

CHAPTER 1

INTRODUCTION

1. PREAMBLE

Uninterrupted flow of material is the lifeline for any manufacturing industry. Indian Ordnance Factories, engaged in production of military hardware, have the arduous task of ensuring on time supply of military hardware required by Defence Forces for security of the country. Inputs required for production of military hardware are of stringent specifications and are to be made to order to fulfill the exacting standards of fail safe performance of the end product. Further the requirement of inputs is wide and various. These being mostly governed by JSS specifications do not have scope for use in other fields and there is no outlet for rejects. Consequently, sources of input are limited and the market is seller driven.

Material that goes into making a product in Ordnance Factories accounts for 60% of the cost of production. In addition, indirect material worth 5% of the cost of production is also used. Making material available at the right time and cost is therefore a matter of paramount importance. Further, stock out situation in the factory not only leads to discontinuity in production rendering installed capacity idle but can also create industrial unrest. On the other hand all canons of financial propriety applicable to Govt. organization are to be observed. The Material Procurement Manual provides the guidelines for making inputs available avoiding stock out situation in the factory. There may also be extraordinary situations that demand an out of box solution to ensure availability of material for continuity of production. In all such cases, Material Managers must take procurement action in the best interests of the State considering the possible wastage of resources in terms of idle capacity, less productivity, time lost in changing production schedule etc.

MOD while finalizing DPM 2009 that guides procurement of revenue items by Defence Units has kept OFB out of the purview of the DPM considering the pressing needs of a manufacturing industry to position material in a time bound manner. OFB Material Procurement Manual has been formulated, by and large, in line with DPM 2009 keeping the requirements of production in view.

1.1 SHORT TITLE AND COMMENCEMENT

1.1.1 This Manual may be called the OFB Procurement Manual, 2010 (OFBPM 2010 for short).

1.1.2 Provisions contained in this manual are, by and large, in conformity with other Government manuals like GFR as also other instructions issued by the Government and CVC from time to time. If any instance of variance is noticed, the matter should be referred to MoD for clarification. However, the ongoing procurements may not be stopped pending receipt of the clarification, if there is operational urgency in going ahead with the production or delay is likely to have adverse implications. The manual shall come into force with effect from 1.04.2011.

1.2 APPLICABILITY

1.2.1 The principles and procedures contained in this Manual will apply to OFB, all Ordnance Factories and other Establishments under OFB.

1.3 SCOPE

1.3.1 The term procurement means acquiring of (i) inputs and aids for production, like raw materials, components, sub-assemblies, assemblies, spares, tools, process materials, production consumables etc. (ii) Maintenance aids including spares (iii) Services including packing, unpacking, preservation, transportation, insurance, delivery, job work, maintenance support, technical assessment, consultation, system study, software development, maintenance conservancy etc.

1.4 DEFINITIONS

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

1.4.2 Authority Holding Sealed Particulars (AHSP): AHSP is the authority responsible for collecting, collating, developing, amending, updating, holding and supplying sealed particulars of the defence items in accordance with the laid down procedure. AHSP may be the Director General of Quality Assurance (DGQA) or an authority in the Service Headquarters for service specific items. Similar responsibility for the Naval and Air Force equipments rests with respective Service Headquarters. Ordnance Factories are the AHSP for certain types of 'B' vehicles and items issued to indentors, other than the defence services. DGAQA is the AHSP for aviation stores of all the Services and the Coast Guard. Procurement officers, the suppliers and the Inspection Agencies are required to comply with the drawing / specifications drawn up by the AHSP.

1.4.3 Competent Financial Authority: The Competent Financial Authority (CFA) is an authority duly empowered by the Government of India/OFB to sanction and approve expenditure from public accounts up to a specified limit in terms of amount of such expenditure and subject to availability of funds. All financial powers are to be exercised by the appropriate CFA. Where financial powers have been delegated to more than one authority under the same Serial/Head, authority with higher delegated financial powers will constitute the 'next higher CFA'. CFA will be assisted by Tender Purchase Committee (TPC) in deciding all purchase proposals valuing more than a threshold value to be decided by OFB. TPC should have representatives of the user section, Quality Assurance Officer, Procurement Officer and IFA apart from CFA as Chairman of the committee. CFA may co-opt other experts in the committee, if required.

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

1.4.5 Direct Demanding Officers: The authorities in the OFs & other establishments under OFB, who have been duly authorized to place purchase orders directly on the rate contract holding firms/suppliers with whom Rate Contracts have been concluded by the central purchase organizations for the particular items/goods.

1.4.6 Financial Power: Financial power is the power to approve expenditure to be incurred for bonafide purposes in accordance with the laid down procedure and subject to availability of funds. The powers delegated by OFB to various authorities in the OFs and other establishments under OFB are personal and cannot be further sub-delegated to any subordinate authority by the delegatee. However, on the strict understanding that the sole responsibility rests on them, the authorities to whom financial powers have been delegated may authorize gazetted officer(s) to

sign communications and financial documents on their behalf provided that the name of the officer who is authorized to sign is communicated to the Audit Officer concerned.

1.4.7 Indent: An indent is a requisition placed by the provisioning authority on the procurement agency to procure an item. Indent is the authority for initiating procurement action and may contain one or more items, each with a distinct item code/part number. All necessary details of the item, including quantity, denomination, estimated price, specifications / drawings, scope of supply, approximate date by which required and inspection authority are to be indicated in the indent to enable prompt procurement of the item.

1.4.8 Inspecting Authority: Consequent upon delegation of responsibility to OFB for inspection of revenue items Sr. General Managers and General Managers of Ordnance Factories will act as Inspecting Authority for items needed by them. The Inspecting Authority is to promulgate inspection methodology and nominate suitable inspection agency for specific contracts.

1.4.9 Inspecting Agency: The Inspecting Authority nominates the Inspecting Agency and the Inspecting officer based on the type of items and geographical location of the purchaser and supplier. The Inspecting Officer need not necessarily be from the organization of the Inspecting Authority.

1.4.10 Integrated Finance : While Finance Division of OFB functions as Integrated Finance for CFAs in OFB, officers from Local Accounts Office at the appropriate level in the factories constitute Integrated Finance for the CFAs in the Factories/establishments.

1.4.11 Original Equipment Manufacturer (OEM): The original equipment manufacturer which is the only firm manufacturing the specified item/equipment of a specific make, as distinguished from the stockists/distributors or suppliers of such items/equipment.

1.4.12 Paying Authority: In respect of procurements made under this Manual, Paying Authority means any of the following authorities:

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

1.4.13 Procurement : Procurement refers to the entire gamut of activities involved in and the procedures to be adopted for acquiring goods and services as defined in paragraph 1.3.1 of this Manual.

1.4.14 Procurement Agency: The Procurement or Procuring Agency is the material management group at factory/establishment that is responsible for the actual procurement as per the prescribed procedure to meet the requirement of the unit.

1.4.15 Purchaser : The President of India acting through the authority issuing the purchase/supply orders or signing the Contracts/Memo of Understanding/Agreements, is the Purchaser in all cases of procurement on behalf of the Government of India. Where the context so warrants, other terms, such as the 'buyer', have also been used in this Manual.

1.4.16 Rate Contract (RC): A Rate Contract is an agreement between the Purchaser and the Supplier to supply stores at specified prices during the period covered by the contract. An RC is

in the nature of a standing offer from the supplier and no minimum drawal need be guaranteed. A contract comes into being only when a formal order is placed by the CFA or the Direct Demanding Officer (DDO) on the Supplier.

1.4.17 Stores: The terms 'Stores' would include all items mentioned in paragraph 1.3.1 of this Manual.

1.4.18 Supplier: Supplier is the entity, which enters into a contract to supply goods and services. The term includes employees, agents, assigns, successors, authorized dealers, stockists and distributors of such an entity. Where the context so warrants, other terms, such as 'vendor' or 'seller', have also been used synonymously in this Manual.

1.4.19 Terms and expressions not defined in the Manual: The terms and expressions not defined herein shall have the meaning assigned to them, if any, in the Indian Sale of Goods Act 1930, the Indian Contract Act 1872, the General Clauses Act 1897, or other Indian Statutes and Government Instructions, as amended from time to time.

1.4.20 Authority for Procurement: Indent / Extract / IFD / SWOD / Annual Supply Plan given by OFB purchase requisition given by user section will be taken as authority for procurement.

i. Extract: Extract is an authority given by OFB to Ordnance Factory / Factories to undertake production of the items mentioned therein. This is placed based on Indent.

ii. SWOD: Supplementary Work Order Draft is placed by other Defence Department on OFB/ Ordnance Factory.

iii. IFD: Inter Factory Demand is placed by one Ordnance Factory on another Ordnance factory which is the supplier of the item.

iv. ANNUAL SUPPLY PLAN: Annual Supply Plan is issued by OFB to Ordnance Factories for making supplies to indentors/ Ordnance factories. This is issued based on the annual plan of supply of various items to various indentors.

v. PURCHASE REQUISITION: Purchase Requisition is the demand raised by user section on purchase department to procure off the shelf items, tools, consumables, maintenance items and other miscellaneous items, service contracts, whole job contracts, transport services, maintenance contracts and other similar outsourcing contracts etc.

1.5.1 INTERPRETATION OF OFB PROCUREMENT MANUAL: In the event of a dispute on interpretation of provisions of the Manual the matter will be referred to OFB for decision.

1.5.2 AMENDMENT TO OFB PROCUREMENT MANUAL: No amendment will be made to the OFB Procurement Manual without prior approval of Department of Defence Production (Ministry of Defence).

CHAPTER 2

PROCUREMENT – OBJECTIVES AND POLICY

2.1 PROCUREMENT:

2.1.1 Fundamental Principles of Public Buying: Every authority delegated with the financial powers of procuring goods in public interest shall have the responsibility and accountability to ensuring efficiency, economy, and transparency in matters relating to public procurement and for fair and equitable treatment of suppliers and promotion of competition in public procurement.

2.1.2 Procedural Propriety: The procedure to be followed in making public procurement must conform to the following yardsticks:

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

2.1.3 Channels of Procurement: Procurement of stores will in general be done by one of the following methods:

- (i) Placement of IFD
- (ii) Availing Rate contract placed by OFB/DGS&D.
- (iii) Purchase from trade
- (iv) Placement of demand on Govt. Department/s

2.2 POLICY GUIDELINES:

2.2.1 Annual Supply Plan will form the basis for procurement of direct material. Provision of indirect materials that are not required directly for production will be made on the basis of monthly average consumption during the preceding 24 months.

2.2.2 Procurement Lead Time: Procurement action may be initiated well in advance catering to the lead time for procurement and production throughput time to ensure supply of end product as per demand given by the indenter.

2.2.3 Authorised inventory:

2.2.3.1 Factories are permitted to hold SIH inventory as mentioned below:

Group of Factories	Over-all SIH Inventory Level
AV	6 Months
OEF	3 Months
Others	4 Months

There may be exceptional circumstances that may call for holding of inventory more than the authorized level. In all such cases approval of Operating Division Member in consultation with Member/Finance will be obtained.

2.2.4 Stockpile: Stockpile is an emergency reserve and is intended to enable the factories to maximise production of the related end product at short notice or immediately after the emergency arises. The cost of this reserve is capitalised. A separate Store Ledger will be maintained by the LAO to enter all the stockpile items. The stockpile, being an emergency reserve should be kept intact. At the same time, as laid down in the provisioning procedure, it has to be turned over from time to time keeping in view the shelf life of the item and need for preservation. This is affected by transfer from stockpile stock to working stock, subject to the following conditions: -

- (a) OF Board approval should be obtained for making any withdrawal from stockpile.
- (b) Stockpile is permissible only in respect of 'imported' and difficult to procure indigenous stores, the maximum limit for each category being 6 months' and 3 months' requirement respectively, unless specifically authorised for higher levels.
- (c) The withdrawal from stockpile will be first transferred to Stock Ledger and issued on Demand Notes.

Once an item is identified for stock piling and the quantum is determined, competent authority shall be approached for sanctioning of stockpile creation. The monthly requirement of stockpile items is determined with reference to the maximum achievable capacity available in the Ordnance Factory for production of the related end product as evidenced by past performance.

Factories will adequately turn over the stockpile from time to time and submit a half-yearly certificate to OFB to the effect that all items held in stockpile, are in good condition and have been subjected to due care and preservative treatment. The stockpiles referred to above will be entirely distinct from the regular or any other stocks that are referred to above. Each item of stockpile shall be reviewed every year or as soon as it comes to notice that the indigenous production of the imported items has been developed satisfactorily or the supply position of the indigenous items has improved or the production of the relevant store has been discontinued.

A register of stockpile items is maintained by each of the holding Factories and a centralised register of all the items is maintained at Stock Pile Section of MM Division at Hqrs. This Section, in co-ordination with the concerned factories, should carry out continuous review of the stockpile items, in pursuance of the stipulation made in the Provisioning Procedure. Such a review is essential having regard to the following factors:

- a) Obsolescence of/reduction in the demand for end products
- b) Change in specifications/substitution
- c) Indigenisation or expansion of the indigenous manufacturing capacity

2.2.5 Timely Action : The factory should take prompt and timely action for both indigenous as well as imported items in such a way that stock-out situations are avoided to maintain continuity of production and at the same time maintaining the over all SIH inventory within the authorised limit.

2.2.6 Staggered Deliveries: Deliveries against the Supply Orders/IFDs shall be staggered so that as far as possible the actual stock at the factory is restricted within the maximum levels in consonance with the Production/Issue Plan of the factory. For this purpose the staggered delivery schedule desired shall be included in the Tender Notice/IFD itself.

2.2.7 Frequency of Provisioning Reviews: Provisioning Review is an annual exercise based on Annual Production Plan. Apart from this annual review, any change in production programme of any end product due to increase or decrease in demand or any other reason will necessitate mid-course review.

2.2.8 Provisioning Period: The total provisioning period normally varies from 18 to 24 months depending on -

- i) Whether the item is a direct material used in production or indirect material for maintenance/general purpose use and
- ii) Whether the item is imported or indigenous

The provisioning period consists of two parts viz. (i) lead-time and (ii) the period of utilisation.

- a) The lead time is intended to cover all actions up to materialisation of supplies i.e. assessment of net requirement, procurement consisting of tender action, tender decision, placement of orders and delivery period required by the supplier.
- b) Period of utilisation is the production period during which the entire ordered quantity will be utilised for meeting the production target after full drawal of stock and supplies received against dues at the time of provisioning action. The period of utilisation covers a period of 12 months.

Separate guidelines will be issued by OFB to specify the provisioning period, lead time and period of utilisation for different kinds of items.

2.2.9 Determination of Requirement: Gross requirement of direct material will be worked out based on product estimate and quantity to be produced during the year. Good dues and stock will be subtracted from the gross requirement to work out net requirement for procurement. If the end product is being phased out before next procurement cycle, WIP should also be subtracted from the gross requirement.

2.2.9.1 Requirement of indirect material normally will be worked out based on average consumption during past 24 months. The factors such as volume of production / usage of m/c etc. may also be considered.

