill this up correctly with full details:

Sl	Item	Unit	Qty	Price	Total Price
1	Machine				
2	Accessories				
3	Erection works (mechanical/ electrical/ instrumentation)				
4	Supervision of Erection and Commissioning				
5	Civil Works				
6	Training				
7	Technical documents				
8	Spares				

(B) Is Excise Duty extra? If yes, mention the following –

- Total value of items on which Excise Duty is leviable:
- Rate of Excise duty (item-wise if different ED is applicable):
- Surcharge on Excise duty, if applicable?
- Total value of excise duty payable:
- Is Excise Duty Exemption (EDE) required:
- If yes, then mention and enclose the following: Excise notification number under which EDE can be given.

(C) Is VAT extra? If yes, then mention the following:

- Total value on which VAT is leviable:

- b. Rate of VAT:
- c. Total value of VAT leviable:
- (D) Is Service Tax extra? If yes, then mention the following:
 - a. Total value of Services on which Service Tax is leviable:
 - b. Rate of Service Tax leviable:
 - c. Total value of Service Tax leviable:
- (E) Is Custom Duty Exemption (CDE) required? If yes, then mention the following:
 - a. Custom notification number under which CDE can be given (Enclose a copy):
 - b. CIF value of stores to be imported:
 - c. Rate of Customs Duty payable:
 - d. Total amount of Customs Duty payable:
- (F) Octroi / Entry taxes:
- (G) Any other Taxes / Duties / Overheads / Other costs:
- (H) Grand Total:

[Note: The format or template for price bid is dependent on scope of supply.]

APPENDIX 'G'**SPECIMEN OF NOTICE INVITING EOI***(This example is for an explosive plant.)*

GOVERNMENT OF INDIA
ORDNANCE FACTORY

NOTICE INVITING EXPRESSION OF INTEREST

NIEOI No.

Date:.....

The General Manager, Ordnance Factory Nalanda, Rajgir, Bihar on behalf of the President of India, invites Expression of Interest (EOI) from reputed Indian Firms for providing the following Machine / Plant at Ordnance Factory,

Sl	Reference No	Name of Plant	Capacity

Contract shall be awarded through Two Stage Process:

Stage 1: Expression Interest (EOI) Stage

Stage 2: Tender Enquiry (TE) Stage

Tender documents will be issued in Stage-2 for each Plant separately to the shortlisted companies who participate and qualify in the EOI (Stage-1). Separate contracts will be signed with successful bidders for each plant.

Interested parties are requested to submit their EOI in the prescribed format along with all supporting documents/credentials.

For detailed information, please see Annexure which is displayed in our website “.....” or send email to E-mail ID of Contact Person mentioned below at least 15 days before the last date of submission of EOI.

Last date of submission of EOI: up to 15:00 hrs of/...../2013.

Sd/-
General Manager

Address for communication:	Contact person (for any queries):
General Manager, Ordnance Factory	Name: Designation..... Telephone No:..... Mobile No: E-mail ID :

Annexure to NIEOI
(Information for Submitting EOI by Interested Parties)

Introduction:

1. Ordnance Factory, is under Ordnance Factory Board (OFB), Kolkata, which is part of Deptt of Defence Production, Ministry of Defence, Govt of India.
2. The above mentioned machines/plants are required for establishment of manufacturing facilities for

Scope of Work in Brief:

1. The scope of work of the plant will include design, fabrication, supply, erection and commission of the plant. The scope will also include civil works for erection, piping and inter-connection of different equipments and services to be provided as part of the plant. The contractor shall have to arrange training for Purchaser's personnel for mutually agreed time period during / before commissioning of the plant at O.F.
2. The Purchaser shall arrange, through separate agency, construction of buildings wherein the above plants have to be supplied by the contractors. The contractor shall have to provide specifications and drawings for civil works beforehand to the Purchaser for the construction of the buildings.
3. The Purchaser shall also arrange to provide utilities like steam, water & electricity at the battery limits of the earmarked sites.
4. Detailed specifications with description of plant manufacturing process and lists of equipments required for each plant will be furnished in the tender documents which will be issued in Stage-2.
5. The plant should be remote controlled with programmable logic (PLC) and have appropriate automation for safety of workmen. There should be in-built safety and fire fighting devices as per Indian regulations.
6. The plant should have effluent treatment facilities with maximum recycling of water (zero or minimum possible discharge) so as to meet the pollution control limits as per Indian regulations.

Bidder's Profile & Qualification Criteria for Stage-1:

1. The interested parties (Bidders) must have the following qualification criteria for selection for Stage-2 (issue of tender documents):
 - a. **Financial Criteria:**
Bidder must have average annual turnover of minimum Rs .. Crores (*30% of estimated cost*) during last three years.
Or, Bidder has the experience of executing one project of value not less than Rs .. crores (80% of estimated cost) or two projects of minimum value Rs .. crores each (50% of estimated cost) or three projects of minimum value Rs .. crores each (*40% of estimated cost*), during the past seven years, either as a single entity or in collaboration with minimum 25% work-share in terms of value.

b. Technical Criteria:

Bidder should have past experience of design, supply, erection and commissioning of the required plant or similar plants for chemicals/explosives either in India or in any other country.

Or, Bidder should have collaboration agreement for design, supply, erection and commissioning and after sales service with any other Indian or foreign company who meets the above criteria.

2. The applications (EOI) of firms should be accompanied by following documentary evidence in support of meeting the above criteria / profile:
 - (i) Photo-copies of audited balance sheet and profit & loss statements for last three years.
 - (ii) Photo-copies of VAT/CST Registration Certificate, Provident Fund Registration Certificate, Income Tax PAN Card and Central Excise & Service Tax Registration Certificates.
 - (iii) Photo-copies of orders/contracts (showing values of projects & work-share of Bidder) and performance certificates of previous supplies/ projects executed. [In case of projects executed by a foreign firm/partner in a foreign country, if value / other information cannot be given for confidentiality, the Bidder shall submit maximum possible relevant information to satisfy its credentials.]
3. The interested firms should also furnish:
 - a. Undertaking to provide pre-delivery inspection with own means or third party mutually agreed with purchaser, in case contract is awarded for any plant.
 - b. Undertaking to be responsible for all contractual obligations including guarantee / warranty obligations in case contract is awarded for any plant.
 - c. Affidavit that the firm has never been banned by Govt. of India.
 - d. General power of attorney in favour of signatory other than owner/head of the firm.
 - e. Confirmation that the firm will sign Pre Contract Integrity Pact and submit necessary bond, if value of contract exceeds Rs 100 crores. Format of Pre Contract Integrity Pact is available in OFB's website <http://ofbindia.gov.in>.

Criteria for Evaluation & Selection Process:

- The interested firms shall be called to O.F. to visit the site and to give presentation about their work experience and competence.
- Based on the credentials, fulfilment of qualification criteria and presentations, the firms shall be short-listed.
- Tender documents (Requests for Bids) shall be issued in Stage-2 to only the shortlisted firms.

Format of Application:

Interested parties should submit EOI application to OF..... in the following format, enclosing supporting documents, required affidavits/undertakings and copies of company presentation. The envelope containing the EOI should be marked with the NIEOI No. and Date for identification and sorting. It may be sent by post/courier/hand delivery. Any application received after the last date & time for submission will not be considered.

Note: Separate sheets may be used wherever necessary.

1. Name & Address of the Bidder:
2. Name & Designation of the person to whom all references shall be made:
3. Fax Nos:
4. Telephone & Mobile Nos:
5. E-mail ID:
6. Chief of the Organization:
E-mail ID:
Telephone / Mobile No:
7. Type of Organization (Public Sector/Limited/Private Limited/Partnership/Proprietary/Society/Any other):
8. No. of offices & factories/workshops (details in separate sheets):
9. No. of qualified Technical & Supervisory Personnel etc in following format:

Sl	Class of Manpower	No. of Personnel Available with contractor	No. of Personnel To be employed
----	-------------------	--	---------------------------------

10. Particulars of past experience of similar works executed:
11. Concurrent Commitments (Details of works under execution, %age completion, expected date of completion):
12. Copy of collaboration agreement between parties (if the Bidder has partnered with any other firm to submit bid jointly):
13. Annual Turnover Statement for last 3 years (**certified by a statutory auditor**):

Financial Year	Annual Turnover (Rs)	Net Worth (Rs)
Year-1		
Year-2		
Year-3		

Net worth shall be worked out on the following basis:

Net worth = Capital + Reserves – Accumulated loss

14. Plant or plants for which interested to bid for:
15. Any other information that the bidder may like to give in order to highlight his bid:
16. List of documents attached:

Place :

Date :

Signature:

Name in Full:

Designation / Status:

APPENDIX 'H'**FORMAT FOR EMD BANK GUARANTEE**

(To be submitted on non judicial stamp paper of appropriate value purchased in the name of the issuing Bank)

1. Whereas
(hereinafter called the "tenderer") has submitted their offer dated.....for
the supply of
(hereinafter called the "tender") against the Purchaser's tender enquiry No.
.....
2. KNOW ALL MEN by these presents that WE
of having our registered office at
..... are bound unto
(hereinafter called the "Purchaser") in the sum of
..... for which payment will and
truly to be made to the said Purchaser, the Bank binds itself, its successors and assigns by these
presents. Sealed with the Common Seal of the said Bank this..... day of
.....20.....
3. CONDITIONS OF THIS OBLIGATION ARE:
 - (i) If the tenderer withdraws or amends, impairs or derogates from the tender in any
respect within the period of validity of this tender.
 - (ii) If the tenderer having been notified of the acceptance of his tender by the Purchaser
during the period of its validity:-
 - a. If the tenderer fails to furnish the Performance Security for the due performance
of the contract.
 - b. Fails or refuses to accept/execute the contract.
4. WE undertake to pay the Purchaser up to the above amount upon receipt of its first
written demand, without the Purchaser having to substantiate its demand, provided that in its
demand the Purchaser will note that the amount claimed by it is due to it owing to the occurrence
of one or both the two conditions, specifying the occurred condition or conditions.
5. This guarantee will remain in force upto and including 45 days after the period of tender
validity and any demand in respect thereof should reach the Bank not later than the above date.

.....
(Signature of the authorized officer of the Bank)

.....
Name of the officer

.....
Designation of the officer

.....
Seal, name & address of the Bank and address of the Branch

APPENDIX 'I'

FORMAT FOR PERFORMANCE BANK GUARANTEE

From

Bank:

To

The President of India

Through: General Manager,
 Ordnance Factory,

Dear Sir,

1. Whereas you (the "PURCHASER") have entered into a contract No. _____ dated _____ (hereinafter referred to as the "said Contract") with M/s _____ (hereinafter referred to as the "SELLER") for supply of goods as defined in the said Contract and whereas the SELLER has undertaken to produce a bank guarantee for ____ % of total contract value amounting to _____ (amount of the guarantee in figures and words) to secure its obligations to the PURCHASER in accordance with the said Contract.

2. We _____ (the Bank) hereby expressly, irrevocably and unreservedly undertake and guarantee as principal guarantor on behalf of the SELLER that, we will pay you on your demand declaring the SELLER to be in default under the said Contract, without demur or contest, all and any sum up to a maximum of Rupees _____ only. Your written demand shall be conclusive evidence to us that such repayment is due under the terms of the said Contract.