2.2.9.2 Necessity for procurement of any new indirect item should be approved by General Manager.

2.2.10 Splitting: Purchase order should not be split to avoid the necessity for obtaining the sanction of the higher authority required with reference to the total value of the orders.

2.3 DELEGATION OF POWERS: With the objective of decentralizing powers to enable effective use of resources by the actual operators, financial powers have been delegated to various authorities in OFB and its field unit formations. These powers are to be used within the framework of laid down procedures, canons of financial propriety and amplificatory instructions. The powers so delegated also imply accountability and the CFAs must ensure that financial propriety and probity are observed in all cases.

2.3.1 DETERMINATION OF CFA: It will be governed by administrative instructions/orders issued by OFB.

2.4 TYPES OF PROCUREMENT:

2.4.1 Indigenous Procurement: Procurement from indigenous sources is called indigenous procurement. It is the policy of the Government to encourage indigenization, particularly in the field of defence to achieve self-reliance. Hence, indigenous firms should be given all support to produce and supply quality goods conforming to drawings / specifications. Proper loading criteria for all taxes, duties and other expenses involved in procurement of an item needs to be applied to provide a level playing field to the indigenous manufacturers. Payments against indigenous procurement are made in rupee terms.

2.4.2 Foreign Procurement (Import): For such defence equipments and assets, as are of foreign origin, items required to maintain and operate these equipments may also need to be procured from suppliers abroad. The procedure for such procurement is laid down in **Chapters 9 and 10** of this Manual.

2.4.3 Central Procurement: Central Procurement (CP) is undertaken by Central Procurement Agency like DGS&D, OFB or OFB nominated Ordnance Factory against indents placed by Ordnance Factories resulting from planned provisioning process. CP indents normally cover the entire requirement of the item for the duration of the provisioning period.

2.4.4 Local Procurement: Local Purchase (LP) is undertaken for the stores that are not within the purview of Central procurement, within the LP powers of various authorities as per the delegated powers.

2.4.5 Procurement from Defence Public Sector Undertakings: The following guidelines will be followed for procurement of goods/services from the Defence Public Sector Undertakings:

- (a) Goods and Services may be procured from Defence Public Sector Undertakings through tender. Any item developed/ manufactured by a Defence PSU specifically for the Defence Services, with transfer of technology or through design and development, should be procured from the concerned Defence PSU only. Similarly, Defence PSUs shall be approached for providing any service, such as repairs and overhauling, if facility for providing such services has been set up by a Defence PSU exclusively for the Defence Services.
- (b) Cases falling under (a) above will not be treated as STE/PAC procurements. The delegation of Financial powers to OFB issued vide MoD letter 5(12)/99/D(Prod)/B dated 26 July 2010 refers.

2.4.6 Purchase of goods without quotation: As provided in GFR 145 (as amended from time to time) purchase of goods up to the value of Rs. 15,000 (Rupees Fifteen Thousand) only on each occasion may be made without inviting quotations or bids on the basis of a certificate to be recorded by the Competent Financial Authority in the following format:-

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

2.4.7 Purchase of goods by Purchase Committee: Purchase of goods costing above Rs. 15,000 (Rupees Fifteen Thousand) only and up to Rs. 1,00,000 (Rupees One Lakh) (in consonance with the provision of Rule 146 of GFR 2005 as amended from time to time) only on each occasion may be made on the recommendations of a duly constituted Local Purchase Committee consisting of three members of an appropriate level as decided by the Head of the Department. The committee will survey the market to ascertain the reasonability of rate, quality and specifications and identify the appropriate supplier.

Before recommending placement of the purchase order, the members of the committee will jointly record a certificate as under:-

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

2.4.8 Purchase of goods directly under Rate Contract: Goods for which OFB or Director General of Supply & Disposal (DGS&D) has rate contracts can be procured directly from the suppliers. While resorting to such procurement it should be ensured that the prices to be paid for the goods do not exceed those stipulated in the rate contract and the other salient terms and conditions of the purchase are in line with those specified in the rate contract. The Purchaser should also make its own arrangement for inspection and testing of such goods, where required.

2.4.9 Cash and Carry Procurement: Cash and carry purchase is a type of LP (local purchase) resorted to in case of extreme urgency or when the supplier is not willing to supply the required item on credit. Cash and carry powers are very limited as such procurement is made only in exceptional cases when cash payment is made from the imprest fund of the unit and the same is claimed from the paying authority who reimburses the amount after due audit of the transaction.

2.5 PRODUCT RESERVATION, PURCHASE/PRICE PREFERENCE AND OTHER FACILITIES:

2.5.1 Product Reservation for Khadi Village Industries Commission (KVIC), etc.: The Government of India, through administrative instructions, has reserved all items of handspun and hand woven textiles (Khadi goods) for exclusive purchase from Khadi Village Industries Commission (KVIC). It has also reserved all items of handloom textiles required by Central Government departments for exclusive purchase from KVIC and/or the notified handloom units of ACASH (Association of Corporations and Apex Societies of Handlooms). Purchases of such reserved goods and items shall be made from these units.

2.5.2 Local Purchase of Stationery and other articles from Kendriya Bhandar, NCCF, etc. : Keeping in view the avowed objectives of the cooperative movement to ensure supply of goods and services to the consumers at the most economical and competitive prices and taking note of the changed concepts of marketing, the Government of India vide DOP&T (Welfare Section) OM No. 14/12/94-Welfare (Vol II) dated 5th July 2007 has decided to adopt the following dispensation in respect of all Central Government Departments, their attached and subordinate offices and other organizations financed and/or controlled by them in making local purchases of stationery and other items from Kendriya Bhandar/National Consumer Cooperatives Federation:

- (a) As per paragraph 2.4.6 of this Chapter, purchase of goods up to Rs.15,000 is permissible without inviting quotations or bids. Further, as per paragraph 2.4.7 of this Chapter, a Local Purchase Committee constituted by the CFA can make purchase of goods up to Rs.1 lakh on the basis of a market survey to ascertain the reasonableness of rate, quality, etc. and submission of a certificate to that effect. In partial modification of these provisions, it would be permissible to make purchase, at the discretion of the CFA, of all items required for office consumption up to Rs.1 lakh on each occasion directly from Kendriya Bhandar/NCCF without calling for quotations. The responsibility for ensuring the reasonableness of rates, quality specifications etc. will be equally that of the Purchasing Ministry/Department and KB/NCCF. Further, the reasonableness of rates, quality, specifications, etc. should be certified by the Local Purchase Committee as envisaged in paragraph 2.4.7 above. It is to be ensured that supply orders are not split under any circumstances with the objective of circumventing the limit of Rs.1 Lakh.
- (b) For procurement of all items of office consumption beyond Rs.1 lakh up to Rs 25 lakh, where limited tenders are to be invited as per the provisions of this Manual, KB and NCCF among others should also be invited to participate in such limited tenders, in case these cooperatives are functioning at the station. Other things being equal, Purchase Preference will be granted to KB/NCCF, if the price quoted by the cooperatives is within 10% of the L1 price and if these cooperatives are willing to match the L1 price. No price preference over and above the L1 price shall be given to these cooperatives. However, KB/NCCF will be exempted from furnishing bid security (Earnest Money Deposit).
- (c) Supply orders up to Rs. 25 lakh, in respect of office equipments covered under the DGS&D rate contract may also be procured from KB and NCCF provided KB/NCCF offer the items at DGS&D rate contracted prices as also fulfill all the contractual obligations which the manufacturers/suppliers of such products are required to meet under the DGS&D rate contract. The Purchaser will have to make his own arrangements for inspection and testing of such goods, where required.
- (d) The above dispensation shall be applicable only up to 31.3.2010. Its current applicability may be checked from time to time.
- (e) Other Multi-State Co-operative Societies registered prior to the issue of DOP&T (Welfare Section) OM No. 14/12/94-Welfare (Vol II) dated 5th July 2007 in which the majority of the shares are held by the Central Government, are also permitted to avail of the facility of Purchase Preference in respect of limited tender enquiries up to Rest. 25 lakh.

2.5.4 Purchase Preference: Purchase preference policy for Central Public Sector Enterprises as circulated from time to time by Dept. of Public Enterprise/GOI will be applicable. Purchase Preference Policy for Central Public Sector Enterprises has been terminated with effect from 31-03-08 vide DPE OM No. PDE/13/ (150/07-Fin dated 21-11-07. However this termination does not apply to the purchase preference allowed for sector specific CPSEs for which the purchase preference policy is laid down by the Ministries concerned

2.6 TIME LIMIT AND ACCOUNTABILITY:

2.6.1 Time Limit for Procurement & Accountability: The effect 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 the best value for money. However, delegation of powers also implies 'authority with accountability'. Every individual in the chain of the procurement process is accountable for taking action in a specified time period so that the requirements of the Defence Departments are met on time. A flow chart showing major activities and time frame prescribed is placed at **Annexures 1 & 2.**

CHAPTER 3

SOURCING AND QUALITY

3.1 GENERAL:

3.1.1 Identification of suitable suppliers: Proper source knowledge and identification of suitable suppliers capable of meeting the product quality required by the defence departments, particularly by the Defence Services, are vital functions for ensuring procurement of quality goods. Providing equal opportunity and ensuring fair play are also important requirements in any procurement process so as to achieve transparency. Hence, the procedure for selection and registration of firms, their performance appraisal and classification must be clearly spelt out and properly disseminated.

3.2 REGISTRATION OF FIRMS:

3.3 ASSESSMENT OF PERFORMANCE OF THE REGISTERED FIRMS:

3.4 REMOVAL FROM THE LIST OF APPROVED FIRMS:

The Standard Operating Procedure (SOP) for capacity verification and vendor registration circulated vide OFB letter No. 108/TIR/TS/QCS dated 13.9.05 as amended from time to time will apply. This SOP will be equally applicable for indirect materials and for the materials available off-the-shelf.

However for the items valuing up to Rs.1 Lakh the said SOP will not be mandatory as same is the limit for purchase through Local Purchase Committee as per GFR 146 and para 2.4.7 of this Manual.

3.5 INTER- FACTORY ACCEPTABILITY OF REGISTRATION:

A firm registered with any OFB factory/establishment may be considered as a registered firm for the purpose of procurement by other OFB factory/establishment for the same range of products/goods/services for which the firm is registered with any of the aforesaid organizations. For this purpose a suitable database may be developed and maintained.

3.6 BAN ON DEALINGS WITH A FIRM:

3.6.1 Ban on dealings: When the misconduct of a firm or its continued poor performance appears to justify imposition of ban on business relations with the firm, action should be taken by the HOD to issue a show cause notice to the firm and after due consideration of all relevant facts and circumstances of the case appropriate decision taken. The reasons for the decision should be duly and appropriately recorded.

3.7 SPECIFICATIONS:

3.7.1 Items bought by the defence departments, particularly the Defence Services, must be manufactured as per or conforming to the specifications. The specifications are the detailed qualitative requirements of the item being procured and should indicate the material composition, physical, dimensional and performance parameters, tolerances, if any, manufacturing process where applicable, test schedule, preservation and packing etc. AHSP/ Specifications promulgating authority should forward copies of specifications/amendments to all the concerned procurement agencies periodically. Various types of specifications relevant to the defence items are as follows:

- (a) PAC Specifications: These are available only with the proprietary firms and are protected by the intellectual property rights. Hence, PAC specifications are normally not available with the purchaser and firm's certificate of *quality is accepted*.
- (b) Branded Product: The specifications for branded commercial product are not available with the purchaser or the inspecting agency and these are to be accepted on the firm's guarantee / warranty.
- (c) Industrial Specifications: There are standard industrial specifications like the IS, BS, DIN and GOST available for sale in the market. In the case of medical stores standard specifications are issued by WHO, FDA, CE etc. Every procuring and inspecting agency should acquire such specifications for reference to ensure quality standards of the product being procured.
- (d) Defence Specifications: There are defence specifications for specialist items for use by the defence departments, particularly the Defence Services. These are Joint Services Specifications, Milspecs, etc. Copies of such specifications should be available with the procuring agency, authority and the AHSP.
- (e) Indigenized Item: The manufacturing agency, QA agency, DRDO, OFB and Service Headquarters, involved in the indigenization efforts often successfully indigenize some items as import substitutes. In such cases, the specifications including the drawing and other details are formulated by these agencies in consultation with the OFB/ manufacturing firms/QA agency/Design agency/Service HQrs, as the case may be, to guide future production. Such specifications should be available with the purchase agency as well as the inspecting authority so as to ensure conformity with the required quality standards of the items being supplied.
- (f) Ad-hoc Specifications: There are items for which neither industrial nor defence specifications are available. In such cases, the indenter must indicate the general parameters, normally the dimensional and performance parameters to enable procurement and inspection. Such ad-hoc specifications must be broad enough to permit wider participation by the suppliers and should not be restrictive so that adequate competition is not obviated.
- (g) As per Sample: There are occasions when items, normally PAC products, cannot be procured from the original manufacturer and have to be procured from another manufacturer as per sample in the absence of detailed specifications or drawing. For such items the supplier prepares detailed specifications as well as the drawing and gets it approved by purchaser. The purchaser and the inspecting authority should acquire such specifications and drawings and retain with them to guide future production and inspection.
- (h) Common Use Items: There are a large number of items in use by the Ordnance Factories which are common-use items, freely available in the open market. As in the case of ad-hoc specifications, specifications of common use items should also be broad enough to permit wider participation by the suppliers and should not be restrictive so that it does not pre-empt adequate competition.

CHAPTER 4

PROCUREMENT MODES

4.1 PROVISION THROUGH INTER FACTORY DEMAND (IFD):

4.1.1 The indenting factory (user) will be responsible for ensuring that the particulars quoted in the IFD issued are correct and place IFD on the supplying factory in the prescribed form viz. **IAFA-1921: (Annexure-21)** giving inter-alia, the following particulars:

- (a) Connected Extract No. Date
- (b) Correct nomenclature of the stores demanded together with the relevant manufacturing particulars etc.
- (c) The purpose for which the stores are required

The user factory will also supply to the feeder factory particulars/drawings/ specifications quoted in the IFDs and required for completion of the IFDs. In order to expedite supply of additional particulars, if any, request to AHSP should be made while forwarding copies of the IFDs to despatch the manufacturing particulars etc. direct to the supplying factory.

Operating Division of both supplying and receiving factories in consultation with finance will review the cases wherever marginal cost of a product of O.F. origin is found to be higher than trade price. Procurement of such items from sister factories will be resorted only after approval of OFB. (Reference OFB Circular No. 903/Policy/P(C) dated 11.12.06 and 10.2.09).

Copies of IFDs should be endorsed, among others, to the following authorities: -

- i) Concerned AHSP for vetting of Specifications/Particulars and communicating additions/alterations, if any
- ii) Concerned Inspection Agency, both for inter-stage and final inspection
- iii) LAO of the user Factory- for post audit
- iv) LAO of the supplying Factory

4.2 PROVISIONING THROUGH RATE CONTRACTS (R/C):

4.2.1 DGS&D Rate Contracts: Goods for which Director General of Supply & Disposal (DGS&D) has rate contracts can be procured directly from the suppliers. While resorting to such procurement it should be ensured that the prices to be paid for the goods do not exceed those stipulated in the rate contract and the other salient terms and conditions of the purchase are in line with those specified in the rate contract. The purchaser should also make its own arrangement for inspection and testing of such goods, where required. Payment in such cases would be made by the concerned Principal Controllers/Controllers of Accounts, their subordinate offices or other paying authorities as per the existing arrangement. Wherever Senior Accounts Officers/ Imprest Holders are authorized, payment may be made by them.

4.2.2 OFB Rate Contracts: OFB may conclude rate/term contract through OTE in two bid system for item(s) required by more than one factory. However, rate contracts can be finalized through LTE with PSUs in respect of items which are known to be manufactured only by them. Ordnance Factories may source these items as Direct Demanding Officer availing long term contract concluded by OFB.

4.3 PROCUREMENT THROUGH TENDER:

4.3.1 Procurement of goods by obtaining bids: Except for cases covered by paragraphs 2.4.6 (Purchase of goods and services without quotations), 2.4.7 (Purchase of goods by Purchase Committee), 2.4.8 (Purchase of goods directly under Rate Contracts) and paragraph 2.4.9 (Cash and Carry Procurement) of Chapter 2 of this Manual and procurement from sister factories on IFD and procurement availing rate contract concluded by OFB or DGS&D, goods should be procured by adopting one of the following standard methods of obtaining bids through conventional / e-mode on single / two bid system:

- (a) Advertised Tender Enquiry (also known as Open / Global Tender Enquiry)
- (b) Limited tender Enquiry; and
- (c) Single Tender Enquiry.

4.3.2 Procurement of Services: The above mentioned methods will also be applicable for procurement of services, subject to other instructions contained in this Manual being followed.

4.3.3 Advertised/Open Tender Enquiry: The Open Tender Enquiry (OTE) System should be the preferred mode for procurement of items which are readily available in the market from a wide range of sources/vendors.

4.3.4 Global Tender Enquiry: Where it is felt that the goods/services of the required quality, specifications, etc., may not be available in the country and it is necessary to look for suitable competitive offers from abroad also, copies of the tender enquiry may be sent to the Indian embassies abroad as well as the foreign embassies in India. Advertisement may also be circulated in international journal of repute. Copies of the OTE may also be faxed to known OEMs. The selection of embassies would depend on the possibility of availability of the required goods/services in such countries. The tender enquiries may also be sent through the Defence Attachés wherever they are posted in the Embassies and High Commissions.

4.3.5 Publicity: Open Tender Enquiry (OTE) system involves wide publicity through advertising media (Press, Trade Journals etc). Open tender notifications should be sent to the Director General of Commercial Intelligence and Statistics, Kolkata for publication in the Indian Trade Journal (ITJ) and to the DAVP, New Delhi for publication at least in one leading daily, which has a wide circulation. Such notifications should also be published in the bulletin, if any, of the Service/Department concerned.

However, for reasons to be recorded in writing, General Manager /HODs may go in for direct advertisement at rates not exceeding the DAVP rates.

4.3.6 Preparation of the Notice Inviting Tender: The Notice Inviting Tender (NIT), to be published in the journals/newspapers in the case of Advertised/Open Tender Enquiry, should be carefully drafted. It should contain 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 needlessly increase the cost of advertisement. The tender notice should normally contain the following information:

- (a) Description and specifications of the goods and quantity
- (b) Address of the website where the details of the tender could be seen and the tender document could be downloaded

4.3.6 Publicity through the website: All OTE notifications in respect of non-lethal/ non-security and non-sensitive items should invariably be posted on the website of OFB and Ministry of Defence. A link may also be provided to the NIC website. The website address should also be given in the notifications advertised through the ITJ and the newspapers.

4.3.8 Direct dispatch of tender documents: In case of OTE, Notice Inviting Tenders (NIT) and/or tender forms may also be sent to all suppliers registered for the particular range of items and to the known OEMs through post or e-mail, through e-portal.

4.3.9 Tender documents on the website: The complete tender document should be posted on the website and the prospective bidders should be permitted to make use of the documents downloaded from the website. If such a downloaded document is priced, there should be clear instructions for the bidder to pay the amount by demand draft, etc., along with the bid. Such documents must be secured to avoid possibility of modification and restriction of access to bidders.

4.3.10 Time to be given for submission of bids: Ordinarily the minimum time to be allowed for submission of bids should be three weeks from the date of publication of the tender notice or availability of the bidding document for sale, whichever is later. Reduced time frame for submission of bids may be adopted in the case of emergent local purchase of supplies, provisions and medicines by use of FAX, e-tendering etc. as permissible.

4.3.11 All open tender enquiries of value more than five lakh will be on a two bid system. The technical and the financial bids will be submitted in separate sealed envelopes together. The technical bids will be opened first. The financial bid should be as per the format placed at Annexure . The financial bid of only those companies will be opened which qualify in technical bid. The technical bid will need to establish the capability of the participating firm to manufacture and supply the required item of the required quantity and in the required time frame. The technical bid must, amongst other things ascertain that:

- (i) The firm has the required financial capability- ascertained by the turnover in the last five years.
- (ii) That it has the requisite manufacturing capability- by listing out the required machines and manufacturing facilities and ascertaining the ownership thereof.
- (iii) That the firm is properly registered with the Sales tax, Income tax, Excise and the taxes which it has been paying shows evidence of its activities.
- (iv) That it has the proper licence.
- (v) Supplies of the similar products made in previous years.

OFB shall get the manufacturing facilities of the participating firms verified- if they have not been verified earlier.

The technical bid for the COTs item only will be accompanied with the samples of the product offered, in as many number as required. These will be examined for the conformance with the QRs.

4.3.12 Dispatch of tender documents: Copies of the bidding document should be sent directly by speed post/registered post/ courier/email/fax to firms which are borne on the list of registered/ established suppliers for the goods in question. Copies of the bidding documents should also be sent by registered post to the firms to whom these are initially sent by fax/email.

4.3.13 Time to be given for submission of bids: Sufficient time, normally ranging from one to three weeks, should be allowed for submission of bids in Limited Tender Enquiries. For perishable goods or consumables a reduced time frame may be followed.

4.4 CLASSIFICATION OF REVENUE STORES:

Revenue stores can be classified in two categories:

- (a) Items available commercially off the shelf (COTS)
- (b) Made to Order

4.5 PROCUREMENT OF ITEMS AVAILABLE COMMERCIALY OFF THE SHELF (COTS):

4.5.1 Advertised/Open Tender Enquiry: The Open Tendering System will be the preferred mode for procurement of common use items of generic or commercial specifications which are readily available commercially off-the-shelf (COTS) in the market from a wide range of sources/vendors.

It must be adopted in all such cases in which the estimated value of the tender is more than Rs. Ten lakhs, subject to the exceptions as provided for in this Chapter. However, LTE may be resorted to prevent stock out situations and cater to unforeseen requirements of the Armed Forces/MHA. In such cases, approval of the next higher CFA will be taken.

4.6. PROCEDURE FOR PROCUREMENT OF ITEMS MADE TO ORDER (Other than COTS) Items:

4.6.1 Limited Tender: Procurement through Limited Tender Enquiry (LTE) may be resorted to:

(a) When the competent authority certifies that the demand is urgent. The competent authority should also put on record the nature of urgency and reasons why the procurement could not be anticipated.

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

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

4.6.1.1 For made to order (other than COTS) items the following procedure may be followed for procurement

(i) 50 % of the total requirement can be procured through Limited Tender Enquiry (LTE) with option / repeat order clause of equal quantity.

(ii) Balance 50% of the total requirement must be procured through Open Tender Enquiry (OTE) as per laid down procedure in two-bid system with 50 % option/ repeat order clause. However, LTE may be resorted to prevent stock out situations and cater to unforeseen requirements of the armed force/MHA. In such cases, approval of the next higher CFA will be taken.

(a) Under OTE, Tenders will be issued to OEMs/Manufacturers.

- (b) In case of raw materials/ machinery spares, procured indigenously, Tender enquiries may be issued to authorized dealers/ distributors/ stockists of the OEMs/ manufacturers.
- (c) In case of imported stores including raw material / machinery spares, Tender Enquiries can be issued to authorized dealers/entities in cases where OEMs/ manufacturers deal only through them.
- (d) As specified in para 4.3.11, all open tender enquiries will be on two bid system wherein the technical bid will lay down the qualifying criteria, such as minimum turnover of the firm, production facilities, supplies of similar products made in required quantity/quality control arrangements etc.
- (e) The long term requirement, if known, is to be indicated while issuing OTE so that more firms get interested to quote.
- (f) In Open Tender Enquiries (OTEs) vide (ii), above issued for developing new sources, the sources already established for the item will not be eligible to participate.
- (g) There may be attempts by cartels of established manufacturers/ suppliers/sources for a particular item to prevent any new manufacturer/source of the said item emerging. Therefore following precaution may be taken:
 - (i) The open tender for developing new sources will be in two bid system, however in the technical bid, only those companies will be short listed which have the capacity for making/ developing the said item- in terms of machineries, capital etc.
 - (ii) Any quote which is 30% or more less than the average of the rate at which orders have been placed over the last three years will be deemed to have been impractical and rejected.
 - (iii) In the development order the company which is L-2 may be given 30% of the order at L-1 prices – if it agrees for the same. Thereby, there will be two companies trying to develop the item.
 - (iv) If both the companies are not able to develop the item in the given time frame(which will be fixed after the pre bid meeting), an extension of time which will be not more than 50% of the time given originally will be allowed. If the item is not developed even in the extended time, the order will be cancelled and retender issued.
 - (v) In the retender the companies which were given the development order earlier, but have failed will be allowed to participate. But no company may be allowed to participate more than twice in development attempt of a particular item.
- (iii) In procurement through Limited Tender Enquiry, tenders will be issued to all the established source(s). There may be cases where established sources are less than three. In all such cases LTE shall be issued to minimum two established sources.

- (iv) A vendor shall be considered as an established source for a particular item if he has successfully delivered at least 95% of ordered quantity against one supply order and the same has been accepted on meeting the desired qualitative requirements satisfactorily at the Factory
- (v) When LTE is issued, all the established sources, including sources developed by other factories for a particular item, shall be allowed to participate.

4.7 SINGLE TENDER ENQUIRY (STE)

4.7.1 Single Tender Enquiry (STE): Procurement from a single source may be resorted to in the following circumstances:

- (i) It is in the knowledge of the user department that only a particular firm is the manufacturer of the required goods.
- (ii) In a case of emergency, the required goods are necessarily to be purchased from a particular source and the reason for such decision is to be recorded and approval of competent authority obtained
- (iii) For standardization of machinery or spare parts to be compatible to the existing sets of equipment (on the advice of competent technical experts and approved by the competent authority), the required items is to be purchased only from a selected firm.

Note : Proprietary Article Certificate in the following form is to be provided by the competent authority before procuring the goods from a single source under the provisions of (i) & (iii) above as applicable.

PROPRIETARY ARTICLE CERTIFICATE

(Description of Goods): _____

It is certified that:

- (i) The indented goods are manufactured by M/S
- (ii) No other make or model is acceptable for the following reasons:
.....
- (iii) Concurrence of finance wing to the proposal vide:-
.....
- (iv) Approval of the competent authority vide:

CO/MM GO/MM CO/User Section GO/User Section

Finance Member

APPROVED/NOT APPROVED
Sr. General Manager/General Manager

4.7.2 Procurement on the basis of Proprietary Article Certificate (PAC):

4.7.2.1 PAC Tendering: Certain items, particularly equipments, are the propriety product of a manufacturing firm. Such items are only available with that firm or their dealers, stockists or distributors as the detailed specifications are not available for others to manufacture the item. Situations may also arise when, for standardization of machinery or ensuring compatibility of spare parts with the existing sets of equipment, as per the advice of the competent technical expert, goods and services have to be obtained from a particular source. In such situations, a Propriety Article Certificate (PAC) may be issued to the original equipment manufacturer (OEM) and items procured on PAC basis from that particular firm or its authorized dealers, stockists or distributors. While PAC is issued only in respect of the concerned OEM, the item may be bought from any dealer, stockist or distributor specified in that particular PAC on the basis of the information provided by the OEM, provided the purchase is accompanied by a proper manufacturer certification.

4.7.2.2 Repairs/servicing on the basis of PAC: The provisions of paragraph 4.7.2.1 would also apply to repairs and servicing of equipment through the sole dealer/servicing agency, authorized by the OEM.

4.7.2.3 Caution to be exercised while granting PAC: PAC bestows monopoly and obviates competition. Hence, PAC status must be granted after careful consideration of all factors like fitness, availability, standardization and value for money. Many OEMs do not manufacture assemblies, subassemblies and components but outsource these items. Hence, such items may be available at cheaper prices with the actual manufacturers. The procurement officers must, therefore, keep abreast of the proper source knowledge and procure items from the right source to protect the interest of the State. However, the spares have to be sourced from OEM or OEM approved/recommended manufacturers only in order to make the OEM responsible for the malfunctioning of the main equipment in which the spares have been fitted.

4.7.4 Procurement from a Single Known Source: Sources are to be developed through Open Tender Enquiry (OTE). At times OTE may result in to development of a single source only. Pending development of more sources, procurement of 50 % of requirement may be done on SKS basis and balance 50 % through OTE on the basis of an SKS certificate to be issued by the Sr. GM/GM/Head of Establishment in the format given below:

SINGLE KNOWN SOURCE CERTIFICATE

1. Nomenclature of Item:

2. Specifications of Item:

3. Total Quantity required;

4. 50% of the Quantity required:

4. End Use:

5. Name and Address of the Firm:

6. It is certified that the indented item has been developed and supplied by M/s against Open Tender Enquiry number dated and the said firm is the only known and established source on date.

7. The action(s) taken for development of more sources and its/their present status is as follows (indicate here the OTE number(s) and date(s) for 50% of the required quantity as and when SKS based procurement action is/was taken and its/their present status):

.....
.....

8. Approximate value of the case:

CO/Planning

GO/Planning

CO/MM

GO/MM

Finance Member

APPROVED/NOT APPROVED

Sr. General Manager/General Manager

SINGLE AND TWO BID SYSTEMS:

4.8.1 Single Bid System: Single commercial bid system may be followed only incases where the procurement is for a value of less than Rs 5Lakhs or where only established manufacturers are participating.

4.8.2 Two bid system : Two bid system may be followed where the value of procurement is more than 05 lakh and it is an open tender enquiry where non-established manufacturers are participating. - In such cases bids should normally be obtained in two parts as follows:

(a) The Technical bid will consists of qualifying parameters, to identify whether the participating firms have the requisite manufacturing facilities for manufacturing the concerned goods & components, their turnover over the past five years, whether they have the necessary licence/registration etc. The manufacturing facilities of the participants will be verified by deputing officers, if not verified earlier.