3. We undertake to effect payment upon receipt of such written demand, notwithstanding any dispute or disputes raised by the SELLER in any suit pending before any Court, Tribunal, Arbitrator or any other authority, our liability under this present being absolute and unequivocal.

4. We shall not be discharged or released from this undertaking and guarantee by any arrangements or variations made between you and the SELLER, indulgence to the SELLER by

you or by any alterations in the obligation of the SELLER or by any forbearance whether as to payment, time, performance or otherwise.

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

6. This guarantee shall remain in full force and effect until three months beyond the warranty period as specified in the contract i.e. up to _____ (expiry date) [[^]or until the PURCHASER has signed the Final Acceptance Certificate (FAC) and has received the contractually agreed Warranty Bond as per the said Contract]. In case of delay in fulfillment of obligations by the SELLER, the expiry date shall be extended by us as per intimation from the SELLER.

7. Unless a demand or claim under this guarantee is made to us in writing on or before the aforesaid expiry date or extended expiry date, all your rights under this guarantee shall be forfeited and we shall be discharged from the liabilities hereunder.

8. This guarantee shall be continuing guarantee and shall not be discharged by any change in the constitution of the Bank or in the constitution of the SELLER.

9. We lastly undertake not to revoke this guarantee during its currency except with the previous consent of the PURCHASER in writing.

Yours faithfully,

for _____ Bank

(Authorised Signatory)

Place : _____

Date : _____

Seal of the Bank

[^]To be inserted if so agreed to and stipulated in the contract.

APPENDIX 'J'**FORMAT FOR ADVANCE BANK GUARANTEE**

From :
Bank _____

To
The President of India

Through: General Manager,
Ordnance Factory,

Sir,

With reference to contract No. _____ dated _____ (hereinafter referred to as "the said Contract") concluded between the President of India (hereinafter referred to as "the Purchaser") and M/s _____ (hereinafter referred to as the "the Contractor") for the supply of _____ as detailed in the said Contract and in consideration of the Purchaser having agreed to make an advance payment in accordance with the terms of the said Contract to the Contractor, we _____ (hereinafter called "the Bank") hereby irrevocably undertake and guarantee to you that if the Contractor fails to supply the goods/services in accordance with the terms of the said Contract for any reason whatsoever or fails to perform the said Contract in any respect or should whole or part of the advance payment at any time becomes repayable to you for any reason whatsoever, we shall, on demand and without demur pay to you all and any sum upto a maximum of Rs _____ (Rupees _____ only) i.e. 110% of advance amount paid to the Contractor in accordance with the provisions contained in Clause _____ of the said Contract.

2. We further agree that if the Contractor fails to complete delivery of goods/service as per original time schedule stipulated in the said Contract, interest on the amount of advance payment corresponding to delayed delivery shall be payable to the Purchaser as per the clause _____ of the said Contract under this Guarantee.

3. We further agree that the Purchaser shall be the sole judge as to whether the Contractor has failed to deliver the goods/services in accordance with the terms of the said Contract or has failed to perform the said Contract in any respect or the whole or part of the advance payment made to Contractor has become repayable to the Purchaser.

4. We further hereby undertake to pay the amount due and payable under this Guarantee without any demur merely on a demand from the Purchaser stating the amount claimed. Any such

demand made on the Bank shall be conclusive and binding upon us as regards the amounts due and payable by us under this Guarantee. However, our liability under this Guarantee shall be restricted to the above mentioned amount. [[^]*With each delivery and payment relating to this Guarantee, our obligation will be reduced automatically by ___% of invoice value, upon presentation to us a photocopy of the invoice and a certificate from the Purchaser about receipt of goods/services as per the invoice.*]

5. We further agree that the Guarantee herein contained shall remain in full force and effect until three months beyond the scheduled date of final delivery of goods/services as per the said Contract i.e. up to _____ (date of validity). In case of delay in fulfillment of obligations by the Contractor, the date of validity shall be extended by us as per intimation from the Contractor.

5. We further agree that any change in the constitution of the Bank or the constitution of the Contractor shall not discharge our liability hereunder.

6. We further agree that the Purchaser shall have the fullest liberty without affecting in any way our obligations hereunder with or without our consent or knowledge to vary any of the terms and conditions of the said Contract or to extend the time of delivery from time to time or to postpone for any time or from time to time any of the powers exercisable by the Purchaser against the Contractor and either to forbear or enforce any of the terms and conditions relating to the said Contract and we shall not be relieved from our liability by reason of any such variation or any indulgence or forbearance shown or any act or omission on the part of the Purchaser or by any such matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of so relieving us.

7. We lastly undertake not to revoke the Guarantee during its currency except with the prior consent of the Purchaser in writing.

Yours faithfully,

for _____ Bank
(Authorised Signatory)

Place : _____

Date : _____

Seal of the Bank

[^]*To be inserted if so agreed to and stipulated in the contract.*

APPENDIX 'K'**FORMAT FOR WARRANTY BOND**

To

The President of India

Through : General Manager
Ordinance Factory

.....

Bank Guarantee No. Dated:.....

Bank Guarantee Amount

Sir,

1. In consideration of President of India (hereinafter referred to as PURCHASER) having entered into a CONTRACT with M/S (hereinafter referred to as CONTRACTOR) bearing the contract number dated (hereinafter referred to as CONTRACT) for supply of (hereinafter referred to as the "Plant/Machinery") we, (the Bank) hereby irrevocably undertake and guarantee to you to pay you all or any sum up to a maximum of, being 5% of the total price of CONTRACT to secure warranty obligations of the CONTRACTOR as per the CONTRACT.
2. In terms of the CONTRACT, the CONTRACTOR has guaranteed that the said Plant/Machinery has been built fully in accordance with the specification and will operate as provided in the CONTRACT.
3. We hereby guarantee that we shall pay to you on demand and without demur the above mentioned sum, within three days of receipt of your written demand stating that there is breach of the warranty provisions of the CONTRACT on the part of the CONTRACTOR.
4. This guarantee shall be valid until two months after the warranty period as per the Contract, i.e. up to (date), except in respect of defects that occurred prior to expiry of such date and notified to the CONTRACTOR as per contractual terms. Written request will be made by the CONTRACTOR to renew/extend the Guarantee prior to its expiry to cover extended warranty for defects.
5. We undertake to effect payment upon receipt of such written demand, notwithstanding any dispute or disputes raised by the SELLER in any suit pending before any Court,

Tribunal, Arbitrator or any other authority, our liability under this present being absolute and unequivocal.

6. We further agree that decision of the PURCHASER as to whether there is breach of the warranty provisions of the CONTRACT on the part of the CONTRACTOR shall be final, binding and conclusive so far as we are concerned. Any approval or acceptance by the PURCHASER of the Plant/Machinery or materials or components incorporated therein shall not in any way limit the liability of the CONTRACTOR.
7. We shall not be discharged or released from the guarantee by any arrangement made between the PURCHASER and the CONTRACTOR with or without our assent or by any alteration in the obligations undertaken in the said CONTRACT or any forbearance regarding payment, time, performance or otherwise. In any case, our guarantee is limited and shall not exceed the above mentioned amount.
8. This guarantee is being furnished for release of 10% of the total contract price to the CONTRACTOR, after adjusting any amount due to the PURCHASER if any, as per the CONTRACT.
9. This guarantee shall not be discharged due to change in the constitution of either the Bank or the CONTRACTOR.
10. We,Bank, lastly undertake not to revoke this guarantee during its currency except with the previous consent of the PURCHASER in writing.

Yours faithfully,

for _____ Bank
(Authorised Signatory)

Place : _____

Date : _____

Seal of the Bank

APPENDIX 'L'**FORMAT FOR LETTER OF CREDIT
For Foreign Supplier in FE**

ISSUE OF A DOCUMENTARY CREDIT (PER S.W.I.F.T TO)

FORM OF DOC CREDIT (40A) : DIVISIBLE AND IRREVOCABLE

DOC CREDIT NUMBER :

EXPIRY (31D) : DATE 30 MONTHS AFTER DATE
OF ISSUING L/C
PLACE

APPLICANT BANK (51) : STATE BANK OF INDIA

APPLICANT (50) : GENERAL MANAGER,
ORDNANCE FACTORY
.....
.

BENEFICIARY (59) :

AMOUNT (32B) : CURRENCY
: AMOUNTMAXIMUM CREDIT AMOUNT (39B) : NOT EXCEEDING
AVAILABLE WITH/BY (41A) : (CONTRACTOR'S BANK)

DRAFTS AT (42C) : AT SIGHT

DRAWEE (42A) :

PARTIAL SHIPMENT (43B) : ALLOWED

TRANSHIPMENT (43T) : NOT ALLOWED

LOADING IN CHARGE (44A) :

TRANSPORT TO (44B) : PORT OF DISCHARGE /
AIRPORT OF DESTINATION.LAST DATE OF SHIPMENT (44C) : MONTHS AFTER CONTRACT
EFFECTIVE DATE.

DESCRIPTION OF GOODS	(45A) : CONTRACT NO. Dated AS PER PACKING LIST (INCOTERMS 2010)
DOCUMENTS REQUIRED	(46A) : AS PER CONTRACT
ADDITIONAL COND. ALLOWED	(47A) : (1) L/C ESTABLISHMENT CHARGES FOR THE INITIAL PERIOD OF 3 MONTHS WILL BE BORNE BY THE PURCHASER, FOR THE REMAINING MONTHS WILL BE BORNE BY THE CONTRACTOR AS FOLLOWS: - L/C establishment charges of @ - L/C establishment charges shall be deducted pro rata from the proceeds of L/C (2) LD AND INTEREST ON ADVANCE AS PER INTIMATION OF APPLICANT SHALL BE DEDUCTED FROM PAYMENT TO CONTRACTOR AND CREDITED BACK TO PURCHASER'S ACCOUNT
DETAILS OF CHARGES	(71B) : ALL CHARGES OUTSIDE OF INDIA ARE TO THE ACCOUNT OF BENEFICIARY
PRESENTATION PERIOD	(48) : UP TO 180 DAYS AFTER SHIPMENT DATE
CONFIRMATION	(49) : CHARGES ARE TO BE BORNE BY THE CONTRACTOR.
REIMBURSING BANK	(53) :
INSTRUCTIONS	(78) : + Documents must be forwarded to us by courier in one lot. + We hereby engage that payments made under and in compliance with all the terms and conditions of this credit will be duly honoured by us upon presentation of the stipulated documents.+ Paying bank may claim reimbursement telegraphically from the reimbursing bank for value 3 days after their authenticated telex/swift advice to the issuing bank of any conform drawing presented under this credit.
ADVICE THROUGH SEND TO REC INFO	(57) : (72) : PHONE (BEN)..... (TEL NO) FAX (BEN)(FAX NO) CONTACT PERSON
OTHER INSTRUCTION	(73) :

APPENDIX 'M'**FORMAT FOR LETTER OF CREDIT
For Indian Supplier in Rupee**

ISSUE OF A DOCUMENTARY CREDIT : (PER S.W.I.F.T TO)

FORM OF DOC CREDIT (40A) : DIVISIBLE AND IRREVOCABLE

DOC CREDIT NUMBER (20) :

EXPIRY (31D) : DATE 30 MONTHS AFTER CONTRACT
EFFECTIVE DATE
PLACE

APPLICANT BANK (51) : STATE BANK OF INDIA

APPLICANT (50) : GENERAL MANAGER,
ORDNANCE FACTORY BHANDARA,
Via.-NAGPUR, MAHARASHTRA-441906
INDIA.