The technical bids for the COTS items only will be accompanied with samples of the product offered, in as many numbers as specified in the bid. The offered samples will be tested to ensure that item conform to the required parameters.

(b) Financial bid indicating item-wise price for the items *quoted for* and all other commercial terms and conditions.

4.8.3 Manner of submission of bids in two bid system : The technical bid and the financial bid should be sealed by the bidder in separate covers duly superscribed and both these sealed covers are to be put in a bigger cover which should also be sealed and duly superscribed. The technical bids are to be opened and evaluated in the first instance. At the second stage, financial bids of only the technically acceptable offers should be opened for further evaluation and ranking before awarding the contract.

4.9 COST OF TENDER AND BID SECURITY/EARNEST MONEY DEPOSIT:

4.9.1 The cost of the Tender document: Tender sets in respect of Advertised (Open) Tender Enquiry will be sold on payment of the prescribed price given below:

	Estimated value of the Tender	Price of the Tender set (Rs)
1	Up to Rs. 50 lakhs	100
2	More than Rs 50 lakhs but up to Rs. 1 crore	250
3	More than Rs 1 crore but up to Rs. 5 crores	500
4	More than Rs 5 crores	1,000

Note: Cost of drawings and specifications will be extra. This may be decided in consultation with AHSP, if required. Duplicate tender form on request of a firm may be issued on fresh payment of tender set.

4.9.2 Earnest Money Deposit (EMD): To safeguard against a bidder's withdrawing or altering his bid during the bid validity period in the case of advertised or limited tender enquiry, EMD is to be obtained from the bidders. The bidders should be asked to furnish the EMD along with their bids. EMD is to be obtained in favour of GM /HOD.

4.9.2.1 Exemption from Submission of Bid Security: EMD is not required to be obtained from those firms who are registered with Ordnance Factories, the Central Purchase Organization (e.g. DGS&D), National Small Industries Corporation (NSIC) or concerned Departments or Ministries of the Government of India.

EMD need not be asked for an estimated Tender value (including all taxes) up to Rs. 2 Lakhs.

4.9.2.2 Amount of EMD: Amount of EMD may be three percent of the estimated value of the goods to be procured which should be mentioned in terms of absolute value subject to max of Rs. 50 lakh.

4.9.2.3 Form of EMD: The EMD may be accepted in the form of Account Payee Demand Draft, Fixed Deposit Receipt, Banker's Cheque or Bank Guarantee from any of the public sector banks or a private sector bank authorized to conduct government business, as per Form given at Annexure 22 safeguarding the purchaser's interest in all respects.

4.9.2.4 Validity of the EMD: EMD is normally to remain valid for a period of forty-five days beyond the final bid validity period.

4.9.2.5 Refund of EMD of Bidders: EMDs of the unsuccessful bidders should be returned to them at the earliest after expiry of the final bid validity and latest on or before the 30th day after the award of the contract. The Bid Security of the successful bidders should be returned, without

any interest whatsoever, after the receipt of Performance Security from them as called for in the contract.

4.9.2.6 Forfeiture of the EMD: The earnest money will be liable to be forfeited if the bidder withdraws or amends impairs or derogates from the tender in any respect within the validity period of his tender. No separate order is required for forfeiture of EMD which follows on default and should be credited at once to the Government Account.

4.10 TENDERING PROCESS:

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

4.10.2 Reference to Brand Names in the TE: Standards and specifications, quoted in bidding documents in generic terms shall promote the broadest possible competition while assuring the critical performance or fulfillment of other requirements for the goods. Reference to the brand names, catalogue numbers, etc. in the RFP should be avoided. Wherever it is essential to buy an item with brand name, LTE may be issued to all known authorized dealers quoting brand name in TE.

4.10.4 Format of TE: Standard forms for invitation to tenders etc. are prescribed as under:

Annexure – 3- Letter to DAVP requesting publication [Form No.OFBPM-11]

Annexure – 4- Instructions to the buyer for framing tender

Annexure- 5 – Instructions to tenderer [Form No.OFBPM-9]

Annexure – 6 – Special instructions to tenderers [Form No.OFBPM-10]

Annexure – 7 - Attendance Report for tender opening [Form No.OFBPM-12]

Annexure – 8 – Spot Comparative Statement [Form No.OFBPM-13]

Annexure - 9 – Data Sheet [Form No.OFBPM-14]

Annexure - 11 - Standard format of Supply Order [Form No.OFBPM-7]

Annexure - 18 – Acknowledgement of SO/AT [Form No.OFBPM-8]

If any special condition(s) in addition to what are covered by the standard forms is required to govern supply in any particular case, the same should be included in the additional instructions/conditions and the contractor's unqualified acceptance thereof may be obtained before incorporating the same in the conditions governing the supply order or A/T.

In this connection attention is invited to **Form No. OFBPM-10 (10) and OFBPM-6 (5)** which lay down certain additional special instructions to the Tenderers. While some of these may have general applicability, others may not be relevant in all cases. Additional conditions by their very nature are intended to suit special requirements and hence these may need to be pruned, amended or enlarged in individual cases according to their peculiarity.

Further, the additional conditions should not be an exact reproduction of any of the clauses of the General conditions and wherever the case /subject is covered by additional conditions, it should be made clear that the additional conditions are in lieu of the General conditions.

4.11 RECEIPT OF TENDERS:

4.11.1 Tender Box: In order to ensure that the bids are received by the purchaser in time, a tender box is to be placed in an easily accessible but secured place, duly locked and sealed, clearly indicating the name of the department. The words “Tender Box” should be written on the box in bold font.

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

4.12 AMENDMENT TO THE TENDER AND EXTENSION OF TENDER OPENING DATE:

4.12.1 Amendment to the tender : Sometimes situations may arise necessitating modification of the tender documents already issued (in Limited Tender Enquiry cases) or already put on sale (in Advertised/Open Tender Enquiry cases) due to change in the required quantity or specifications. In some cases, after receiving the documents, a tenderer may point out some genuine mistakes necessitating amendment in the tender documents. In such situations, it may become necessary to amend/modify the tender documents suitably prior to the date of submission of bids. Copies of such amendment/ modification should be simultaneously sent to all the selected suppliers by registered/speed post/ courier/e-mail in case of Limited Tender Enquiry. In case of Advertised/Open Tender Enquiry, copies of such amendments/ modifications should be dispatched simultaneously free of cost by registered/speed post/courier/e-mail to all the parties who may have already purchased the tender documents and copies of such amendments are also required to be prominently attached to the unsold tender documents (which are available for sale), including the tender documents put on the website.

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 are also to 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. Depending on the situation, such an amendment may also need fresh publication adopting the same procedure as for publication of the original tender enquiry.

4.12.2 Extension of Tender Opening Date: Even in those cases where extension of tender opening date does not become necessary because of the amendment to the tender, the Competent Financial Authority, where required as per delegation of financial powers, may extend the date of opening of the tender as specified in the tender but such extension should not exceed the total delivery period envisaged in the tender. Such extensions and amendments should be published in the same journals/newspapers in which the original tender was published and must be given publicity through the website if the original tender was hosted on the website.

4.12.3 Extension of Tender Opening Date After Due Date of Opening : In exceptional circumstances, date of opening of the tender may be extended within a reasonable period after the due date of the opening of tenders for reasons to be recorded in writing, with the approval of the GM/HOD.

4.13 TENDER OPENING:

4.13.1 Opening of Tenders under Single Bid System: The following procedure should be followed for opening of tenders:

- (a) All the tenders received on time should be opened in the presence of authorized representatives of the tenderers at the prescribed time, date and place by the official/Tender Opening Committee, to be nominated by the CFA in advance. Telegraphic/telex/fax/letter quotation may be considered as regular tender if the same is followed by a formal tender within 7 days from the date of opening of tender provided the telegram etc. is complete in all respects with regard to price, specifications, delivery and other particulars essential for taking purchase decision.

The authorized representatives, who intend to attend the tender opening, would be required to bring with them letters of authority from the tenderers concerned.
- (b) The tender opening official/committee should announce the salient features of the tenders like description and specifications of the goods, quoted price, terms of delivery, delivery period, discount if any, whether EMD furnished or not and any other special feature of the tender for the information of the representatives attending the tender opening.
- (c) After opening, every tender should be numbered serially, initialed, and dated on the first page by the official(s) authorized to open the tenders. Each page of the price schedule or letter attached to it shall also be initialed by them with date, particularly the prices, delivery period etc., which should also be circled and initialed indicating the date. Blank tenders, if any, should be marked accordingly by the tender opening officials.
- (d) Alterations in tenders, if any, made by the tenderers, should be initialed with date and time by the official(s) opening the tenders to make it perfectly clear that such alterations were present on the tenders at the time of opening.
- (e) Wherever any erasing or cutting is observed, the substituted words should also be encircled and initialed with date and time to make clear that such erasing/cutting of the original entry was present on the tender at the time of opening.
- (f) The tender opening official(s) should prepare a list of the representatives attending the tender opening and obtain their signatures on the list. The list should contain the representatives' names and the corresponding tenderers' names and addresses. The authority letters brought by the representatives should be attached with this list. This list should be signed by both the tender opening official(s) with date and time.
- (g) An on-the-spot report containing the names of the tenderers (serial number wise) salient features of the tenders, as read out during public opening of tenders should be prepared by the tender opening official(s) duly signed by them with date and time.
- (h) The tenders, which have been opened, the list of the representatives attending the tender opening and the on-the spot report should be handed over to the

nominated officer of the procuring agency and acknowledgement obtained for the same.

4.13.2 Opening of tenders under two bid system: The procedure laid down in the preceding paragraph should be followed mutatis mutandis under two bid system also but only the technical bids should be opened in the first instance. Commercial bids of only QR-compliant tenderers should be opened only after evaluation of the technical bids and approval of the TEC report by the CFA. The commercial bids of other tenderers, who are not found to comply with the QRs as above, will be returned to the tenderers, in sealed and unopened condition as received.

4.13.3 Late tender:

- (a) Tenders or modifications to tender received after the specified time for opening are treated as 'Late' tenders.
- (b) If late quotations are received through post, a similar action should be taken i.e. the officer should write "Late" tenders on such tenders and file them: 'Late Tenders shall not be opened but kept sealed in their original envelopes and returned to the firm.
- (c) Unsolicited offers are to be summarily rejected. Offers sent through telegram/telex/fax/letter quotations, which have not been followed up by formal completed tenders within 7 days from the date of opening, must also be ignored. Such quotations may be entered below all the regular tenders in Red Ink in CST.
- (d) The "Late" Tenders, if any, may be entered below all the regular tenders in Red Ink in the CST.

4.14 EVALUATION OF TECHNICAL BIDS:

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

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

4.14.3 Technical Evaluation Committee (TEC): TEC, wherever formed, should invariably have representatives of the user, designated inspecting agency, procurement agency and CFA. Finance representative need not be associated with the TEC, for technical aspects. Finance Member as per TPC level is to be associated if commercial parameters such as EMD, SD, Payment terms, Warranty/ Guarantee clauses are in the technical Bid.

4.14.4 Objective of the TEC: The main objective of the TEC is to prepare technical matrix showing how the technical parameters of bids received compare with the parameters mentioned in the tender document/RFP. If the offers conform to essential parameters they should be accepted.

4.14.5 Preparation of Compliance Report by TEC: The TEC should prepare a compliance statement bringing out the extent of variations and differences, if any, with the qualifying parameters laid down. If considered necessary, the TEC may invite the vendors who meet essential parameters for technical presentation/clarification.

4.14.6 Format of the TEC Report: The TEC report should be prepared in the format as given at Form at **Appendix-X**

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

4.14.7 Mandate of the TEC as regards commercial aspects: The TEC is not authorized to discuss commercial aspects of the case. However, the TEC should prepare a compliance statement in respect of commercial terms and conditions, such as bid security, warranty, etc., included in the technical bid as per the tender.

4.14.8 Association of IFA : Whenever two bid system of tendering is followed, technical evaluation of the bid becomes a vital step not only for ascertaining conformity of the technical bids with the technical specifications mentioned in the tender.

4.14.9 Approval by the CFA: The TEC report should be approved by the respective CFA. TEC report may be accepted by Chairman/OFB in the cases falling beyond OFB's power.

4.14.10 QR-compliant Offers : *The financial bids of those tenderers, whose technical bid meet the essential parameters as per the TEC report, duly approved by the CFA, may be opened by the Commercial Negotiation Committee (CNC) which, in turn, should evolve methods for benchmarking of price and holding internal meetings to finalize approach for conducting negotiations with the L1 vendor, if considered necessary by the CFA, in consultation with the IFA where powers are to be exercised with the concurrence of integrated finance.*

4.15 EVALUATION OF COMMERCIAL BIDS:

4.15.1 Preparation of the Comparative Statement of Tenders: After opening of the commercial bids (of QR-compliant tenderers in the case of two bid system and after approval of the TEC report by the CFA); the procuring agency should prepare a comparative statement of tenders (CST). The comparative statement of tenders should be prepared with due care showing each element of cost (basic cost, taxes, levies, etc.) separately against each tenderer. The CST should be prepared soon after opening of the commercial bids and got vetted by the IFA as to its correctness, where financial powers are to be exercised with the concurrence of integrated finance.

4.15.2 Commercial Evaluation: Evaluation of commercial bids is the core activity in any purchase decision. If the correct evaluation of quoted rates, freight, insurance, taxes, duties and

other expenses involved is not carried out as per the criteria incorporated in the tender, purchase decision may become deficient and faulty. Detailed guidelines on establishing reasonability of prices and ranking of bids are contained in **Chapter 13** of this Manual.

4.15.3 Commercial Negotiations : It is not mandatory to hold commercial negotiations in each case, particularly in open and limited tender cases, where the response has been substantial and the L1 price is found to be very close to the reasonable price, if such an assessment had been carried out prior to opening of the commercial bids. However, commercial negotiation may become necessary to ensure that the interest of the State is fully protected and the price paid is reasonable. Commercial negotiations are invariably conducted in case of single tender situations, including PAC cases, or when price is considered high with reference to assessed reasonable price, irrespective of the nature of tendering. Such negotiations are invariably conducted by Tender Purchase Committee (TPC) duly constituted. In the cases of procurement beyond OFB's financial power TPC under Chairman/OFB will do commercial negotiation.

4.15.4 Price Reasonableness and Freak Rates: The basic objective of commercial negotiation is to establish reasonableness of price being paid by the Government. This is a complex task and many factors need to be considered. Detailed guidelines are contained in Chapter 13 of this manual. However, factors like the last purchase price (LPP), movement of price indices, the market intelligence regarding cost of the item or similar items, material composition, cost analysis of raw materials, technological complexities involved, whether the items are of current production or otherwise, maintenance requirements, requirement of spares and warrantee etc. need to be considered while examining price reasonableness. Price offered by a firm/vendor will be considered as freak if it is found to be less than 30% or more than the average of the rate at which orders have been placed over the last three years. Such offers should not be accepted and reasons for rejection should be specifically recorded. Action should be initiated against such bidders for vitiating the tendering process. The standard format of RFP will also include these provisions.