BENEFICIARY (59) :

AMOUNT (32B) : CURRENCY
: AMOUNT

MAXIMUM CREDIT AMOUNT (39B) : NOT EXCEEDING
AVAILABLE WITH/BY (41A) :

DRAFTS AT (42C) : AT SIGHT

DRAWEE (42A) :

PARTIAL SHIPMENT (43P) : ALLOWED

TRANSHIPMENT (43T) : NOT ALLOWED
LOADING IN CHARGE (44A) :
FOR TRANSPORT TO (44B) : GENERAL MANAGER,
ORDNANCE FACTORY
.....

LAST DATE OF SHIPMENT (44D) : MONTHS AFTER CONTRACT
EFFECTIVE DATE

DESCRIPTION OF GOODS (45A) : CONTRACT NO.
Dated
AS PER PACKING LIST (INCOTERMS 2010)

DOCUMENTS REQUIRED (46A) : AS PER CONTRACT

ADDITIONAL COND. (47A) : (1) L/C ESTABLISHMENT CHARGES WILL BE
AALLOWED BORNE BY THE BENEFICIARY AND SHALL BE
DEDUCTED FROM THE PROCEEDS OF L/C
(2) LD AND INTEREST ON ADVANCE AS PER
INTIMATION OF APPLICANT SHALL BE
DEDUCTED FROM PAYMENT TO
CONTRACTOR AND CREDITED BACK TO
PURCHASER'S ACCOUNT

DETAILS OF CHARGES (71B) :

PRESENTATION PERIOD (48) : UP TO 180 DAYS AFTER SHIPMENT
DATE

CONFIRMATION (49) : "WITHOUT"

REIMBURSING BANK (53) :

INSTRUCTIONS (78) : + Documents must be forwarded to us by courier
in one lot. + We hereby engage that payments made under and in
compliance with all the terms and conditions of this credit will be duly
honoured by us upon presentation of the stipulated documents.+ Paying
bank may claim reimbursement telegraphically from the reimbursing bank
for value 3 days after their authenticated telex/swift advice to the issuing
bank of any conform drawing presented under this credit.

ADVICE THROUGH (57) :
SEND TO REC INFO (72) : PHONE (BEN)..... (TEL NO)
FAX (BEN)(FAX NO)
CONTACT PERSON

OTHER INSTRUCTION (73) :

APPENDIX 'N'**MODEL TENDER TERMS FOR PAYMENT**

Applicable for: Explosive plant projects being procured on turn-key basis including civil works under Global TE involving partly foreign component (payment in FE) and partly Indian component (payment in RE).

1.0 Advance Payment:

- 1.1 Normally payment is made after receipt of goods at the site. However, under special circumstances, interest-free advance payment can be considered for up to 15% contract value.
- 1.2 There will be no advance payment for Training and Supervision of Erection & Commissioning services.
- 1.3 Advance payment shall be made only after submission of Bank Guarantee for 110% of advance amount and will be deducted proportionately from subsequent payment.
- 1.4 Advance payment shall be without interest within the original delivery period. In case the delivery of the plant is delayed due to reasons for which the contractor is responsible, interest will be charged on the outstanding amount of the advance payment during the extended delivery period. The rate of interest will be equal to 12-month LIBOR + 100 basis points for payment in foreign currency and SBI's Base rate plus 200 basis points for payment in Indian Rupee, reckoned on the date of release of advance payment.
- 1.5 In case of Machinery and Equipment advance, the contractor shall ensure insurance and hypothecation of the same to the purchaser (employer).

2.0 Mode of Payment:

- 2.1 Payment for Indian parts of the plant in Indian Rupees will be deposited directly to the nominated bank account of the supplier in India.
- 2.2 Payment for imported parts of the plant in foreign exchange will be made through irrevocable and divisible Letter of Credit to be established on a scheduled PSU bank in India. In case the supplier wants the LC to be confirmed, the charges of confirmation will have to be borne by them.

- 2.3 Purchaser will establish LC only three months prior to the actual date of delivery/ shipment. If any extension of the Letter of Credit (LC) is required due to the fault of the supplier, the supplier will have to pay for such extension.
- 2.4 In case supplier insists on establishment of LC immediately after conclusion of contract/ placement of order irrespective of delivery/ shipment schedule, LC will be established by the purchaser immediately after conclusion of contract for a period of three months with a provision in LC that cost of further extension or validity of LC will be borne by the beneficiary and the issuing bank will be advised accordingly while amending the LC.
- 2.5 If supplier insists on opening of LC along with the order for full period of contract and does not accept to bear the LC charges beyond three months, the additional cost involved in keeping the LC valid for the period beyond three months will be loaded on the supplier's quoted price, while evaluating the bids. In case the contract period is extended for reasons for which the supplier is responsible, the cost of maintaining the LC in the extended period will have to borne by the supplier.
- 3.0 **Conditions of Payment:**
- 3.1 Payment for 90% / 80% value of foreign equipment and spares less advance payment if any will be made after despatch on pro rata basis on submission of the following documents:
- (a) Invoices in 6 copies (original and 5 copies) covering the value of goods delivered.
 - (b) 6 copies of packing list.
 - (c) 1 copy of non-negotiable Bill of Lading or airway bill.
 - (d) Certificate of inspection and acceptance of Purchaser's PDI team or of the Contractor.
 - (e) Certificate from the contractor confirming that the original shipment documents have been despatched in accordance with the requirement of the contract to the Port Consignee.
 - (f) Certificate of Origin issued by contractor or its Chamber of Commerce.
 - (g) Certificate from contractor indemnifying against third party rights.
 - (h) Certificate that the equipment and spares are new, unused and from current production.

Note: 90% payment is applicable for inspection & acceptance certificate of Purchaser's representative and 80% payment is applicable for such certificate from the Contractor (when functional PDI by Purchaser is not possible).

3.2 Payment for 90% / 80% basic price of Indian equipment and spares less advance payment if any plus 100% Taxes, Duties, if any, will be made on pro rata basis on receipt of the items at site and against submission of the following documents:

- (a) Invoices in 6 copies (original and 5 copies) covering value of goods delivered.
- (b) 6 copies of packing list.
- (c) Certificate that the equipment and spares are new, unused and from current production.
- (d) Certificate of inspection and acceptance of Purchaser's PDI team or of the Contractor.
- (e) Certificate of receipt at factory from the Purchaser or his representative.
- (f) Documentary proof of actual payment regarding claim for ED, sales tax or any other taxes paid in India.
- (g) Certificate of Contractor indemnifying against third party rights.

Note: 90% payment is applicable for inspection & acceptance certificate of Purchaser's representative and 80% payment is applicable for such certificate from the Contractor (when functional PDI by Purchaser is not possible).

3.3 Payment for 90% price of Design & Documentation less advance payment if any will be released in two stages – (i) 50% less advance amount if any, on receipt of initial documents like design specifications, Approved For construction drawings, layouts, etc and (ii) 40% on receipt of final documents like As Built drawings of the Plant, Operation Manuals, Maintenance Manuals and electronic copies of all documents – on submission of:

- (a) Six copies of commercial invoices (original and 5 copies).
- (b) Signed certificate from the Contractor stating that all initial / final (*as applicable*) design and documentation required as per the Contract have been delivered to the Purchaser as on date of the certificate.
- (c) Certificate of receipt from the Purchaser or his representative.

3.4 Payments for up to 90% of value of civil works less advance payment if any will be made in stages, i.e. after execution of identifiable, measurable and verifiable milestones, on submission of commercial invoices, certified by the CONTRACTOR. For construction of buildings, the stages are (i) Site clearance and excavation for foundation -

10%, (ii) Plinth level - 20%, (iii) Superstructure up to roof level - 30%, (iv) Roof - 20% and (v) Finished building - 10%. For other erection works at site like mechanical, piping, electrical and instrumentation, payment can be made progressively in monthly/quarterly intervals on submission of invoices with copies of measurement records. Each claim for payment will be released within one month after verification by designated official of the Purchaser.

- 3.5 Payment for 90% amount for Training in contractor's premises in foreign country will be released after completion of training on submission of:
- (a) Six copies of commercial invoices (original and five copies)
 - (b) Certificate signed by the Purchaser for completion of training as per the contract.
- 3.6 Balance 10% or 20% payment for above items along with 100% value of Supervision of Erection & Commissioning (E&C) charges will be made, after commissioning and final acceptance of the plant, on receipt of Commercial Invoices with Final Acceptance Certificate and Warranty Bond for 5% of contract value.

APPENDIX 'O'**FORMAT FOR PRE-CONTRACT INTEGRITY PACT**

Ref: Tender Enquiry No Dated

General

1. Whereas the PRESIDENT OF INDIA, represented by _____, hereinafter referred to as the Buyer and the first party, proposes to procure (Name of the **Store/** Equipment), hereinafter referred to as Defence Stores, and M/s _____, represented by, **Mr/ Mrs _____ Chief Executive Officer/ Authorised Signatory** (Designation which term, unless expressly indicated by the contract, shall be deemed to include its successors and its assignees), hereinafter referred to as the Bidder/Seller and the second party, is willing to offer/has offered the stores.

2. Whereas the Bidder is a private company/public company/partnership/registered export agency, constituted in accordance with the relevant law in the matter and the Buyer **is a Departmental Organisation under Ministry of Defence, Government of India** performing its functions on behalf of the President of India.

Objectives

3. Now, therefore, the Buyer and the Bidder agree to enter into this pre-contract agreement, hereinafter referred to as Integrity Pact, to avoid all forms of corruption by following a system that is fair, transparent and free from any influence / unprejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:-

3.1 Enabling the Buyer to obtain the desired defence stores at a competitive price in conformity with the defined specifications by avoiding the high cost and the distortionary impact of corruption on public procurement, and

3.2 Enabling bidders to abstain from bribing or any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also refrain from bribing and other corrupt practices and the Buyer will commit to prevent corruption, in any form, by their officials by following transparent procedures.

Commitments of the Buyer

4. The Buyer Commits itself to the following:-

4.1 The Buyer undertakes that no official of the Buyer, connected directly or indirectly with the contract, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the Bidder, either for themselves or for any person, organization or third party related to the

contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to the Contract.

4.2 The Buyer will, during the pre-contract stage, treat all Bidders alike, and will provide to all Bidders the same information and will not provide any such information to any particular Bidder which could afford an advantage to that particular Bidder in comparison to other Bidders.

4.3 All the officials of the Buyer will report to the appropriate Government office any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.

5. In case of any such preceding misconduct on the part of such official(s) is reported by the Bidder to the Buyer with full and verifiable facts and the same is prima facie found to be correct by the Buyer, necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the Buyer and such a person shall be debarred from further dealings related to the contract process. In such a case while an enquiry is being conducted by the Buyer the proceedings under the contract would not be stalled.

Commitments of Bidders

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

6.1 The Bidder will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Buyer, connected directly or indirectly with the bidding process, or to any person, organization or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the Contract.

6.2 The Bidder further undertakes that he has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Buyer or otherwise in procuring the Contract or forbearing to do or having done any act in relation to the obtaining or execution of the Contract or any other Contract with the Government for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other Contract with the Government.

6.3 The Bidder will not collude with other parties interested in the contract to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract.

6.4 The Bidder will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.

6.5 The Bidder further confirms and declares to the Buyer that the Bidder is the original manufacturer/integrator/ authorised government sponsored export entity of the defence stores and has not engaged any individual or firm or company whether Indian or foreign to intercede, facilitate or in any way to recommend to the Buyer or any of its functionaries, whether officially or unofficially to the award of the contract to the Bidder, nor has any amount been paid, promised or intended to be paid to any such individual, firm or company in respect of any such intercession, facilitation or recommendation.

6.6 The Bidder, either while presenting the bid or during pre-contract negotiations or before signing the contract, shall disclose any payments he has made, is committed to or intends to make to officials of the Buyer or their family members, agents, brokers or any other intermediaries in connection with the contract and the details of services agreed upon for such payments.

6.7 The Bidder shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information provided by the Buyer as part of the business relationship, regarding plans, technical proposals and business details, including information contained in any electronic data carrier. The Bidder also undertakes to exercise due and adequate care lest any such information is divulged.

6.8 The Bidder commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.

6.9 The Bidder shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.

7. Previous Transgression

7.1 The Bidder declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any Public Sector Enterprise in India or any Government Department in India, that could justify bidder's exclusion from the tender process.

7.2 If the Bidder makes incorrect statement on this subject, Bidder can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

8. Earnest Money/Security Deposit

8.1. Every bidder, while submitting commercial bid, shall deposit an amount* _____ as Earnest Money/Security Deposit, with the buyer through any of the following instruments:-

(i) Bank Draft or a Pay Order in favour of the **Buyer**,

(ii) A confirmed guarantee by an Indian Nationalized Bank, promising payment of the guaranteed sum to the **Buyer**, on demand within three working days without any demur

whatsoever and without seeking any reasons whatsoever. The demand for payment by the Buyer shall be treated as conclusive proof for payment. A model Bank guarantee format is enclosed.

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

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

* At present, the amount of EMD/SD is Rs. 1 crore in cases where the cost as estimated by the Buyer is above Rs. 100 crore and up to Rs. 300 crore and Rs. 3 crore if above Rs. 300 crore.

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

8.2. The Earnest Money/Security Deposit shall be valid up to a period of five years or the complete conclusion of contractual obligations to complete satisfaction of both the bidder and the buyer, whichever is later. In case there are more than one bidder, the Earnest Money/Security Deposit shall be refunded by the buyer to those bidder(s) **whose bid does not qualify (do not qualify) after the stages of TEC/ TPC, as constituted by the Buyer, immediately after a recommendation is made by the TEC/ TPC on bid(s)** after an evaluation.

8.3 In the case of successful bidder a clause would also be incorporated in the Article pertaining to Performance Bond in the Purchase Contract that the provisions of Sanctions for Violation shall be applicable for forfeiture of Performance Bond in case of a decision by the Buyer to forfeit the same without assigning any reason for imposing sanction for violation of this pact.

8.4 The provisions regarding Sanctions for Violation in Integrity Pact include forfeiture of Performance Bond in case of a decision by the Buyer to forfeit the same without assigning any reason for imposing sanction for violation of Integrity Pact.

8.5 No interest shall be payable by the Buyer to the Bidder(s) on Earnest Money/Security Deposit for the period of its currency.

9. Company Code of Conduct

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

10. Sanctions for Violation

10.1 Any breach of the aforesaid provisions by the Bidder or any one employed by him or acting on his behalf (whether with or without the knowledge of the Bidder) or the commission of any offence by the Bidder or any one employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act 1988 or any other act

enacted for the prevention of corruption shall entitle the Buyer to take all or any one of the following actions, wherever required:-

(i) To immediately call off the pre-contract negotiations without assigning any reason or giving any compensation to the Bidder. However, the proceedings with the other Bidder(s) would continue.

(ii) The Earnest Money/Security Deposit/Performance Bond shall stand forfeited either fully or partially, as decided by the Buyer and the Buyer shall not be required to assign any reason therefore. (iii) To immediately cancel the contract, if already signed, without giving any compensation to the Bidder.

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

(iv) To encash the advance bank guarantee and performance bond/warranty bond, if furnished by the Bidder, in order to recover the payments, already made by the Buyer, along with interest.

(v) To cancel all or any other Contracts with the Bidder.

(vii) To debar the Bidder from entering into any bid from the Government of India for a minimum period of five years, which may be further extended at the discretion of the Buyer.

(vi) To recover all sums paid in violation of this Pact by Bidder(s) to any middleman or agent or broker with a view to securing the contract.

(vii) If the Bidder or any employee of the Bidder or any person acting on behalf of the Bidder, either directly or indirectly, is closely related to any of the officers of the Buyer, or alternatively, if any close relative of an officer of the Buyer has financial interest/stake in the Bidder's firm, the same shall be disclosed by the Bidder at the time of filing of tender. Any failure to disclose the interest involved shall entitle the Buyer to rescind the contract without payment of any compensation to the Bidder.

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

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

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

11. Fall Clause

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

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

12. Independent Monitors

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

12.2 As soon as the Monitor notices, or believes to notice, a violation of this Pact, he will so inform ***the DGOF and Chairman/ Ordnance Factory Board, Ayudh Bhavan, 10A, S K Bose Road, Kolkata – 700 001.***

13. Examination of Books of Accounts

In case of any allegation of violation of any provisions of this Integrity Pact or payment of commission, the Buyer or its agencies shall be entitled to examine the Books of Accounts of the Bidder and the Bidder shall provide necessary information of the relevant financial documents in English and shall extend all possible help for the purpose of such examination.

14. Law and Place of Jurisdiction

This Pact is subject to Indian Law. The place of performance and jurisdiction is the seat of the Buyer i.e. ***the nearest location from the seat of the Buyer of a High Court or a Bench of High Court.***

15. Other Legal Actions

The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the extant law in force relating to any civil or criminal proceedings.

16. Validity

16.1 The validity of this Integrity Pact shall be from date of its signing and extend up to 5 years or the complete execution of the contract to the satisfaction of both the Buyer and the Bidder/Seller, whichever is later.

16.2 Should one or several provisions of this Pact turn out to be invalid; the remainder of this Pact remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

17. The Parties hereby sign this Integrity Pact at _____ on _____

BUYER
Witness

1. _____
2. _____

BIDDER
Witness

1. _____
2. _____

APPENDIX 'P'

FORMAT FOR INTEGRITY PACT BANK GUARANTEE (IPBG)

(For submitting EMD as per Pre-contract Integrity Pact)

To

General Manager

Guarantee No:

Amount of Guarantee:

Guarantee cover up to:

1. Whereas(hereinafter called the “Bidder”) has submitted their offer dated..... (hereinafter called the “Bid”) to the President of India acting through the General Manager, (hereinafter called the “Buyer”) for the supply of against Tender Enquiry No..... dated and
2. Whereas the Buyer has stipulated that a Bank Guarantee is to be furnished by the Bidder as Earnest Money Deposit with the Bid.
3. KNOW ALL MEN by these presents that WE having our registered office at (hereinafter called the “Bank”) are bound unto the Buyer in the sum of Rs(in words, Rupees) for which payment will and truly be made to the said Buyer and the Bank binds itself, its successors and assigns by these presents, sealed with the Common Seal of the said Bank this..... day of20.....

4. We undertake to pay the Buyer the above guaranteed amount on demand within 3 (three) working days, without any demur and without seeking any reasons whatsoever, upon receipt of a written request for payment from the Buyer stating the occurrence of one or more of the below mentioned conditions. The demand for payment by the Buyer shall be treated as conclusive proof for payment.
5. The Buyer shall be entitled to demand the guaranteed amount due to occurrence of any one of the following conditions:
 - (A) If the Bidder or any one employed by him or acting on his behalf violates any of the provisions of the Pre Contract Integrity Pact signed by the Bidder with the Buyer.
 - (B) If the Bidder withdraws or amends their Bid in any respect during the period of validity of the Bid.
 - (C) If the Bidder having been notified of the acceptance of his tender/Bid by the Buyer during the period of its validity,
 - a) Fails to furnish the Performance Security for the due performance of the contract.
 - b) Fails or refuses to accept/execute the contract.
6. This guarantee shall be valid up for a period of five years i.e. _____(date). The validity period of this guarantee shall be extended from time to time by the Bidder as required by the Buyer upto complete conclusion of contractual obligations to complete satisfaction of both the bidder and the buyer or a period of five years, whichever is later.
7. This guarantee will not be revoked during the above period except with the previous consent of the Buyer in writing and the Bank's liability under this guarantee shall not be discharged by any variation in the terms of the commercial offer.
8. No interest shall be payable by the Buyer to the Bidder on the guarantee for the period of its currency.

Place:

Date:

.....

(Signature of the authorized officer of the Bank)

Name and designation of the officer

Seal, name & address of the Bank and address of the Branch

APPENDIX 'Q'

FORMATS FOR FY TEC / TPC MINUTES

(A) Model format for preparation of Minutes of Factory TEC recommendation

1. Nomenclature and quantity of the machine
2. Demand No. and year. Ref of RR Plan (for RR m/cs) and LAO's concurrence.
3. OFB's sanction/clearance, reference and date.
4. Estimated cost FE & RE
5. Mode of tendering, justification and authority to the same along with a copy of factory TPC minutes.
6. Date of issue of tender enquiry, due date of opening, names of the firms to whom Tes were issued.
7. Details of offers received including firms responded, regretted and not responded.
8. Date of TEC meeting and details of offers considered technically acceptable and reason for accepting deviation, if any.
9. Details of offers not considered technically acceptable along with reasons duly linking with relevant clause of tender specification.
10. Specific comments in respect of offers not considered technically acceptable as to whether the same may meet factory's requirement from functional point of view, if not firm-wise comments specifying the limitation of offers vis-à-vis functional necessity.
11. Whether the requirement still exists keeping in view the present & anticipated product-mix and production load.
12. Whether factory is satisfied with the performance of similar m/c. supplied by the firms. The basis on which factory considers their performance satisfactory to be clarified.
13. Clause-wise technical CST in respect of the all offers on equitable basis, to be attached.
14. Clause-wise deviation statement to be attached, if Fy proposes discussion/negotiation with the bidders on certain points.
15. In case of limited tender enquiry, factory to comment whether the reputed firms have been issued with tender enquiry. In the event of lack of competition/poor response Fy TEC shall comment on whether re-tendering/OTE will fetch more competition.
16. Any other points needing elucidation relevant to the case but not covered in the above format.
17. Recommendation of Fy's TEC headed by GM duly associating LAO.