4.15.5 Responsibility of the TPC: Wherever negotiations are conducted by the TPC, minutes of the TPC meetings should be recorded clearly and expeditiously. Detailed record of discussions regarding compliance with tender will be placed on record in the form of minutes of the meeting. TPC will also consider and evaluate all the technically and commercially acceptable bids to determine L1 and make unambiguous specific recommendations giving reasons for making the recommendations. The Members of TPC will render their expert advice/opinion in their respective fields and such advice will be deliberated by all the members of TPC. Unless there is a difference of Opinion among the members, the decision of TPC will be considered as collective decision of all Members and Chairman of TPC. The difference of opinion, if any, should be recorded in writing which may be overruled by Chairman/TPC with suitable justification in writing.

4.15.6 Acceptance of TPC's recommendations: The recommendations of the TPC should have the approval of the CFA as per the delegation of powers.

4.16 RESULTANT SINGLE VENDOR SITUATION:

4.16.1 Action to be taken in Resultant Single Vendor Situations: There are cases when only a single quote or a single valid acceptable quote is received even against LTE or OTE. This situation may arise in single bid tendering as well as in two-bid tendering before or after technical evaluation. This results in a single vendor situation indicating lack of competition. In such situations, the following aspects will be examined:

- (a) Whether all necessary requirements such as standard tender enquiry conditions, industry-friendly specifications, wide publicity, and sufficient time for formulation of tenders had been taken care of while issuing the tender;
- (b) Whether the tender had been properly dispatched to prospective vendors.
- (c) Whether the QRs, particularly in the LTE cases, could be reformulated and made broader based to generate wider competition.
- (d) Whether time and criticality of requirement permits reformulation of the SQRs.

If the examination reveals that (a) and (b) had been complied with and (c) and (d) are not feasible, the proposal may be processed further treating it as a case of OTE or LTE as the case may be with the approval of the CFA. In case, however, there is any doubt about the tendering process or it is considered feasible to consider reformulation of SQRs without compromising on operational requirement, the tender should be retracted and re-issued after rectifying the deficiencies and/or reformulating the SQRs.

4.17 RE-TENDERING:

4.17.1 Re-tendering: Re-tendering may be recommended by the TPC and approved by the CFA, generally under the following circumstances:

- (a) Offer(s) do not conform to qualitative requirements and other terms and conditions set out in the tender.
- (b) There are major changes in specifications and quantity, which may have considerable impact on the price.
- (c) Prices quoted are unreasonably high with reference to assessed reasonable price or there is evidence of a sudden slump in prices after receipt of the bids.

4.17.2 Withdrawal of offer by L₁: In case the lowest tenderer withdraws his offer, re-tendering should be resorted to as per the instructions issued by the Central Vigilance Commission. While re-tendering TE may not be issued to the vendor who had backed out and EMD, if any, of such a firm should be forfeited.

Further Sr. GM /GM / Head of Establishment may issue a show cause notice to the defaulting firm and on consideration of reply received thereto; consider imposition of ban on business relations with the firm *either permanently or* for a specified period and issue order to that effect.

4.17.3 Procurement of bare minimum quantity in case of re-tendering: In cases where it is decided to resort to re-tendering due to unreasonableness of the quoted rates but the requirement is urgent/inescapable and re-tendering for the entire quantity is likely to delay the availability of the item(s) jeopardizing the essential operations such as meeting the production targets, maintenance and safety, negotiation may be held with the L1 bidder for supply of a bare minimum quantity. The balance quantity should, however, be procured expeditiously through re-tender, following the normal tendering process.

4.18 SIGNING OF CONTRACT/PLACING OF SUPPLY ORDER:

4.18.1 Signing of Contracts/Placing of Supply Orders: Once the TPC recommendations are accepted by the CFA the contract should be signed or the supply order placed, as the case may be, immediately. It must be ensured that the contract/supply order is as per the approved terms and conditions and the rates are correctly shown as finally negotiated and accepted by the CFA. Copies of the contract/supply order should be sent to all concerned, including the IFA, the audit authority and the paying authority, and their acknowledgement obtained. The formats for Contract and Supply Order and Instruction to Vendor are given at **Annexure – 12,13,14,15**.

4.19 CARTEL FORMATION / POOL RATES:

4.19.1 Cartel formation/ Pool rates: Sometimes a group of tenderers form a cartel to manipulate the tender process. Such Pool/Cartel formation is against the basic principle of competitive bidding and defeats the very purpose of open and competitive tendering system. Such practices should be severely discouraged with strong measures. The offers may be rejected in such cases; The vendors or firms, in the above cases, will be issued show-cause notice and their reply examined. Based on the merits of the case action may be taken for blacklisting such firms either permanently or for a specified period. Suitable provision in this regard should be made in the Tender documents.

4.19.2 OFB instruction as per Part VII of Annexure 4 may be incorporated as a standard term and condition in tender and may be followed to break cartel.

4.20 PROCEDURE TO BE FOLLOWED FOR PROCUREMENT OF STORES INVOLVING VALIDATION/TESTING:

4.20.1 Opening of Commercial Offer after Trial Evaluation/Testing: The commercial offer should be opened only after acceptance of the TEC/ Validation Trial/Testing Report of samples of those vendors who have been recommended as technically compliant. The commercial offer should normally have adequate validity period from the date of submission of the offer to ensure that the offer is still valid when the commercial bid is opened, commercial negotiations held and the order placed.

4.20.2 Special provisions to be made in the tender: The tender for up gradation, refurbishment, etc. should invite technical and commercial offers separately and may also have a provision for pre-bid conference prior to submission of the offers so that the technical and other issues could be clarified to vendors. The tender should ask the vendors to specify the location of their plant/factory where up gradation, refurbishment, etc. will be undertaken and tenders of those vendors who do not have the requisite plant or facilities will be disqualified. There should be a provision in the tender that one lead equipment (where there are more than one number) will be tested by the vendor along with the representatives of the User (either in India or abroad) before the balance equipments are taken up for up gradation, refurbishment, etc. In case of a single weapon platform, there should be a provision for concurrent testing along with the up gradation, refurbishment, etc.

4.21 PLACEMENT OF ORDER ON MORE THAN ONE FIRM AGAINST A TENDER:

Buyer may like to conclude order on more than one firm against a tender due to critical / vital nature of an item. In such cases intention of buyer should be spelt out in the tender

mentioning number of firms on whom orders are intended to be placed and the ratio of distribution of quantity linked with rank of the vendor determined after commercial evaluation.

4.22 INSTRUCTION TO BIDDERS:

4.22.1 Instruction to Bidders: Subject to other specific provisions in this Manual, the broad instructions for the prospective bidders are as follows:

(a) Eligibility: A firm registered with OFB for the manufacture/supply of the tendered goods/services would be eligible to bid. An unregistered firm may get itself assessed for capacity/competency to manufacture/supply the tendered goods/services to become eligible to participate in tendering. As regards unregistered firms participating in OTE in two bid system, the capacity verification may be done during technical evaluation before opening of the price bid. This may be through an agency and/or through physical verification.

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

(c) Quotations to be submitted under original memos: Bids should be forwarded by vendors under their original memo /letter pad, inter alia, furnishing the TIN No., VAT/ CST No., Bank Address with EFT account No. and the complete postal and e-mail address of the firm.

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

(e) Bid Validity: A bid shall remain valid for ninety days in case of single bid RFP and one hundred twenty days in case of two-bid system, unless otherwise specified, from the date of the opening of the tender. A bid valid for shorter period can be rejected by the purchaser, as being nonresponsive. In exceptional circumstances the purchaser may request the consent of the bidder for an extension to the period of bid validity. Such requests shall be made in writing. The bid security provided shall also be suitably extended. A bidder accepting the request and granting extension shall not be permitted to modify his bid.

(f) Late Bids: In the case of advertised tender enquiry or limited tender enquiry, late bids (i.e. bids received after the specified date and time for receipt of bids) should not be considered and returned unopened to the bidder.

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

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

(i) Agents of the OEM/Principals: One agent cannot represent two OEMs/Principals or quote on their behalf in a particular tender enquiry. Such quote should be rejected.

4.23 **VENDOR SELECTION**: The relevant TPC under whose financial powers the case falls will do the Vendor Selection for the floating tender Enquiries. For the cases beyond the powers of Factory (i.e. cases falling under the powers of OFB/MOD), Vendor Selection will be done by Factory Level – I TPC.

4.24 INSTRUCTION TO THE PURCHASE OFFICERS:

4.24.1 Instruction to the Purchaser: Subject to other specific provisions of this Manual, the broad instructions for the purchase officers are as follows:

- (a) Vendors are broadly divided into the following categories: -
 - (i) Registered and Established Vendors for a particular item
 - (ii) Established vendors since long but not registered.
 - (iii) Registered Vendors but not yet established
 - (iv) Potential vendors neither registered nor established supplier for a particular item as yet.
 - (v) DRDO/AHSP recommended vendors for new items.

- (b) Preliminary Examination: Purchaser shall evaluate the bids to determine whether they are complete; whether any computational errors have been made; whether required sureties have been furnished; whether essential documents such as the technical literature and Agency Agreement in the case of medical stores, etc., as specified in the RFP have been furnished; whether the bid documents have been properly signed; and, whether the bids are generally in order.

- (c) Discrepancy in quoted price: If there is a discrepancy between unit price and the total price, the unit price shall prevail. If there is a discrepancy between words and figures, the amount in words shall prevail. If a supplier does not accept the correction of the errors, his bid should be rejected and the bid security may be forfeited.

(d) Trivial errors: Trivial errors such as omission to (i) enter the rates in words, (ii) initial any alteration in rates or (iii) sign both the tender and the schedules(s) may be corrected, initialed and dated both by the officers opening the tenders and signed and dated subsequently by the tenderer.

(e) Responsiveness of the bid: Prior to detailed evaluation, the purchaser should determine the substantial responsiveness of each bid to the bid documents. A substantially responsive bid is the one which conforms to all terms and conditions of the bid documents without material deviations. Deviations from or objections or reservations to critical provisions like Bid Security, Warranty & Guarantee, Applicable Law, Taxes and Duties and non-submission of documents such as valid Agency Agreement and technical literature in the case of medical stores should be deemed to be a material deviation.

(f) Evaluation and comparison of substantially responsive bids: The evaluation and comparison of responsive bids shall be done on the prices of the goods offered inclusive of all levies & taxes, such as VAT, Excise Duty and other charges such as Packing & Forwarding, Freight and Insurance etc., as indicated in the price schedule of the Bid document but exclusive of Octroi/Entry Tax, which is to be paid extra as per actual, wherever applicable.

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

(h) Waiver of QRs/parameters: There should be no waiver of parameters after the issue of TE as this may result in denial of opportunity to firms which could have met the revised essential parameters, had this been reflected in the TE ab initio. This is particularly relevant in single vendor/resultant single vendor cases where waiver of essential parameters after issue of TE and receipt of tenders would be prejudicial to the interest of other firms which might have submitted their bids as per the revised parameters but could not because of the essential parameters mentioned in the TE.

(i) Pre-bid conference: To obviate the possibility of the TE fetching no response, resulting in a single vendor situation or resulting in generation of limited competition, technical specifications should be firmed up in a pre-bid conference in two-bid tender, particularly where the goods/services to be procured are not available commercially off-the-shelf or are of complex and highly technical nature. No fresh commercial bids should be invited after opening of technical bids.

- 4.25 E-Procurement: Procurement will be made through electronic means when OFB is ready for the same. Once e- procurement commences, all procurement cases will be processed through e portal, except cases of local procurement under GFR-145, items upto Rs. 1.00 lakh, DGS&D rate contracts and cash and carry procurements.

CHAPTER 5

APPROVAL PROCESS AND CONCLUSION OF CONTRACT

5.1 PROCUREMENT OF GOODS AND SERVICES:

5.1.1 Procurement of Goods: The need for procurement of goods may arise in the following circumstances:

- (a) to cater for annual production plan and other production activities
- (b) to build up authorized stocks; or
- (c) to cater for requirement of asset repair and maintenance

5.1.2 Procurement of Services: The need for procurement of services may arise for any of the following reasons:

- (a) maintenance of any equipment/asset already held on charge;
- (b) performance of any task being performed in-house but considered appropriate for outsourcing;
- (c) need for engaging consultants;
- (d) any new function which can be performed economically by an outside agency.

5.2 PROCESSING OF PROCUREMENT PROPOSALS:

5.2.1 Preparation of Store Holder Inability Sheet (SHIS): For all items of procurement Store Holder Inability Sheet (SHIS) will be prepared stating the requirement, present stock and dues, net requirement etc. The SHIS will also give the details of all dues. The SHIS prepared preferably on the system should invariably be vetted by LAO in respect of quantity and by QC/Pattern office in respect of the technical specifications. The purpose of quantitative vetting is to ensure that there is no over provisioning, whereas specifications vetting will ensure procurement of stores to latest approved specifications / drawings. However, there is no need for financial vetting of SHIS for the cases below a value of Rs. One lakh.

5.2.2 Disagreement with the IFA: In case of disagreement with the IFA, the CFA can overrule the IFA giving reasons for overruling the financial advice.

5.3 TRANSPARENCY, COMPETITION, FAIRNESS AND ELIMINATION OF ARBITRARINESS IN THE PROCUREMENT PROCESS:

5.3.1 Need for Ensuring Propriety of Procurement Process: All government purchases should be made in a transparent, competitive and fair manner, to secure best value for money. This will also enable the prospective bidders to formulate and send their competitive bids with confidence. Some of the measures for ensuring the above are as follows:

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

- (a) the criteria for eligibility and qualifications to be met by the bidders such as minimum level of experience, past performance, technical capability, manufacturing facilities and financial position etc.
 - (b) eligibility criteria for goods, indicating any legal restrictions or conditions about the origin of goods etc which may be required to be met by the successful bidder;
 - (c) the procedure as well as date, time and place for sending the bids;
 - (d) date, time and place of opening of the bid;
 - (e) terms of delivery;
 - (f) special terms affecting performance, if any.
- (ii) Suitable provision should be kept in the bidding document to enable a bidder to question the bidding conditions, bidding process and/ or rejection of its bid.
 - (iii) Suitable provision for settlement of disputes, if any, emanating from the resultant contract, should be kept in the bidding document.
 - (iv) The bidding document should indicate clearly that the resultant contract will be interpreted under Indian Laws.
 - (v) The bidders should be given reasonable time to send their bids.
 - (vi) The bids should be opened in public and authorized representatives of the bidders should be permitted to attend the bid opening.
 - (vii) The specifications of the required goods should be clearly stated without any ambiguity so that the prospective bidders can send meaningful bids. In order to attract sufficient number of bidders, the specifications should be broad based to the extent feasible. Efforts should also be made to use standard specifications which are widely known to the industry.