SIGNATURE

SIGNATURE

SIGNATURE

(B) Model format for preparation of Minutes of Factory TPC recommendation

1. Nomenclature and quantity of the m/c.
2. Demand No. and year.
3. OFB approval and date reference authorising factory for opening of price bids.
4. Date of Factory TPC meeting.
5. In case of imported offer –
 - i) Country of origin.
 - ii) Rate of exchange taken for arriving at FE requirement.
 - iii) Whether custom duty exempted if not rate to be given.
 - iv) Confirmation that order will be placed on foreign principal only and that there is no involvement of Indian Agent requiring payment of agency commission.
6. Financial CST in respect of technically acceptable offers taking scope of supply on equitable basis.
7. Whether the cost of recommended offer is considered reasonable, if so justification for the same.
8. Whether re-tendering of item is considered advantageous to get cheaper offers.
9. Whether scope of supply can be reduced to the barest minimum without affecting the inescapable necessity.
10. Payment terms accepted by firm and recommended by factory. Whether other commercial terms and conditions are acceptable to the factory.
11. Cost comparison of recommended offer with the estimated cost. In case of wide variation, indicate specific reasons and also state whether there has been any revision in scope of supply.
12. Cost details of the recommended offer vis-à-vis sanctioned cost and details of additional fund if any for the total purchase.
13. Validity of recommended offers.
14. Any specific/special issue where approval of OFB is needed.
15. A Statement of Case (SOC) shall be attached, giving chronological history of the case from demand approval stage onwards.
16. Recommendation of factory TPC headed by GM duly associating LAO.

SIGNATURE

SIGNATURE

SIGNATURE

APPENDIX 'R'

**(A) MODEL AMENDMENT LETTER FOR EXTENSION OF DELIVERY PERIOD
FOR FOB/FAS/CIF CONTRACT
Registered Acknowledgement Due**

Address of the purchaser

To
M/s
.....

Sub: This office contract no..... dated placed on you for supply of
.....

Ref: Your letter no..... dated

Dear Sirs,

You have failed to deliver the goods / entire quantity of the goods within the contract deliver period/delivery period as last extended up to _____. In your above referred letter, you have asked for extension/ further extension of time for delivery. In view of the circumstances stated in your above referred letter, the time of delivery is extended from _____ (last delivery period) to _____ (presently agreed delivery period).

2. Please note that in terms of clause..... of the contract, a sum equivalent to% (..... per cent) of the delivered price of the delayed goods for each week of delay or part thereof (subject to the ceiling as provided in the aforesaid clause) beyond the original contract delivery date/the last unconditionally re-fixed delivery date (as & if applicable) viz. zzz will be recovered from you as liquidated damages.

3. The above extension of delivery date will also be subject to the further condition that, notwithstanding any stipulation in the contract for increase in price on any ground, no such increase, whatsoever, which takes place after zzz shall be admissible on such of the said goods as are delivered after the said date. But, nevertheless, the purchaser shall be entitled to the benefit of any decrease in price on any ground (including the impact of the price variation clause, if incorporated in the contract), which takes place after the expiry of the above mentioned date namely zzz.

4. You are also required to extend the validity period of the performance guarantee for the subject contract from (present validity date) to (required extended date) within fifteen days of issue of this amendment letter.

5. Please intimate your unconditional acceptance of this amendment letter within ten days of the issue of this letter failing which the contract will be cancelled at your risk and expense without any further reference to you.

All other terms & conditions of the contract remain unaltered.

Yours faithfully,
(.....)
for and on behalf of.....

Copy to :

.....
.....
.....

(All concerned)

zzz Original delivery date or the last unconditionally re-fixed delivery date (as the case may be)

NB : The entries which are not applicable for the case under consideration are to be deleted.

**(B) MODEL AMENDMENT LETTER FOR EXTENSION OF DELIVERY PERIOD
FOR CONTRACT OTHER THAN FOB/FAS/CIF CONTRACT**

Registered Acknowledgement Due
Address of the purchase office

To

M/s

.....

Sub: This office contract no..... dated Placed on you for
supply of

Ref: Your letter no..... dated

Dear Sirs,

You have failed to deliver the goods / entire quantity of the goods within the contract deliver period/delivery period as last extended up to _____. In your above referred letter, you have asked for extension/ further extension of time for delivery. In view of the circumstances stated in your above referred letter, the time of delivery is extended from _____ (last delivery period) to _____ (presently agreed delivery period).

1. Please note that in terms of clause..... of the contract, a sum equivalent to% (..... per cent) of the delivered price of the delayed goods for each week of delay or part thereof (subject to the ceiling as provided in the aforesaid clause) beyond the original contract delivery date/the last unconditionally re-fixed delivery date (as & if applicable) viz. zzz will be recovered from you as liquidated damages.
2. The above extension of delivery date will also be subject to the following further conditions:-
 - i) That no increase in price on account of any statutory increase in or fresh imposition of custom duty, excise duty, sales tax or on account of any other tax or duty leviable in respect of the goods specified in the said contract, which take place after zzz shall be admissible on such of the said goods as delivered after the said date.
 - ii) That notwithstanding any stipulation in the contract for increase in price on any ground, no such increase whatsoever, which takes place after zzz shall be admissible on such of the said goods as are delivered after the said date.
 - iii) But nevertheless, the purchaser shall be entitled to the benefit of any decrease in price on account of reduction in or remission of custom duty, excise duty, sales tax or on account of any other tax or duty or any other ground whatsoever, including the impact of price variation clause (if incorporated in the contract), which takes place after the expiry of the above mentioned date namely zzz.
3. You are also required to extent the validity period of the performance guarantee for the subject contract from(existing date) to (required extended date) within fifteen days of issue of this letter.
4. Please intimate your unconditional acceptance of this amendment letter, to reach this office within ten days of issue of this letter, failing which the contract will be cancelled at your risk and expense without any further reference to you.
5. All other terms & conditions of the contract remain unaltered.

Yours faithfully,
(.....)
for and on behalf of.....

Copy to :

.....
.....
.....

(All concerned)

zzz Original delivery date or the last unconditionally re-fixed delivery date (as the case may be)

NB : The entries which are not applicable for the case under consideration are to be deleted.

APPENDIX 'S'

**FORMAT FOR PROPRIETARY ARTICLE CERTIFICATE /
SINGLE KNOWN SOURCE CERTIFICATE**

Description of Machine: _____

It is certified that:

- (i) The above mentioned equipment/machine is manufactured by M/S
.....
- (ii) No other make or model is acceptable for the following reasons:
.....
- (iii) Concurrence of finance / LAO to the proposal obtained vide:-
.....
- (iv) Approval of the competent authority vide:

CO/User Section

GO/User Section

DO/User Section

Finance Member

CO/EO

GO/EO

APPROVED/ NOT APPROVED

Sr. General Manager/General Manager

APPENDIX 'T'**CARGO PARTICULARS INTIMATION FORM****MINISTRY OF SHIPPING****CHARTERING WING****(SHIPPING CO-ORDINATION COMMITTEE)**

Particulars of Cargo for which shipping space is required to be arranged by Ministry of Shipping (Chartering Wing) on behalf of Ministry/Department/PSU.

Sl No	Name of Supplier with full Postal Address including Telephone/Tellex/fax No.	Contract No. & Date.	Name of the Consignee with Telegraphic Postal Address.	Particulars of Cargo – *whether ship loads or Parcel if the later, size of parcel.			Period of shipment.	Loading Port.	Discharge port.
				Description	Quantity	Lable*			

Note : This form should be filled in and sent in duplicate (Both for Bulk and Liner Cargo) to the Chief Controller of Chartering, Ministry of Surface Transport, Chartering Wing, New Delhi, together with two copies of Purchase / Sale Contract.

APPENDIX 'U'

CIRCULARS OF MINISTRY OF SHIPPING (1/2)

TELEGRAM: TRANSCHART
TELEX: VAHN IN 31-61157/
31-61158/31-61159

FAX NO: 3718614/3352726
TELEPHONE: 3710356/3710039/
3718390/3719480

**GOVERNMENT OF INDIA
MINISTRY OF SURFACE TRANSPORT
(CHARTERING WING)**

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

Dated. the 15th November, 2001

OFFICE MEMORANDUM

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

.....

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

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

Contd...

-2-

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

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

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

5. Hindi version is also enclosed.

Sd/-
(T.V. SHANBHAG)
CHIEF CONTROLLER OF CHARTERING

To

- (1) All Ministries/Departments of Government of India2 copies
- (2) The Chief Secretary to all the State Governments including the Union Territories.

CIRCULARS OF MINISTRY OF SHIPPING (2/2)

**Government of India
Ministry of Surface Transport
(Chartering Wing)**

No. SC-18013/1/98-ASO.II New Delhi,
1998

the 11th February,

OFFICE MEMORANDUM

Sub: Govt. Departments / Public Sector Projects/Undertakings Contracting of FOB/FAS import and CIF exports – shipping arrangement through the Ministry of Surface Transport (Chartering Wing) from various sectors-procedure regarding.

The undersigned is directed to say that as per general policy of Government of India, all import contracts have to be concluded on FOB/FAS and those for exports on CIF basis in respect of Government owned and controlled cargoes and shipping arrangements are centralized with Chartering Wing of Ministry of Surface Transport. For any departure from the above policy, prior approval of this Ministry is required. The policy provides for grant of waivers in suitable cases where it is found it is not possible to follow the said policy.

2. The shipping arrangements are being made by Chartering Wing, Ministry of Surface Transport by using Indian flag vessels and if no suitable Indian vessels are available in the required position, foreign flag vessels are chartered. Shipping arrangements in respect of Government general liner cargoes are being made by this Ministry through respective Government of India's freight forwarders like M/s. Schenker International, Humburg, M/s. OPT, USA etc. Shipment of general liner cargo is not restricted to Indian flag vessels and it is shipped by any vessel belonging to Conference member lines which are operating from various sectors.

3. The Government of India has an agreement with India-Pakistan- Bangladesh-Ceylone and Burma Freight Conference (INDPAKCON) FMC Agreement No.7690) covering the trade from US Atlantic and Gulf ports to India through the vessels belonging to the Member lines of this Conference only and as per the agreement all Government of India/State Government Departments/PSUs/Projects cargoes are to be shipped only through the vessels of Member Lines belonging to this Conference.

4. Similarly, the Government of India has another agreement with India- Pakistan Bangladesh Conference (IPBC) covering the trade from ports in the United Kingdom including Northern Ireland, North Continent of Europe (Germany, Holland, Belgium, Norway, Sweden, Denmark, Finland) and from parts on the continental sea boards of the Mediterrean (i.e. French and Western Italian Port) to ports in India. It is obligatory on the part of Government to ship all Government liner cargoes through the vessels belonging to this Conference.

5. In order to ensure smooth and timely shipment of governmental general liner cargoes, the Government of India, Ministry of Surface Transport has appointed freight forwarding agents from various areas as mentioned below:

6. M/s . Schenker International Deutschland GmbH
Postfach 11 03 13
20403 Hamburg
Dei den Muhren 5
20457 Hamburg.

Tel : (040) 36135-537
Fax : (040) 36135-509
Tlx : 21700 sh d

(In respect of government general liner cargoes emanating from UK/North Continent as indicated in para (2) above).