5.4 RESPONSIBILITY OF THE CFA:

5.4.1 Responsibility of CFA in Purchase Decision: The CFA must consider all aspects of the case, including the quoted terms and conditions of the contract, delivery period, taxes and duties applicable, freight, insurance and other charges and the compliance with the specifications before a purchase decision is taken. CFA shall ensure compliance with **Para 4.15.1** before proceeding with the TPC meeting. The financial implication should be considered as the all-inclusive cost to the User on delivery to the designated consignee(s). Conditional offers and those with specifications not in conformity with the tendered specifications (Essential QRs) should not be considered. Before according sanction, concurrence of integrated finance should be taken wherever the powers are exercisable subject to such concurrence.

5.4.2 Compliance with Procedures: While taking the purchase decision, the CFA needs to satisfy himself that proper procedures have been followed at various stages of procurement,

purchase policies of the Government have been complied with and capacity and financial status of the firm have been checked. Purchase decisions should be taken through a formal order in a written form.

5.4.3 Accountability: The decentralization of decision making mechanism and delegation of financial powers are aimed at facilitating faster decision making and obtaining best value for money. However, the delegation of powers also implies 'authority with accountability'. The CFA approving the expenditure must ensure financial propriety and probity, transparency and fair play as well as optimum utilization of resources. The designated CFA and all members of committee CFA wherever a Committee is CFA are accountable for all decisions taken by them while approving any measure involving Government funds. This accountability is unconditional and absolute.

5.5 TIME FRAME:

5.5.1 Need for Expeditious Processing: It is imperative that the procurement process is fully responsive to the need of the Defence Services and other departments and facilitates expeditious procurement so that requirements are met on time. It is, therefore, essential that all prescribed activities are undertaken expeditiously and advice rendered within a specified time frame.

5.5.2 Time Frame: The time frame as given in **Annexure – 1 & 2** is suggested for all activities in the procurement process to ensure that the bids are finalized within validity period. In case the prescribed time frame cannot be adhered to in any specific case, suitable extension of validity of the bids should invariably be asked for well in time.

CHAPTER 6

CONTRACT

6.1 LAW:

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

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

6.2 ELEMENTARY LEGAL PRACTICES:

6.2.1 What is a Contract?: 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, and an agreement if made with free consent of parties competent to contract, for a lawful consideration and with a lawful object is a contract.

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

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

6.2.4 Which 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

6.3 COMPETENCY OF PARTIES:

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

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

- (a) Individuals

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

6.3.3 Contracts with Individuals: Individuals tender either in their own name or in the name and style of their business. If the tender is signed by any person other than the concerned individual, the authority of the person signing the tender on behalf of another must be verified and a proper power of attorney authorizing such person should be insisted on. 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 authorized attorney.

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

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

6.3.6 Corporation other than Limited Companies: Associations of individuals incorporated under statutes such as Trade Union Act, Cooperative Societies Act and Societies Registration Act are also artificial persons in the eye of law and are entitled to enter into such contracts as are authorized by their memorandum of association. If any contract has to be entered into with any one of such corporations or associations, the capacity of such associations to enter into contract should be verified and also the authority of the person coming forward to represent the said associations.

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

6.4 CONSENT OF BOTH THE PARTIES:

6.4.1 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 relates to the subject matter of the agreement.

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

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

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

6.5 CONSIDERATION:

6.5.1 What is Consideration? : Consideration is something which is advantageous to the promisor or which is onerous or disadvantageous to the promisee. Inadequacy of consideration is, however, not a ground for avoiding the contract. But an act, forbearance or promise, which in contemplation of law has no value, is no consideration and likewise an act or a promise, which is illegal or impossible, has no value.

6.6 LAWFULNESS OF OBJECT:

6.6.1 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.

6.7 COMMUNICATION OF AN OFFER/PROPOSAL AND ACCEPTANCE:

6.7.1 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.

6.7.2 Communication of Acceptance: A date is invariably fixed in tender forms up to which tenders are open for acceptance. A proposal or offer stands revoked by the lapse of time prescribed in such offer for its acceptance. If, therefore, in case it is not possible to decide a tender within the period of validity of the offer as originally made, the consent of the tenderer firm should be obtained to keep the offer open for further period or periods.

6.7.3 When is communication of Acceptance Complete? : 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 should be sent to the correct address by some authentic foolproof mode like registered post acknowledgement due, etc.

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

6.8 WITHDRAWAL OF AN OFFER/PROPOSAL AND ACCEPTANCE:

6.8.1 Withdrawal of an Offer or Proposal: A tenderer firm, which is the proposer, may withdraw its offer at any time before its acceptance, even though the firm might have offered to keep the offer open for a specified period. It is equally open to the tenderer to revise or modify his offer. Such withdrawal, revision or modification must reach the accepting authority before the date and time of opening of tender. No legal obligations arise out of such withdrawal or revision or modification of the offer as a simple offer is without a consideration. Where, however, a 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.

6.8.2 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.

6.9 SIGNING, ACCEPTANCE AND STAMPING OF THE DEFENCE CONTRACTS:

6.9.1 Who can Sign the Defence Contracts? All defence contracts are in the name and on behalf of the President of India. However, the contract, after due approval of the CFA, may be signed by a gazetted officer, duly authorized by the CFA in writing. The specimen signature of such officer is to be sent to all concerned, including the paying and inspecting authorities. As for the contractor, the person signing the contract is deemed to have been authorized by the supplier.

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

6.9.3 Stamping of Defence 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.

6.10 TYPES OF CONTRACT AND GENERAL PRINCIPLES FOR CONTRACTING:

6.10.1 Types of Contracts: Government contracts can be of many types depending on the nature of the item being procured, work to be executed, and services required to be rendered and support to be provided. The provisions contained in this Manual are not applicable to the contracts for works and projects. These will apply to all other types of revenue contracts. The general types of contract could be as follows:

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

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

- (a) The terms of contract must be precise and definite and there must be no room for ambiguity or misconstruction therein.
- (b) Standard forms of contracts should be adopted, wherever possible, and the terms of the contract should be subjected to close prior scrutiny.

- (c) As far as possible and where mandated, particularly if standard format of contract is not to be adopted, legal and financial advice should be taken in drafting of contracts and before they are finally entered into.
- (d) The terms of a contract, once the contract is concluded, should not be materially varied without the previous consent of the authority competent to enter into the contract as so varied.
- (e) No contract involving an uncertain or indefinite liability or any condition of an unusual character should be entered into without the previous consent of the competent financial authority.
- (f) Whenever practicable and advantageous, contracts should be placed only after tenders have been openly invited.
- (g) In selecting the tender to be accepted, the financial status of the individuals and firms tendering must be taken into consideration in addition to all other relevant factors.
- (h) Even in those rare cases where a formal written contract is not made, no order for supplies, etc., should be placed without at least a written agreement as to the price.
- (i) Adequate provision must be made in the contracts for safeguarding Government property entrusted to the service provider.

6.11 CHANGES IN THE TERMS OF/AMENDMENT TO A CONCLUDED CONTRACT:

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

6.11.2 Amendment to a Concluded Contract: Amendment to a contract already concluded may become essential in certain situations when either party to the contract requests for an amendment and the proposed amendment is acceptable to other party to the contract.

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

6.11.4 Vetting of Price Variation Clause: Financial Advisor should be consulted for vetting of price variation clauses/exchange rate variation clauses.

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

6.11.6 Liability on Account of Taxes etc in the Event of Grant of Extension of Delivery Period: While granting extension of delivery period, any increase in the taxes and levies would not be payable, unless the contract specifically provides for it or it is expressly agreed to with the concurrence of the Integrated Finance.

6.11.7 Consultation with IFA: All amendments to contracts, which have financial implications, including short closing and delivery period extensions (with or without LD) should be approved by the CFA in consultation with the IFA, where the original contract was concluded with the concurrence of integrated finance.

6.11.8 Amendments of Minor and Non-financial Nature: Amendments of minor nature concerning Drawing No., Part Nos., etc., which do not have financial implication, may be approved by an authority one step below the contract approving authority, if such authority is specifically authorized by the CFA.

6.12 TERMINATION OF CONTRACT:

6.12.1 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 stores/render services 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.

6.13 CONTRACT EFFECTIVE DATE:

6.13.1 Contract Effective Date: The contract effective date is normally the date on which the contract is signed by both the parties unless otherwise mutually agreed to and clearly indicated in the contract as per agreed terms and conditions.

CHAPTER 7

CONDITIONS OF CONTRACT

7.1 CONDITIONS OF CONTRACT:

7.1.1 Conditions of Contract: A contract is a legal document and must be governed by certain terms and conditions to protect the interest of both the parties to the contract. It is important that 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.

7.1.2 Standard Conditions of Contract (SCoC): In order to facilitate clear understanding of the conditions of contract, a set of standard conditions, generally applicable to all contracts, is formulated and made available to all firms at the time of registration itself. It is desirable that the SCoC as given in **part III of Annexure – 12** are publicized on the Defence website also. The Request for Proposal format contains reference to the standard as well as special conditions in **Part III & Part IV respectively of Annexure 4** that the bidders would be required to abide by. The contract must also include the standard as well as special conditions specific to a particular case, as mentioned in the RFP. The standard and special conditions of contract are included in the format of the RFP as well as the supply order and contract given in **Annexures 4, 11 and 12** respectively.

7.1.3 Applicability of SCoC to Supply Orders: The Standard and Special Conditions of Contract are applicable to Supply Orders also as given in **Annexure 11 and 12**. Acceptance of Supply Order by the Firms/PSUs is essential to make the same as legally valid document.

7.1.4 Special Conditions of Contract: Special conditions of contract are supplementary conditions applicable to a specific tender and contract. Such conditions become essential particularly in cases of contract for supply of services or even equipment. Special conditions of contract are given in **Part-IV of Annexure 11 and 12** which can be included on case-to-case basis. In addition, there may be a need to stipulate conditions like stage inspection, acceptance trials, installation, setting to work, and commissioning or pre-defined stages of payment for services. Such conditions should be decided while processing the proposal for CFA's approval and mentioned in the Request for Proposal as well as the contract/supply order.

7.2 APPLICABILITY OF CONDITIONS OF CONTRACT:

7.2.1 Applicability of all terms and conditions: The formats of the TE and the contract agreement contain all the standard and special conditions of contract. While the special conditions may be mentioned in the TE and subsequently in the contract, as applicable in a particular case, all the standard terms and conditions should invariably be mentioned in the TE and the contract. Minor changes in the text would be permissible, as long as such changes do not materially alter the context or import of the relevant article. CFAs would be competent to take a decision in this regard in consultation with Integrated Finance, wherever such consultation is required for sanctioning the proposal. Legal opinion may be sought, if considered necessary, before making any such alteration. However, standard text of clause given in tender and supply order should not be altered without seeking legal opinion.

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

7.3 EFFECTIVE DATE OF CONTRACT:

7.3.1 Effective Date: The effective date of commencement of contract should be invariably indicated in each contract as per agreed terms and conditions. Normally, the date of signing of the contract will be the effective date of contract as given in **Part III, Annexure – 12**, except when specifically provided otherwise in the contract. Where specifically agreed to by the parties to the contract, effective date may be the date on which any or the last of the following conditions, as applicable, is complied with:

- (a) Furnishing of the Performance Bond in the form of PBG by the Seller
- (b) Obtaining of the Export License for supply of stores by the Seller and a confirmation in writing sent to the Buyer within specified days of signing of the contract.
- (c) Receipt of Bank Guarantee for advance payment
- (d) Date of Issue of the End User Certificate. (The supplier should normally provide the End User Certificate within 30 days of the signing of the contract.)

7.4 PAYMENT OF ADVANCE:

7.4.1 Advance Payment to Suppliers: Ordinarily, payments for services rendered or supplies made should be released only after the services have been rendered or supplies made. Therefore, no advance should be offered in the TE. However, it may become necessary to make advance payments in the following types of cases:

- (a) Advance payments are demanded by firms holding maintenance contracts for servicing of air-conditioners, computers, other costly equipments, etc.
- (b) Advance payments demanded by firms against fabrication contracts, turnkey contracts, etc.

Where it is decided to provide advance payment, the quantum should be incorporated upfront in the TE.

7.4.2 Quantum of Advance: Advance payment should not exceed fifteen percent of the contract value or the amount payable for six months in case of maintenance contracts.

7.4.3 Relaxation of the Prescribed Ceilings: The ceilings mentioned above may be relaxed only with the approval of Ministry of Defence.

7.4.4 Stage/Part Payments: If stage/part payments are proposed to be made on achievement of milestones, it should be clearly mentioned upfront in the TE with the approval of CFA and the concurrence of the IFA, wherever required as per the delegation of financial powers.

7.4.5 Securing the Advance: While making any advance payment, adequate safeguards in the form of bank guarantee, etc., should be obtained from the firm. The format in which such guarantee is to be obtained is given in **Annexure – 24**.

7.5 PRICE VARIATION CLAUSE/PRICE ADJUSTMENT CLAUSE:

7.5.1 Normally a contract should be entered into on a fixed price basis. Nevertheless, in the fluctuating market conditions or in the case of long term contracts it may become necessary to consider variable price quotes given by the suppliers. The following guidelines will be followed in cases where a price variation provision is sought to be included in the contract:

- (a) Price Variation Clause can be provided (i) in long-term contracts, where the delivery period extends beyond 12 months and (ii) in short term contract in fluctuating market. Where a price variation clause is provided, the price agreed upon should specify the base level viz., the month and year to which the price is linked, to enable variations being calculated with reference to the price levels prevailing in that month and year.
- (b) A formula for calculation of the price variations that have taken place between the Base level and the Scheduled Delivery Date should be included in this clause. The variations are calculated by using indices published by Governments or Chambers of Commerce periodically. An illustrative formula has been given in **Part IV of Annexure – 4** for guidance.
- (c) The Price Variation Clause should also specify cut-off dates for material and labour, as these inputs taper off well before the scheduled delivery dates.
- (d) The Price Variation Clause should provide for a ceiling on price variations. It could be a percentage per annum or an overall ceiling or both. The buyer should ensure a provision in the contract for benefit of any reduction in the price in terms of the Price Variation Clause being passed on to him.
- (e) The clause should also stipulate a minimum percentage of variation of the contract price above which price variations will be admissible (e.g. where resultant increase is lower than two per cent no price adjustment will be made in favour of the supplier).
- (f) Where advance or stage payments are made, there should be a further stipulation that no price variations will be admissible on such portions of the price, after the dates of such payment.
- (g) No price variation will be admissible beyond the original Scheduled Delivery Date for defaults on the part of the supplier.
- (h) Price variation may be allowed beyond the original Scheduled Delivery Date, by specific alteration of that date through an amendment to the contract in cases of Force Majeure or defaults by Government.
- (i) Where deliveries are accepted beyond the scheduled Delivery Date subject to levy of liquidated damages as provided in the Contract, the liquidated damages

(if a percentage of the price) will be applicable on the price as varied by the operation of the Price Variation Clause.

- (j) Where contracts are for supply of equipment, goods, etc., imported (subject to customs duty and foreign exchange fluctuations) and/or locally manufactured (subject to excise duty and other duties and taxes), the percentage and element of duties and taxes included in the price should be specifically stated, along with the selling rate of foreign exchange element taken into account in the calculation of the price of the imported item. The mode of calculation of variations in duties and taxes and Foreign exchange rates and the documents to be produced in support of claims for such variations should also be stipulated in the Contract.
- (k) The clause should also contain the mode and terms of payment of the price variation admissible.

7.6 EXCHANGE RATE VARIATION (ERV):

7.6.1 ERV Clause: This clause is only to be included in the contracts concluded with Defence PSUs, in case the delivery period exceeds one year from the date of contract which involves import content (foreign exchange). The offer should indicate the import content. In case DP is re-fixed / extended, ERV will not be admissible, if this is due to default of the supplier. Base exchange rate of each major currency used for calculating FE content of the contract is to be indicated. The base date for ERV to be admissible would be the contract date and variation on the base date can be given up to the midpoint of manufacture unless the firm has already indicated the time schedule within which materials will be exported by the firm. Other conditions as above for price adjustment would be applicable.

7.6.2 Documentation for Claiming ERV: The following documents would need to be submitted in support of the claim on account of ERV:

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

7.7 PERFORMANCE SECURITY DEPOSIT:

7.7.1 Performance Security: Performance Security deposit payable to the Purchaser is furnished by the Supplier in the form of a Performance Bank Guarantee (PBG) issued by a public sector bank or a private sector bank authorized to conduct government business, in the prescribed format within thirty days from the date of contract. At present, ICICI Bank Ltd., Axis Bank Ltd. and HDFC Bank Ltd. are the three private sector banks authorized to carry out government transactions. The performance security deposit is meant to compensate the Purchaser for any loss suffered due to failure of the supplier to complete his obligations as per the contract. Preferably, performance security is payable by the supplier at the rate of 10% of the contract value. PBG should remain valid for a period of sixty days beyond the date of completion of contractual obligations, including warranty. The BG is returned to the supplier on successful completion of all his obligations under the contract. In case the execution of the contract is delayed beyond the contracted period and the purchaser grants extension of delivery period, with or without LD, the

supplier must get the BG revalidated, if not already valid. The format of the PBG is given in Annexure -25.

7.7.2 As a rule Performance Security Deposit (PSD) should not be waived except in most unavoidable circumstances.

However, for reasons to be recorded in writing, PSD waiver in respect of PSUs may be considered by the CFA.

In other than PSU cases waiver of PSD may be considered, for reasons to be recorded in writing, by the CFA only on the basis of recommendations of the relevant TPC. In such cases, prior approval of the next higher CFA will be obtained. In cases DGOF/ Chairman OFB is the CFA, he will be the competent authority for granting waiver of PSD.

7.7.3 For the cases valuing below Rs. 2 Lakhs PSD may not be insisted.

7.8 PAYMENT:

7.8.1 Payment Terms: Payment terms are of great importance both for the purchaser and the supplier as the cost of finance plays a very important role in deciding the cost of an item or service being contracted for. Normally, 90 % of the contract amount is released against provisional receipt of the item at the consignee's premises along with inspection note and other documents. Balance 10% is released after the stores have been properly checked and accounted for. Some suppliers prefer 100% payment on delivery and acceptance, which may be accepted. In many cases, suppliers request for allowing part supply and corresponding part payment. Such requests can also be considered by the CFA for acceptance on merit of individual cases.

7.8.2 Paying Authority: The specific office of the Principal Controller/Controller or the Unit Accounts Office, which would be responsible for making payment, should be clearly mentioned in the TE and the contract.

7.8.3 E-payments: It will be mandatory for the suppliers/vendors to indicate their bank account numbers and other relevant e-payment details so that payments could be made through ECS/NEFT/RTGS mechanism 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 **Annexure – 41**. The details given in the mandate form should also be incorporated in the supply order/contract.

7.8.4 Documents to be Submitted for Claiming Payment: The documents to be submitted for audit and payment depend upon the nature of procurement and the terms and conditions of a particular supply order/contract. However, essential documents that are required for audit and payment are as follows:

- (a) Documents to be submitted to the Audit Authority Along With Advance Copy of the Supply Order/Contract:
 - (i) Ink signed copy of the Supply Order/Contract Agreement/ Accepted Tender (AT) Note
 - (ii) An ink-signed copy of sanction of the CFA indicating UO Number and date of IFA's concurrence, where applicable
 - (iii) A copy of the techno-commercial evaluation and rejection details, if any, in case of two bid system

- (iv) A copy of the Comparative Statement of Tenders (CST) with price bids
- (v) A copy of TPC/PNC proceedings, if held
- (vi) PAC certificate/OEM's Certificate/ any other certificate that may be peculiar to the procurement
- (vii) Specimen signatures of sanctioning and countersigning authorities
- (viii) VAT/CST/Service Tax Registration No. /PAN No.

Note: [The budget allotment letter(s) conveying allocation of funds under the concerned code-heads of expenditure are required to be sent as and when the allocations are made. In case documents listed above are not sent in advance to the audit authority, they may be called for by such authority at the time of payment of bills/post audit, where applicable.]

- (b) Documents to be submitted to Paying Authority for payment along with the Bill
 - (i) An ink-signed copy of the Contingent Bill/Seller's Bill
 - (ii) An ink-signed copy of the Commercial Invoice
 - (iii) A copy of the Supply Order with UO No. and date of IFA's concurrence, where required under delegation of financial powers.
 - (iv) CRVs in duplicate
 - (v) Inspection note
 - (vi) Relevant documents/proof of payment in support of the claim for statutory and other levies, such as Excise duty challan, Customs duty clearance certificate, Octroi receipt, proof of payment for EPF / ESIC contribution with nominal roll of beneficiaries, etc., as applicable
 - (vii) Exemption certificate for Excise duty/Customs duty, if applicable
 - (viii) Bank Guarantee for advance, if any
 - (ix) Guarantee/Warranty Certificate
 - (x) Performance Bank Guarantee/indemnity bond, where applicable
 - (xi) DP extension letter with CFA's sanction, UO No. and date of IFA's concurrence, where required, indicating whether extension is with or without LD
 - (xii) Details for electronic payment as per mandate form given in **Annexure – 41**, if these details are not incorporated in the Supply Order/Contract or in case there is a change in these details
 - (xiii) User acceptance
 - (xiv) Any other document/certificate that may be provided for in the supply order/contract.

[Note: Depending upon the peculiarities of the procurement being undertaken, documents may be selected from the list given above and specified in the TE and supply order/contract.]

7.9 DELIVERY:

7.9.1 Delivery: Timely delivery as per the delivery period (DP) stipulation in the Contract/Purchase Order is one of the most important procurement objectives as timely availability of items is vital, particularly for the department of defence. The stores are considered to have been delivered only when these are handed over to the consignee after due inspection by the designated inspecting agency. Most contracts stipulate door delivery at the consignee's end by

road. In some cases, the stores are also despatched by rail, in which case the delivery is deemed to have been made on receipt of RR and inspection note. In certain cases where the contractor offers stores for inspection during the last few days of contract DP or on the last day of the contract DP, the inspector can inspect the store and sentence it as per standard franking clause.

[As per the standard franking clause, the fact that the stores have been inspected after the delivery period and accepted by the inspectorate does not bind the purchaser, unless at his discretion he agrees, to accept delivery thereof. The stores are accepted without prejudice to the right of the Purchaser.]

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

7.9.3 Failure to deliver within the DP: When the supplies do not materialize by the stipulated contract delivery date, the purchaser has the option of:

- (a) Extending the delivery date with imposition of LD and denial clause, which implies denial of increase in price, taxes, duties, etc. taking place during the extended period.
- (b) Re-fixing the delivery date.
- (c) Canceling the contract and repurchasing the non-supplied quantity.

When option (b) is chosen, specific reasons will be given.

7.9.4 Deciding the Course of Action in the Event of Failure of Supply: For deciding on these options the Procuring Authority has to balance the time factor required for making repurchase and whether the supply can be arranged earlier than the period of extension sought for at cheaper rates from alternative sources and in the latter case whether the indenter can reasonably wait to take advantage of lower trend in prices. Extension shall be granted only where the CFA is convinced that supplier would come forward during extended DP.

7.9.5 MAXIMUM PERIOD OF DELIVERY EXTENSION: The maximum period of extensions of delivery can be approved the concerned CFA as per the delegated OFB Financial Powers.

7.10 LIQUIDATED DAMAGES (LD):

7.10.1 Liquidated damages: Compensation of loss on account of late delivery where loss is pre-estimated and mutually agreed to is termed as the Liquidated Damage (LD). Law allows recovery of pre-estimated loss, provided such a term is included in the contract. For imposition of LD, there is no need to establish actual loss due to late supply. The legal position with regard to claim for liquidated damages is as follows:

- (a) Whatever the quantum of the loss sustained, the claim cannot exceed the sum stipulated in the contract.
- (b) Only reasonable sum can be calculated as damages, which in given situation may be less than the sum stipulated.
- (c) What is a reasonable sum would depend on facts.

- (d) Court may proceed on the assumption that the sum stipulated reflects the genuine pre-estimates of the parties as to the probable loss and such clause is intended to dispense with proof thereof.
- (e) The distinction between penalty and LD has been abolished by the Indian Contract Act and in every case; the Court is not bound to award more than 'reasonable compensation' not exceeding the amount so named.

7.10.2 Quantum of LD: As a general rule, if the contractor fails to deliver the stores/service or any installment thereof within the DP or at any time repudiates the contract before expiry of such period, the CFA, without prejudice to the right of the purchaser to any other remedy for breach of contract, may recover from the contractor a sum equivalent to 0.5% of the prices of any stores/service which the contractor has failed to deliver within the period agreed for delivery in the contract, for each week or part thereof during which the delivery of such stores/service may be in arrears, where delivery thereof is accepted after expiry of the aforesaid period. The total damages shall not exceed value of 10% of the delayed stores/service beyond original delivery period. The LD cannot exceed the amount stipulated in the contract.

7.10.3 Guidelines for levying of LD: The following guidelines would be followed while taking decision for imposition of LD:

Sl. No.	Circumstances	Quantum of LD
1	Delay in supplies resulted in actual/demonstrable monetary loss and the Supplier was responsible for the delay	Full LD as per the provisions of paragraph 7.10.2, subject to the LD not exceeding 10% of the value of the delayed stores/service.
2	Delay in supplies 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 10% of the value of the delayed stores/services.
3	Delay in supplies 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	<i>Actual monetary loss can't be certified but inconvenience has been caused.</i>	<i>LD may be levied at the rates as may be decided, but less than the maximum prescribed.</i>

7.10.4 Waiver of LD: Liquidated damages may be waived in full or part, as per the guidelines contained in the preceding paragraph, with the approval of the CFA and the concurrence of the IFA, wherever such concurrence is mandated as per delegation of financial powers. In all such cases, adequate reasons should invariably be recorded for waiving the Liquidated Damages.

7.10.5 Consequential Damages: Consequential damage is imposed over and above LD in case of time critical Turn-key Projects. Where considered necessary, it should be included in the TE and the contract.

7.11 ARBITRATION:

7.11.1 ARBITRATION CLAUSE:

A tender being issued to Indian Private Firms should have an arbitration clause stating the following:

"All disputes & differences arising out of or in any way touching or concerning this agreement (except those for which specific provision has been made therein) shall be referred to Sole Arbitrator to be appointed by Director General, Ordnance Factories. The Arbitrator so appointed shall be a Government Servant who had not dealt with matters to which this agreement relates and in course of his duties had not expressed views on all or any of the matter in dispute or differences. The Award of the Sole Arbitrator shall be final and binding on the parties".

7.11.2 Appointment of Arbitrators through Court: There may be situations when either party approaches a court of law for appointing an independent arbitrator. Purchase Officers must consult the Legal Advisor (Defence) and Government counsel in all cases of arbitration.

7.12 SETTLEMENT OF DISPUTES:

Having regard to legal complications, cost involved in litigation and difficulties in enforcing legal awards, all efforts have to be made to settle disputes with overseas contractors by negotiation specially in case of small value contracts.

The sole-arbitration clauses as laid down in the general conditions of contract may not be accepted by the foreign firms. As an alternative, Provision may be made, where necessary, for arbitration by three arbitrators, one each nominated by the Purchaser and the Supplier and the third, who should not normally be a native of either India or the contractor's country chosen by these two arbitrators. In case of disagreement between the two arbitrators, the third arbitrator may be left to be nominated by the Chairman of International Chamber of Commerce, Paris or similar prima facie neutral and reputed institutions.

7.13 FORCE MAJEURE:

7.13.1 Force Majeure: Wherever considered necessary, this clause may be included in the TE and in the Contract. In this context provisions of **paragraph 10.9 of this Manual** will apply, mutatis mutandis, to procurement from indigenous sources also, though this clause should be included in such contracts only if absolutely necessary. The standard format of the clause is given in **Part-IV of Annexure – 4**.

7.14 OPTION CLAUSE AND REPEAT ORDER CLAUSE:

7.14.1 Repeat Order and Option Clauses: While exercising any one or both of these clauses, the overall ceiling of fifty percent of the originally contracted quantity will not be exceeded. Repeat Order and/or Option Clause may be exercised more than once, provided altogether these orders do not exceed 50% of the original order quantity.

7.14.2 Option Clause: All tenders should have an option clause stating “the purchaser retains the right to place orders for additional quantity up to a maximum of 50% of the originally contracted quantity at the same rate and terms of contract”. The purchaser may operate the option clause within original DP subject to (a) incorporation of option clause in the contract and (b) there is no downward trend in price. Option clause after original DP may be exercised with the consent of supplier subject to (a) and (b).

7.14.3 Repeat Order: Wherever considered necessary, provision may be made in the tender and the contract for Repeat Order. A Repeat order against a previous order may be placed at the same cost and terms and conditions as in the original order/contract with the approval by the CFA and concurrence of integrated finance, wherever required as per the delegation of financial powers.

7.14.4 Conditions Governing Repeat Order: A Repeat Order may be placed subject to the following:

- (a) Items ordered against the previous order had been delivered successfully.
- (b) Original order should not have been placed to cover urgent/emergent demand.
- (c) Repeat Order is not placed to split the requirement to avoid obtaining the sanction of the next higher CFA.
- (d) The original order should have been placed on the basis of lowest price negotiated and accepted by CNC, and not on the basis of delivery or any other preference.
- (e) There is no downward trend in the price of the item. (A clear certificate should be recorded to that effect.)
- (f) The requirement is for stores of identical nature/ specifications, nomenclature etc. Minor improvements in spec(s) or phasing out of products due to obsolescence should not be precluded from the purview of repeat order but this aspect should be very carefully examined from the point of view of interchangeability of the product offered as an improved substitute.
- (g) The repeat order is to be placed within six months from the date of completion of the supply against the previous order and it may be placed more than once.
- (h) The repeat order quantity is to be restricted to a maximum of 50% of last order quantity in case of indigenous and foreign procurement, where the contract does not also include the option clause. In case of orders for small quantities (1 to 7), the Repeat Order quantity may be rounded off to the next whole number.
- (i) This provision may be exercised in case of PAC/Single vendor OEM also. However, care should be taken before exercising this provision in multi-vendor situation.
- (j) Where the contract also includes an Option clause, Repeat Order may be placed only for such quantity, which, along with the quantity for which Option clause may have already been exercised, does not result in the total quantity under the Option clause and the Repeat Order exceeding 50% of the originally ordered quantity.
- (k) The CFA will be decided taking into consideration the value of the originally ordered quantity and the Option clause/Repeat Order quantity.