2. M/s OPT Overseas Project Transport Inc.,
(A Thyssen Haniel Logistic Co.)
46, Sellers St., Kearny, N.J. 07032, USA

Tel : (201) 998-771, TLX : 673-3586, FAX : (201) 998-7833

(In respect of cargoes emanating from US Gulf, Canada & South America)

3. Embassy of India,
2-11, Kudan Minami 2-chome
Chiyoda-ku
TOKYO 102

TLX : 2324886, INDEMB J
Phone : 03 (3262) 2391
FAX : 03 (3234) 4866

(In respect of government general liner cargoes emanating from Japan)

4. Embassy of India
San-2-1
Bokwang-Doong, Yongsan-ku
(Behand Bewling Centre)
Seoul, South Korea (CABLE IND EMBASSY, SEOUL, SOUTH KOREA)

Telex : K211641, Tele. 793-4142, 704159

(In respect of cargoes emanating from South Korea)

5. Shipping Corporation of India Ltd.
Shipping House
245, Madame Cama Road
Mumbai

Tlx : 011-2214/2371 SCI IN)

Phone : 2026666/2026785

(In respect of cargoes being shipped from all other areas which are not covered from (1) to (4) above).

6. In order to ensure compliance with the transportation agreement with INDPACKCON, IPBC, M/s Opt, USA and M/s Schenker International, Hamburg, all the Public Sector Undertakings, Projects are requested to prescribe in their purchase contracts that all booking must be made through Government of India's respective freight forwarders as indicated above and the same may also be incorporated in the letter of credit to ensure shipping arrangements through the vessels of Members of the Conference and appointed freight forwarders.

7. It has been brought to the notice of this Ministry that some of the Public Sector Undertakings are not following the above policy and shipping arrangements are made through other than GoI appointed freight forwarders. It has been further brought to the notice of this Ministry that some of the Indian freight forwarding companies are claiming to have been appointed as freight forwarders by M/o Surface Transport which is not correct. Therefore, it is advised that Government of India and State Government Departments and Public Sector Undertakings should ensure (as indicated above) only and should not entertain any other freight forwarder in this regard.

8. It is requested that the above may kindly be brought to the notice of all the Public Sector Undertakings/projects/purchase and selling organizations under the administrative control of the Ministries/Departments concerned and they may be advised to follow the prescribed procedure for arranging shipment of their cargoes through Chartering wing (Transchart) of this Ministry and incorporate the prescribed shipping clauses in the import/export contracts.

Sd/-

(T.V. SHANBHAG)
Chief Controller of Chartering

To

1. All Ministries/Departments2 copies
2. The Chief Secretary to all the State Governments

APPENDIX 'V'

FORMAT FOR TAKING OVER CERTIFICATE (TOC)

CONTRACT No.

PURCHASER :

CONTRACTOR : M/s

I, the undersigned hereby certify that CONTRACTOR **(and his INDIAN / FOREIGN COLLABORATOR)* have supplied and erected all equipment in accordance with the CONTRACT and the same are found satisfactory in preliminary checks. The plant/equipment has been taken over by the PURCHASER.

DATE OF TAKING OVER:

This certificate is issued without prejudice to final acceptance tests, warranty and other obligations of the CONTRACTOR as per the CONTRACT.

Remark: Minor defaults or deficiencies that do not hinder the start up and the actions to be taken by the CONTRACTOR to remedy the same along with corresponding deadlines are recorded by the PARTIES in the attached list.

SIGNATURE OF REPRESENTATIVE OF THE PURCHASER
DATE OF SIGNATURE:

** To be deleted if not applicable.*

APPENDIX 'W'

FORMAT FOR FINAL ACCEPTANCE CERTIFICATE (FAC)

CONTRACT No. :

PURCHASER :

CONTRACTOR : M/s

I, the undersigned hereby certify that CONTRACTOR **(and his INDIAN / FOREIGN COLLABORATOR)* have completed commissioning of the plant/equipment and the performance testing has shown that the plant/equipment has attained the minimum performance levels as per the CONTRACT.

This certificate is issued without prejudice to warranty and other obligations of the CONTRACTOR as per the CONTRACT.

Remark: Minor adjustments or additions or replacements or other pending obligations to be completed by the CONTRACTOR, which do not hinder the plant/equipment from being operated, and the deadlines for completing the same are recorded by the PARTIES in the attached list.

ACCEPTANCE DATE:

SIGNATURE OF THE PURCHASER
DATE OF SIGNATURE:

** To be deleted if not applicable.*

APPENDIX 'X'**FORMAT FOR OBTAINING PERMISSION FOR FOREIGN NATIONALS***[for Visit to Ordnance Factories or OFB Hqrs]*

1	Name & Sex	
2	Nationality	
3	Date of Birth	
4	Name & Nationality of Parents	
5	Present Address	
6	Permanent Address	
7	Passport No & Date, Place of issue, Period of validity.	
8	Occupation	
9	Whether previously in India? If so Date, Place & Purpose of Previous Visit	
10	a. Whether area to be visited is sensitive/ non-sensitive? b. If any protective or sensitive area is to be visited the justification thereof. c. Details of Shop/Area to be visited.	
11	a. Whether Foreigners are Visiting Ordnance Factories for their own work or for Govt/OFB work? (Please indicate either their own work/OFB/Govt work) b. Purpose of visit. c. Duration of visit	

Encl: Copies of Passports of Foreign Nationals and Firm's letter.

GENERAL MANAGER
ORDNANCE FACTORY,

Note: Under Member/OFB's power, permission can be given for duration of less than three months at a time.

APPENDIX 'Y'**FORMATS FOR IRR CALCULATION****METHOD-I**

FORM NO. 1A (ASSUMPTIONS / OPERATING PARAMETER FORM)													
Name of the Project / Proposal :													Date:
Name of the Factory :													
Sl. No	Cost Head	Units	Before Investment	Projection									
				Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10
1	Manpower a) Direct/Indirect (IEs) b) Others	Nos Nos											
2	Operating parameter relating to materials a) Rejection % b) Yield % c) Rework %												
3	Energy consumption a) Power cost b) Fuel cost	Rs. In lakhs p.a.											
4	Consumables (please specify)	Rs. In lakhs p.a.											
5	Tools & Jigs (if not included in 4)	Rs. In lakhs p.a.											
6	Repairs & maintenances cost p.m.	Rs. In lakhs p.a.											

FORM NO. 1B (VALUATION FORM)													
Name of the Project / Proposal :													
Name of the Factory :												Date:	
Sl. No.	Cost Head	Units	Before Investment	Projection									
				Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10
1	Manpower costs a) Average Manpower Costs (IEs) b) Average Manpower Costs (Others)	Rs in lakh											
2	a) Rejection Valuation Product 1/ Product 2/ Product 3 DM+DL+VOH (Excl. Ind. Labour) (Reduced effect of rejection scrap to be given due to less rejection) b) Yield product wise : pls. specify (based on input material cost) c) Rework valuation : product wise pls. specify	Rs in lakh Rs in lakh											
3	Deterioration factor (please specify)												
4	Incremental costs product wise DM+DL+VOH (Excl Ind. Labour) pls. specify												
5	Price from Trade/ Import/Revised OFB Price after investment Product												

	wise												
6	Inflation %												

FORM NO. 1C (PRODUCT MIX FORM)												
Name of the Project / Proposal : Name of the Factory :												
												Date:
Sl. No.	Product Mix (Quantity)	Units	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10
1	Without Investment Product 1 Product 2 Product 3	MT/Nos										
2	With Investment With old machines, till disposal Product 1 Product 2 Product 3 With New machines Product 1 Product 2 Product 3 Total Product 1 Product 2 Product 3	MT/Nos MT/Nos MT/Nos										
3	Increase / Decrease in Demand Product 1 Product 2 Product 3	MT/Nos										

FORM NO. 1D (SUMMARY SAVINGS FORM)												
Name of the Project / Proposal : Name of the Factory :												
Date:												
Sl. No.	Saving	Units	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10
1	Savings in Manpower cost a) Average Manpower Costs (IEs) b) Average Manpower Costs (Others)	In Rs. lacs In Rs. lacs										
2	Savings in Material cost Product 1 Product 2 Product 3											
3	Savings in Energy cost Power Fuel	In Rs. lacs In Rs. lacs										
4	Savings in Consumables Cost											
5	Tools & Jigs											
6	Savings in repairs & maintenance											
7	Savings in Rejections In Units In Costs											
8	Savings in Yields In Units In Costs											
9	Savings in Reworks In Units In Costs											
A	Total Direct Savings for existing prodn.											
11	Incremental Cash outflow (Basis: Trade											

	/ Import / OFB price : item 5 of 1B)											
12	Incremental OFB cost (DM-VOH excluding indirect labour)											
B	Cash inflows											
A- B	Total Cash inflows – Real Terms											
NOTE: ROW 11&12 for 'B' will be utilized when the production after investment is increased by more than 50% In such cases 100% of the existing production will fall under 'A' for valuation of saving and the balance under 'B'. If increase is less than 50% the whole quantity will qualify for saving under 'A'.												

FORM NO. 1E (IRR CALCULATION FORM)												
Name of the Project / Proposal :												
Name of the Factory :												
Date:												
Sl. No.	Saving	Units	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10
1	Cash outflows: a)Investment b)Residual value of M/c replaced prematurely											
2	Cash inflows of savings in nominal terms											
3	Salvage value of the old machine											
4	Usable value of new machine											
5	Net cash flows or sum of inflows and outflows											
6	Cumulative cash flows											
Internal rate of return (IRR)												
Pay back period												

METHOD-II**FORM NO. 2A**

Name of the Project / Proposal :

Name of the Factory :

Date:

Sl. No.	Particulars	Units	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10
1	Volume of Production (Qty)											
2	Rate (note below) a) International price b) Domestic price c) Internal	Rs in lakh										
3	Material Cost	Rs in lakh										
4	Manpower Industrial Employees: a) Total No IEs b) Rate IEs c) Total manpower cost IEs Others: a) Total Nos b) Rate others c) Total Manpower cost others	Rs in lakh										
5	Recruitment Industrial Employees: a) Nos IEs b) Recruited Manpower cost IEs Others: a) Nos others b) Recruited manpower cost others	Rs in lakh										
6	Variable overhead excluding indirect Labour: a) Major items (pls specify) b) Others	Rs in lakh Rs in lakh										
7	Fixed overhead excluding manpower cost. a) Major items (pls	Rs in lakh										

	specify) b) Others	Rs in lakh										
8	Depreciation	Rs in lakh										

NOTE:

Import / Domestic price if available, the same should be taken.

Otherwise internal price after investment to be taken.

FORM NO. 2B

Name of the Project / Proposal :

Name of the Factory :

Date:

Sl. No.	Particulars	Units	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10
1	Value of issue:	In Rs Lakh										
2	Cost of Production Direct Material Direct Labour Variable overheads Fixed overheads	In Rs Lakh In Rs Lakh In Rs Lakh In Rs Lakh In Rs Lakh										
3	Total cost	In Rs Lakh										
4	Net Surplus / (deficit)	In Rs Lakh										
5	Add depreciation (if included in FOH)	In Rs Lakh										
6	Net cash inflows in real terms	In Rs Lakh										

FORM NO. 2C

Name of the Project / Proposal :

Name of the Factory :

Date:

Sl. No.	Cash flows	Units	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10
1	Cash outflows of the investment	In Rs Lakh										
2	Cash inflows - Nominal terms	In Rs Lakh										
3	Value of the new machine	In Rs Lakh										
4	Net cash flows or sum of inflows and outflows	In Rs Lakh										
5	Cumulative cash flows	In Rs Lakh										
Internal rate of return (IRR)												
Pay back period												

APPENDIX 'Z'**FORMAT FOR FINANCIAL CLOSURE OF PROJECTS****BOARD MEMORANDUM**

3. ITEM NO.
4. ORIGINATING DIVISION:
5. PROPOSAL/SUBJECT IN BRIEF : Submission of Proposal for Financial Closure Of Project
6. BACKGROUND AND JUSTIFICATION:

A) Project was sanctioned vide M of D letter No.....dated..... as per the following details:

	FE	RE	Total
P&M			
CW			
Total			

B) Capacities to be created were as below:

Factories involved	Description of products	Capacity to be established

C) Revised Sanction/Revised Capacity, if any

D) PRESENT STATUS:

(a) The project was physically closed on vide Board Memorandum No. dtd..... and Board Decision vide U.O. No. dt

(b) Physical Achievement :

(ii) Plant & Machinery

All the Plant & Machinery under the project have been received, erected and commissioned to the tune of 100% and entered in Machinery Block Register.

(iii) Civil Works:

The scope of works under the project have been completed to the tune of 100% and taken in charge.

E) FINANCIAL ACHIEVEMENT

Sanctioned Amount (2)			Expenditure booked till date(2)			Liability (3)			Completion cost (4)	Remarks if any
FE	RE	Total	FE	RE	Total	FE	RE	Total	(2) + (3)	
P&M										
CW										
Total										

F) TIMES OVER RUN WITH REASONS FOR DELAY

G) COST OVER RUN WITH REASONS THERE OF (IF ANY)

H) PRODUCTION ACHIEVEMENT

Factory	Description of end products	Capacity created	Capacity achieved till date	Remarks

7. VIEWS OF FINANCE DIVISION
8. POINT REQUIRING ATTENTION/SANCTION OF OFB:
9. This issues with the approval of Member/

(PROJECT OFFICER)

SECRETARY/OFB

APPENDIX-AA**FORMAT FOR ECS MANDATE**

Customer's option to receive payments through e-Payment (ECS/ EFT/ DIRECT CREDIT/ RTGS/ NEFT/ Other payment mechanism as approved by RBI.)

1. Customer's name:

2. Particulars of Bank Account –

a	Bank name	
b	Branch name	
c	Address	
d	Telephone numbers	
e	IFSC code	
f	9 Digit code number of Bank and Branch appearing on MICR cheque issued by Bank	
g	Account Type (S.B. Account / Current Account or Cash)	
h	Ledger number	
i	Ledger Folio number	
j	Account number as appearing on Cheque Book	

3. Please attach a blank cancelled cheque, or, photocopy of a cheque or front page of your savings bank passbook issued by your bank for verification of the above particulars.

4. Date of Effect:

"I, hereby, declare that the particulars given above are correct and complete. If the transaction is delayed or not effected at all for reasons of incomplete or incorrect information, I would not hold the user institution responsible. I have read the option invitation letter and agree to discharge the responsibility expected of me as a participant under scheme."

Date -
Customer

(.....)
Signature of

Certified that the particulars furnished above are correct as per our records.

Date:
(.....)

Bank's Stamp:

Signature of the Authorized Official from the Bank

APPENDIX-AB**FORMAT FOR INDEMNITY BOND**

NOTE: To be executed on non-judicial paper of appropriate value and notarised.

1. This DEED OF INDEMNITY is made at on this.....day of by M/s _____, a society registered under The Act having its registered office at _____ (hereinafter referred to as the "SELLER").
2. Whereas (Sr) General Manager, acting on behalf of the President of India (hereinafter referred to as "BUYER") has placed a Contract No _____ dated _____ on the SELLER for supply of (name of machine).
3. And whereas, it is one of the terms of the said contract that the SELLER shall furnish an Indemnity Bond in lieu of Advance Bank Guarantee / Performance Bank Guarantee / Warranty Bond to the BUYER.
4. And whereas the SELLER has agreed to furnish in favour of the BUYER an Indemnity Bond on the terms and conditions appearing hereinafter.
5. Now therefore, in pursuance of the said agreement, the SELLER hereby declares and undertakes to the BUYER that:-
 - a. The SELLER shall duly and faithfully perform its obligations under the said contract including warranty obligations and comply with the conditions in the said contract.
 - b. The SELLER shall, in as much as within its control, refrain from such actions that may cause loss, injury, damage to the BUYER.
 - c. In the event of breach/default by the SELLER in performing as per the said contract and in case the breach/ default is not remedied by the SELLER up to period of the notification of the breach/default by the BUYER, the SELLER shall indemnify the BUYER, to the extent of _____ (Rupees _____ only) being ____% of the contract value, against any direct losses or damages suffered by the BUYER due to the breach/default by the SELLER.
 - d. The SELLER shall be fully discharged of its obligations under this bond on meeting its liability as per Para (c) above, which shall be restricted to the limit as provided at Para (c) above.
 - e. The SELLER shall not be liable for any breach/default arising out of force majeure situation or due to any default, action, inaction or failure on the part of the BUYER. The liability of the SELLER under this bond shall remain in full force until three months after the fulfilment of the obligations of the SELLER under the said contract i.e. up to (expiry date).
 - f. The SELLER hereby expressly, irrevocably, and unreservedly undertake and guarantee that in the event that the BUYER submits a written demand to SELLER stating that they have not performed according to the contractual obligations, SELLER will pay BUYER

on demand and without demur any or all sum up to maximum amount stated at (c) above. BUYER'S written demand shall be conclusive evidence to SELLER that such repayment is due under the terms of the said contract. SELLER undertakes to effect payment within ____ days from receipt of such written demand.

- g. Unless a demand is received by SELLER in writing by post/fax/email/any other mode on or before the expiry date (unless the same is extended by the SELLER) all rights under this indemnity shall be forfeited and SELLER shall be discharged from the liabilities hereunder.
 - h. The Bond shall not be discharged due to the change in the constitution of the SELLER or by absorption with any other body or company or otherwise and this indemnity will be enforceable through such body or company.
 - i. Any breach of the provision of this Indemnity Bond shall make the SELLER liable of all consequences including legal action under the provisions of law in the country.
6. This Indemnity Bond shall be governed by Indian Law.
7. The undersigned hereby declares that it has power to issue this Indemnify Bond and the undersigned has full powers to do so.

For

Signature:

Name:

Witness:

1.

2.

(Name and full address of witnesses to be mentioned after signature)

INCORPORATION OF AMENDMENT / ADDENDUM IN TENDER CONDITION**Part I : INSTRUCTION TO TENDERERS**

ATC Clause No.	OFBPM TE clause No.	Clause Heading	Description
5.0 (b)	Addendum	DEFINITION OF BIDDER/TENDERER	Bidder/tenderer (including the term 'tenderer', 'consultant' 'vendor' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), participating in a procurement process.
14.0 (a)	14. (a)	EARNEST MONEY DEPOSIT (BID SECURITY):-	Bidders are required to submit Earnest Money Deposit (EMD) for amount of Rs...../- (.....In Words.....) along with their bids. Bids received without EMD shall be summarily rejected without technical evaluation. The EMD may be submitted in the form of an Account Payee Demand Draft and Banker's Cheque (In Case of Demand Draft and banker's cheque EMD shall be in favour of Munitions India Limited-Factory Name), Insurance Surety Bond, Fixed Deposit Receipt or Bank Guarantee (Annexure) from any of the scheduled Commercial Banks in India as per Form enclosed. EMD shall be in favour of "The General Manager, Factory name :....., Unit of Munition India Limited, Address of Factory :" .
14.0 (c)	14 (c)		EMD shall be obtained from the bidders except Micro and Small Enterprises (MSE) as defined in MSE Procurement Policy issued by Dept. of Micro, Small and Medium Enterprises or Startups as recognized by Dept. of Industrial Policy and Promotion (DIPP) as per GeM GTC. Note : No exemption of EMD will be available for MSE Firms participating in consortium / Collaboration / Joint Venture with foreign firms.
14.0 (d)	14 (d)		The EMD will be forfeited if the bidder withdraws or amends impairs or derogates from the tender in any respect within the validity period of their tender or if the successful bidder fails to furnish the required performance security within the specified period.

17 (b)	17 (b)	PRICE BID	Rates for Spares should be quoted separately item-wise as per Annexure D(TO BE UPLOADED IN FINANCIAL DOCUMENT FIELD ONLY) and not to be included in the price of the machine. The price quoted for spares by the firms will not be taken into account for deciding the ranking position of the firm. Ordering of the spares will be handled separately by the buyer.(if required at the time of placement of order.)
17 (f)	17 (f)		Indian firm (having prerequisite experience of manufacturing and supplying similar plant & machinery) can bid OR Indian firm (machine/plant manufacturing entity or a system integrator of defence equipment) can bid in this tender in collaboration/consortium/Joint Venture with a foreign firm (having prerequisite experience of supplying similar plant & machinery) In case of collaboration for bidding, a copy of collaboration agreement or MOU is to be submitted, clearly defining the responsibility for the scope of work with reference to NIT/TE and subsequent liabilities of the contract. OR a). Cases where the Indian OEM participates only through it's authorised Vendors: Indian authorized vendor/dealer authorized by Indian OEM (having prerequisite experience of supplying similar plant & machinery) can bid. b). Cases where the Foreign OEM participates only through its authorised Vendors: Indian authorized vendor/dealer must be machine/plant manufacturing entity with experience of manufacturing and supplying plant and machinery and can only be allowed to bid in consortium/collaboration/JV with their foreign OEM (having prerequisite experience of supplying similar plant & machinery) to comply MII order 2017. The bidder must comply Make in India (MII) order 2017 and its subsequent amendment. the above tender conditions has been framed to ascertain the compliance of MII policy Payment will only be made in Indian Rupees to prime bidder/lead partner(Indian firms). Since the above clause has been framed to comply MII policy hence, any necessary import clearance should be arranged by the Indian counterpart and <u>he should arrange inspection/ training in India and also provide after sale services.</u>
18(b)	18(b)	Technical Capacity:	In this regard the tenderer shall submit a detailed statement of similar plants/ machines built by him and the tenderer must have supplied similar plants/ machines in the past (i.e.

			maximum 15 years and bidder must be presently in the business of manufacturing of similar plants/ machines). Bidder has to submit name and full address of the customers with order No., date of supply and performance report thereof. Due to constraint in GEM Website, Experience of 03 years and 80% past performance has been mentioned in bid document. Hence, bidder has to submit Experience and related documents along with performance report from customers of last 15 years as per this clause.
		Definition of similar plant & machinery	Factory will provide definition of similar plant and machinery.
			In case of consortium/collaboration at least one member of the consortium/collaboration must comply the technical capacity.
			In case of Joint Venture(JV): Either JV firm or at least one partner of the JV must comply the technical capacity.
			Bidder/tenderer/Vendor must be a machine/plant manufacturing entity or a system integrator of defence equipment and not a trading company.
19.0	19(i)	(i)Financial Capacity:	The tenderer shall produce satisfactory proof that he is financially in a position to fulfill the contractual obligations offered to be undertaken by him, e.g. showing average annual turnover during last three years. The average annual turnover of last three years should be more than the minimum average turnover (30% of the estimate) mentioned in the GeM bid Document. and Net Worth : Net worth of bidder, ending 31st March of the previous financial year, should not be less than 5% of the estimated cost. In case of consortium/collaboration: Each member of the consortium should comply the financial criteria independently in the ratio of member's equity stake in the consortium/collaboration. In case the Consortium Member relies on its Holding Company for any one of the above-mentioned Financial Parameters, then reliance must be placed on the Holding Company for meeting all the financial criteria.

			In case of Joint Venture(JV) : For newly formed JV (less than 5 years old) each partner of JV must comply the financial criteria independently in the ratio of their shareholding in the JV firm. For JV (more than or equal to 5 years old), JV firm should meet the financial criteria. In case the JV partner relies on its Holding Company for any one of the above-mentioned Financial Parameters, then reliance must be placed on the Holding Company for meeting all the financial criteria.
19 ii. (b)	19. ii (b)		(b)(i).Consortium agreement in notarized form.
23.0	Addendum	Micro and small enterprises (MSE) purchase preference	MSE Purchase preference will be as per GeM bid Document. <u>Note</u> : No purchase preference will be available for MSE Firms participating in consortium /Collaboration/Joint Venture with foreign firms.
24	Addendum	Preference to Make in India (MII)	Local content criteria and preference to Make In India clauses as per GeM bid document.
25	Addendum	Local content declaration as per MII order 2017 and its subsequent amendment :	a. The Class-I local supplier'/ Class-II local supplier' at the time of tender, bidding or solicitation shall be required to indicate percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I local supplier'/ 'Class-II local supplier', as the case may be. They shall also give details of the location(s) at which the local value addition is made. b. In cases of procurement for a value in excess of Rs. 10 crores, the Class-I local supplier'/ Class-II local supplier' shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content. Refer : Annexure C.
26	Addendum	Minimum local content definition :	Minimum local content will be as defined in make in India order 2017 & it's subsequent amendment.

Part III : STANDARD CONDITIONS OF CONTRACT

ATC Clause No.	OFBPM TE clause No.	Clause Heading	Description
3 (C)	Addendum	FOR FOREIGN SUPPLIERS:-	This clause is only applicable in case of dispute between buyer and foreign firms. This clause cannot be exercised in case of internal dispute of collaboration /consortium /JV and buyer cannot be party in the internal dispute of collaboration /consortium / JV.
15	15	Taxes and Duties:	This clause will be as per GeM General Terms & Conditions Sl. No. 8 Duties and Taxes.

Part IV : SPECIAL CONDITIONS OF CONTRACT

ATC Clause No.	OFBPM TE clause No.	Clause Heading	Description
1 (c)	1 (c) (Part IV – Special Condition of Contract)	Performance Security / Security Deposit:	c) The performance security will be in the form of Insurance Surety Bond, demand draft or fixed deposit receipt or bank guarantee on non-judicial stamp paper (from any commercial bank in India) in the specified format as ANNEXURE B. The Performance Bank Guarantee (also called Performance Bond) shall be submitted from any commercial bank in India and should be valid up to 60 days beyond the date of completion of all contractual obligations of the supplier, including warranty obligations. <u>Note</u> : In case of Account payee Demand Draft and banker cheque, PSD shall be in favor of Munitions India Limited- Factory name
2. B	Addendum	Advance Payment.	If required by bidder, advance payment to be made maximum up to 30% (of total contract value), against an un-conditional Bank Guarantee called Advance Bank Guarantee (ABG)for 110% of advance amount (format attached). The percentage of advance payment will be based on the DP of the contract.

			Accordingly, the following advance payment can be allowed vis a vis the delivery period of the contract. <table border="1"> <thead> <tr> <th>Sl.No.</th><th>Advance Payment</th><th>Adv. PBG</th><th>DP of Contract</th></tr> </thead> <tbody> <tr> <td>01.</td><td>30% of Contract Value (Max)</td><td rowspan="3">110% of Adv. Payment</td><td>1 Year</td></tr> <tr> <td>02.</td><td>20% of Contract Value (Max)</td><td>2 year</td></tr> <tr> <td>03.</td><td>15% of Contract Value (Max)</td><td>3 Years</td></tr> </tbody> </table> Following documents is required for release of advance payment : a. Acceptance of Supply Order b. Performance Security deposit as per Supply Order. c. Ink singed copy of proforma invoice. d. Bank Guarantee for advance payment. This advance payment will be adjusted at the time of payment after successful joint receipt inspection (i.e against 90% payment). Any advance made to suppliers will be interest free within original delivery period of the contract, but shall carry interest beyond this period if delay is due to the contractor. Also in case of Seller fails to perform a substantial obligation under the Contract, buyer reserved the rights to recover the said amount already paid by the Buyer, and in case of an Indian Bidder with interest thereon at 2% higher than the prevailing Prime Lending Rate of State Bank of India (or Base Rate of State Bank of India in the absence of Prime Lending Rate), while in case of a Bidder from a country other than India with interest thereon at 2% higher than the LIBOR. If the recovery amount is more than the Bank Guaranty submitted for advance payment then, balance amount will be recovered from the pending bill of other supply orders.	Sl.No.	Advance Payment	Adv. PBG	DP of Contract	01.	30% of Contract Value (Max)	110% of Adv. Payment	1 Year	02.	20% of Contract Value (Max)	2 year	03.	15% of Contract Value (Max)	3 Years
Sl.No.	Advance Payment	Adv. PBG	DP of Contract														
01.	30% of Contract Value (Max)	110% of Adv. Payment	1 Year														
02.	20% of Contract Value (Max)		2 year														
03.	15% of Contract Value (Max)		3 Years														
6	9	Delivery Period:	Firm has to supply, install and erection & commissioning of the machine as per GEM BID mentioned delivery period (i.e. Delivery period from the date of placement of supply order for time required to														

			manufacture of machine, necessary civil work, Inspection, Erection & commissioning of the machine & acceptance trial etc.). If required, firm may visit the site at factory, where P&M proposed to be installed. (a) Time is the essence of the contract. The tenderer shall comply delivery period mention in GEM BID so that plant is available at site at the earliest. (b) Tenderer will submit a BAR CHART in this regard, showing detailed activities for execution of the order and their time schedule, for consideration of the purchaser. The tenderer will be responsible for coordinated delivery and erection of the complete plant, equipment and materials both from outside India and from indigenous sources and he shall ensure deliveries in the sequence in which they will be required for erection at site. (c) The 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.
			(d) Time required for Erection and Commissioning of the machine has to be as per time given for ICT clause of GeM. E&C date will commence from the date of handing over of site by Factory <u>Note:</u> If the Vendor supplies the machine before the schedule delivery period mentioned in the contract then the balance delivery period benefit will be added to the erection commissioning of the contract.
12 A	16	Pre-Dispatch Inspection (PDI): (Note : PDI will be conducted by the buyer in India only.)	No change in the description.
12 B	Addendum	Trial Components	The quantity of trial components required for machine trial, tool design and pre-dispatch inspection, etc. should be clearly indicated by the tenderers in the Technical Bid. The cost of trial components as Rs....., further the actual cost of input trial components will be worked out by factory..... prior to the issue of components and will be intimated to the supplier for submission of Security Deposit in the form of Demand Draft / Banker Cheque

			/ Bank Guarantee . The indigenous vendors have to collect trial components from factory..... The tried out components along with scrap will be returned by the firm along with the machine in a separate box.
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Note : As per the GOI guidelines the PSD is applicable @ 3% up to 31/03/2023. Henceforth, the PSD @5% will be applicable in line with OFB PM 2013, till further directives from G.O.I.

AMENDMENT TO OFB P&M PROCUREMENT MANUAL 2013.

	OFBPM clause No.	Clause Heading	Description
OFB PM (Aug 2013)	Addendum 6.22 (a)	Price Bid Opening	6.22(a) Benchmark Models Committee. On receipt of Trial Report by SHQ, concurrent benchmarking will be carried out by a Benchmark Models Committee headed by the Advisor (Cost)/Director (Cost) in non-delegated/delegated cases respectively and representatives of concerned SHQ Directorates, as per guidelines issued by Principal Advisor (Cost) and as amended from time to time. This process will be automatically undertaken once SHQ informs Advisor (Cost) /Director (Cost) about receipt of Trial Report. Along with this information, SHQ will also provide Advisor (Cost) /Director (Cost) with details of representatives of SHQ Directorates nominated as members of the concerned Benchmark Models Committee. The recommendations of the Benchmark Models Committee may be accepted as such/deliberated upon by the CNC post approval of GS Evaluation and promulgation of CNC. Till then, the Benchmark Models Committee benchmark models and costing data will be kept in a sealed cover with the Chairman, CNC.
	Amendment 2.4	Price preference for Small Scale units:	2.4.1 Price preference for MSE/MSME Units as per Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2018 has been notified under section 11 of MSMED Act, 2006. The Policy is effective from 1st April 2019 (Gazette notification on 9 November 2018). The objective of Policy is promotion and development of Micro and Small Enterprises by supporting them in marketing of products produced and services rendered by them. However, the policy rests upon core principle of competitiveness, adhering to sound procurement practices and execution of supplies in accordance with a system which is fair, equitable, transparent, competitive and cost effective.

			2.4.2 Public Procurement (Preference to Make in India) Policy: Provisions contained in Public Procurement (Preference to Make in India), Order 2017 issued by DIPP, Ministry of Commerce & Industries vide letter No.P-45021/2/2017-B.E-II dated 15-06-2017 along with MoD I.D No.59011/8/2015-D(HAL-II) dated 19-07-2017 and subsequent amendment issued by DIPP dated 30/09/2020 shall be followed. (Please refer linkhttps://dpiit.gov.in/public-procurementsfor latest updates)
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MINIMUM LOCAL CONTENT DECLARATION

A. SAMPLE FORMAT FOR SELF DECLARATION OF MINIMUM LOCAL CONTENT

Self-Certification under preference to Make in India order

Certificate

In line with Government Public Procurement Order No. P-45021/2/2017-PP(BE-II) dated 04.06.2020 and its Latest amendments, we hereby certify that we M/s_____ are local supplier meeting the requirement of minimum local content i.e., _____% as defined in above orders for the material against **Factory.....** Enquiry/TenderNo.....dated..... Details of location at which local value addition will be made as follows:

_____.

We also understand, false declarations will be in breach of the code of integrity under rule 175(1)(i)(h) of the General Financial Rules for which a bidder or its successors can be debarred for up to two years as per Rule 151(iii) of the General Financial Rules along with such other actions as may be permissible under law.

Thanking You

Signature with date:

Name:

Designation:

Official Seal

Note : The Class-I local supplier' / Class-II local supplier' shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.

MINIMUM LOCAL CONTENT DECLARATION

B. SAMPLE FORMAT OF MINIMUM LOCAL CONTENT CERTIFICATION:-

To,
The General Manager,
.....Factory,..... ,
Unit of Munition India Limited.

SUBJECT :

TENDER No. :

Dear Sir,

I/We,..... (Name of the issuing CA Firm / **Statutory Auditor / Cost auditor**) have verified relevant records of M/s (Name of the bidder) and certify that M/s (Name of the bidder) meet the minimum Local content requirement of% specified in bidding document of local content declaration.

[Signature of Authorized Signatory]

Name:

Date:

Designation:

Seal:

Membership no.

UDIN no.