7.15 RISK AND EXPENSE PURCHASE:

7.15.1 Risk & Expense Purchase: Risk and expense purchase clause may be included in the TE and the contract, if considered necessary. Risk and Expense purchase is undertaken by the purchaser in the event of the supplier failing to honour the contracted obligations within the stipulated period and where extension of delivery period is not approved. While initiating risk purchase at the cost 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. A Standard Risk & Expense Purchase clause is given in **Part-IV of Annexure – 4**.

7.15.2. Risk and Expense purchase clause 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.

7.15.3 Alternative remedies to Risk & Expense Purchase Clause: In case of foreign contracts, risk and expense clause is generally not applicable. The other remedies available to the purchaser in the absence of the Risk and Expense Clause are as follows:

- (a) Deduct the quantitative cost of discrepancy from any of the outstanding payments of the 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.

7.16 APPORTIONMENT OF QUANTITY:

7.16.1 Apportionment of Quantity: In global and limited tender enquiry cases, if there is an apprehension that the L1 may not have the capacity to supply the entire required quantity, it should be mentioned in the TE that the order may be placed on L2, L3 and so on for the balance quantity at L1 rates, provided this is acceptable to them. Even if there was no prior decision to split the quantities and it is discovered that the quantity to be ordered is far more than what L1 has quoted for, the order may be distributed as above among L2, L3, etc. at the L1 rate in a fair and equitable manner. Where it is decided in advance to have more than one source of supply (due to vital or critical nature of the item) the ratio of splitting should be indicated in the TE.

7.17 ACCEPTANCE OF EXCESS OR SHORT DELIVERIES:

7.17.1 Acceptance of Excess or Short Deliveries: There may be occasions when excess or short supplies are made by the vendors due to various reasons like, exact multiples of the standard units

of measure, or where it is difficult to mention exact weight in case of steel plates etc. A clear indication should be made in the TE if this clause is to be applied in any particular case. These variations in supplies may be accepted with the approval of CFA, subject to the value of such excess/short supplies not exceeding 5% (five percent) of the original value of the contract. CFA will be determined with reference to the value of the original order plus excess/short supply.

7.18 BUY BACK OFFER:

7.18.1 Buy Back Offer: When it is decided to replace an existing old item(s) with a new item(s), a suitable clause should be incorporated in the TE so that the prospective and interested bidders may formulate their bids accordingly. Depending on the value and condition of the old item(s) to be traded, the time as well as the mode of handing over of the old items to the successful bidder should be decided and relevant details in this regard suitably incorporated in the TE. Suitable provision should also be made in the TE to enable the Purchaser either to trade or not to trade the old item(s) while purchasing the new one(s).

7.19 FALL CLAUSE:

7.19.1 Fall Clause: In cases where contracts have to be concluded with the firms, whose rate contract with DGS&D/other central procurement agencies has expired and renewal of RC has not taken place, a 'fall clause' should be incorporated in the Supply Order/Contract to the effect that during the currency of the Supply Order/Contract, in case rates are found to be lower on conclusion of rate contract, the lower rates as in the rate contract shall be applicable.

7.20 Penalties: All contracts whether with Indian or Foreign vendors will have provision for black listing or levy of fines /penalties. A vendor may be blacklisted for a specific period or indefinitely. The order levying penalty/fine/blacklisting will only be passed after giving the said vender an opportunity to show cause. The following action will lead to penalties as listed above:

- (i) Any attempt to bribe/influence the public authorities involved in the procurement.
- (ii) Forming of cartel.
- (iii) Non supply of goods and / or services.
- (iv) Supply of sub standard goods, and refusal to replace these with goods of requisite qualities.

CHAPTER 8

RATE CONTRACT

8.1 GENERAL:

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

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

8.1.3 Price Agreement: While procuring goods and services, it may be expedient to enter into a Price Agreement (PA)/Fixed Price Quotation (FPQ) with the Original Equipment Manufacturers (OEMs). The PA/FPQ may be finalized after due negotiation and market survey. Such PA/FPQ may be normally valid for a period up to three years and may be extended further suitably with next higher CFA's sanction.

8.1.4 Types of Items Suitable for RC: The types of items which may be considered for RC are:

- (a) Items required by several users on recurring basis and having clear specifications.
- (b) Fast moving items with short shelf life or storage constraints.
- (c) Items with minimum anticipated price fluctuation during the currency of the RC. Coverage of items with high probability of considerable price fluctuation by RC except for short term contract may be avoided.
- (d) Items that take long gestation period to manufacture and for which there is only one source for manufacturing.

8.1.5 Items already on DGS&D Rate Contract: No Rate Contract should normally be concluded for items in respect of which DGS&D Rate Contracts are already in place. If, however, it becomes necessary to enter into contracts for items which are already on DGS&D Rate Contract, the reasons for doing so should be recorded and CFA's approval taken after consulting integrated finance.

8.2 AUTHORITIES COMPETENT TO CONCLUDE RATE CONTRACT/LONG TERM PRODUCT SUPPORT:

8.2.1 Authorities competent to conclude Rate Contracts: Rate Contract or Price Agreement for goods and services will be concluded by OFB or Ordnance Factory nominated by OFB.

8.2.2 Long Term Product Support: The Price Agreement for long term product support should be concluded with the approval of the authorities to whom such powers have been specifically delegated.

8.2.2.01 The provision/mechanism for having long term contract (3 to 4 years) with price variation formula for the items which have regular and consistent requirement and are supported by requisite indents shall be made

8.2.2.02 Procedure for Long Term Contracts by OFB/Ordnance Factories:

(a) For certain direct Materials/Components required consecutively for 3 to 4 years or more for production of End-Stores for which firm Indents/Roll on Plan are available and are regular priority items of the Indentor, Long Term parallel Contracts for 3 to 4 years may be concluded. However, Factories should continue to take action for development of new sources as per the guidelines given.

(b) Staggered delivery schedule of the consignee shall be forwarded to the Vendors, periodically, in such a way that at any point of time neither any stock-out situation shall arise nor the inventory Level shall exceed as prescribed.

(c) OFB shall decide a nodal factory for each of the items for which Long term Contract is to be finalised on the basis of maximum consumption of the store. The nodal factory, to be decided by the concerned Additional DG/ Member Operating Division, shall be responsible for the tendering process.

(d) For Items which are common for factories under different Operating Divisions, the nodal factory shall be decided by Member/P&MM or Chairman/OFB depending on the approximate value of Annual requirement of all Factories.

(e) Based on the capacity of the firms and annual requirement and criticality of the stores parallel Long term contracts may be finalised keeping prices and other terms and conditions at same level so that factories can operate the contracts depending on the economy of transportation charges and landing charges and also the availability of capacity with the firms. The condition on parallel contracts should be mentioned in the Tender Enquiry.

(f) Processing at nodal factory/Agency:

(i) Nodal factory/Agency will collect the approximate annual estimated requirement from all the factories and consolidate the same

(ii) Collect the established supplier list for the subject item from all the factories and short list the suppliers as per the performance, capacity and registration status of the suppliers.

iii) While processing for Long term contract for the first time, established suppliers of all the factories shall be taken into consideration.

(iv) In case the number of established suppliers is less than three, one of the factories other than Nodal factory, shall take action for further source development through OTE.

- (v) Issue the LTE to those short listed suppliers by clearly indicating the terms and conditions.
 - (vi) Price shall be obtained with Price Variation Clause for which Price variation formula shall be indicated in the TE by clearly indicating the period for which the Long term Contract is being proposed.
 - (vii) Prices shall be obtained on FOR destination basis.
 - (viii) After opening the tenders, case shall be forwarded to OFB (MM division) / OEF/ AVHQ along with factory level TPC recommendations if it exceeds powers delegated to the factory.
 - (ix) Factory shall ensure that all the documents such as annual estimated requirements, vendor selection TPC minutes duly justifying addition or deletion of vendors, tender enquiry copy along with terms & conditions, specifications of the stores, CST, DATA sheet on prices for last 3 years at which various factories were purchasing the stores, certificate from GM that the subject stores is not covered in rate contract concluded by DGS&D or any other department at less price, total estimated value of the Long Term Contract etc. are forwarded to OFB.
- (g) Processing at OFB/OEFHQ /AVHQ
- (i) Based on the type of item, case will be processed either by OFB/MM or OEFHQ/MM or AVHQ/MM.
 - (ii) Case will be put up to appropriate TPC based on the financial value of the case on the basis of annual consumption.
 - (iii) Based on the approval of relevant TPC concerned, the procurement division (OFB/MM, OEFHQ/MM AND AVHQ/MM) will conclude the Long term Contract and circulate to all the Ordnance Factories and other concerned agencies.
 - (h) In this regard, the provisions of para 4.2.2 of the Manual (reproduced below for ready reference) shall have precedence:

OFB Rate Contracts: OFB may conclude rate/term contract through OTE in two bid systems for item(s) required by more than one factory. However, rate contracts can be finalized through LTE with PSUs in respect of items which are known to be manufactured only by them. Ordnance Factories may source these items as Direct Demanding Officer availing long term contract concluded by OFB.

8.3 PERIOD OF RATE CONTRACT:

8.3.1 Period of RC: A Rate Contract will normally be concluded for one year. However, in special cases, shorter or longer period, not exceeding three years, may be considered. Any extension of the existing RC or conclusion of an RC beyond a period of three years would need the approval of the Ministry of Defence.

8.3.2 Fixing of the Termination Period: As far as possible termination period of RC should be so fixed as to ensure that budgetary levies would not affect the price and thereby frustrate the contracts.

8.4 DETERMINATION OF THE COMPETENT FINANCIAL AUTHORITY TO APPROVE RC:

8.4.1 Competent Financial Authority: Value of anticipated drawal over a period of one year should be taken into account while determining the level of CFA for conclusion of Rate Contract/Price Agreement.

8.5 PROCESS OF CONCLUDING RATE CONTRACTS:

8.5.1 Estimate/Indent/Requisition: A Rate Contract can be concluded based on estimated annual requirements of various users under the authority processing an RC proposal. The contract concluding authority will obtain estimated annual requirement from user Ordnance Factories duly authenticated by Sr.GMs/GMs along with detailed specifications.

8.5.2 Selection of Firms: Rate Contracts should be normally concluded only with the registered firms based on their capacity assessment by the designated Registering/Inspecting Agency. In respect of *unregistered firms bidding for Rate Contract for the first time*, their technical and financial capabilities *must be verified*. The following aspects should normally be kept in mind:

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

8.5.3 Price Negotiation: While concluding RC, it is preferable to conduct price negotiations by the CNC in order to obtain best value for money and also to clarify all aspects of the RC to avoid ambiguity and dispute at a later stage. All Rate Contracts and Price Agreements should be processed through the committee CFA or the CNC so as to ensure best value for money, quality assurance and transparency. Participation of finance member in all deliberations, particularly regarding the pricing and conditions of contract, is mandatory.

8.5.4 Signing of Rate Contract: RC concluded for various wings of the MOD will be signed for and on behalf of the President of India by the authority to whom powers to enter into RC are delegated or an officer authorized to sign financial documents on his behalf, after CFA's approval.

8.6 Conclusion of Parallel RC

8.6.1 Parallel Rate Contracts: In case it is observed that a single supplier does not have enough capacity to cater to the entire demand of an item or where it is desirable to have a wider vendor base due to criticality of the items, it may become desirable to conclude parallel RCs with more than one firm. The CFA, based on the merit of each case, may decide the number of firms to be awarded RC for an item so that DDOs will have a wider choice. Efforts should be made to conclude parallel RCs with firms located in different parts of the country to cater to users over a wider geographical spread. In all such cases, the proposal to distribute the order will be part of the RFP, and the bidders other than L1 have to match the L1 price. In such cases approval of the next higher CFA is to be taken. In cases where DGOF/ Chairman OFB is the CFA, he will be the competent authority for granting such approval.

8.6.2 All DDOs to operate the RCs: Orders against a Rate Contract concluded by any authority may be placed on the same terms and conditions by all Direct Demanding Officers of Services/ Departments/ Organizations/Units/Establishments under the Ministry of Defence, subject to there being no downward trend in prices. To facilitate such operation, a suitable provision should be made in the RCs and the details of the RCs posted on the website of the Service/Organization concerned.

Special Conditions Applicable for Rate Contract

8.7.1 Special Conditions: Some conditions of rate contract differ from the usual conditions applicable for other contracts. Some such important special conditions of rate contract are as follows:

- i) Earnest Money Deposit (EMD) is not applicable.
- ii) In the Schedule of Requirement, no quantity is mentioned; only the anticipated drawal may be mentioned without any commitment.
- iii) The purchaser reserves the right to conclude more than one rate contract for the same item.
- iv) The purchaser as well as the supplier may withdraw the rate contract by serving suitable notice to each other. The prescribed notice period is generally thirty days.
- v) The purchaser has the option to renegotiate the price with the rate contract holders.
- vi) In case of emergency, the purchaser may purchase the same item through ad hoc contract with a new supplier.
- vii) Usually, the terms of delivery in rate contracts are FOR dispatching station. This is so, because the rate contracts are to take care of the users spread all over the country. However, wherever it is decided to enter into RCs which are FOR destination, the cost of transportation should be separately asked for.
- viii) Supply orders, incorporating definite quantity of goods to be supplied along with all other required conditions following the rate contract terms, are to be issued for obtaining supplies through the rate contract.
- ix) The purchaser and the authorized users of the rate contract are entitled to place supply orders up to the last day of the validity of the rate contract and, though supplies against such supply orders will be effected beyond the validity period of the rate contract, all such supplies will be guided by the terms and conditions of the rate contract.
- x) The rate contract will be guided by “Fall Clause”.

8.7.2 Fall Clause: Fall clause is a price safety mechanism in rate contracts. The fall clause provides that if the rate contract holder reduces its price or sells or even offers to sell the rate

contracted goods following conditions of sale similar to those of the rate contract, at a price lower than the rate contract price, to any person or organization during the currency of the rate contract, the rate contract price will be automatically reduced with effect from that date for all the subsequent supplies under the rate contract and the rate contract amended accordingly. Other parallel rate contract holders, if any, are also to be given opportunity to reduce their price as well, by notifying the reduced price to them and giving them 15 (fifteen) days' time to intimate their revised prices, if they so desire, in sealed cover to be opened in public on the specified date and time and further action taken as per standard practice. On many occasions, the parallel rate contract holders attempt to grab more orders by unethical means by announcing reduction of their price (after getting the rate contract) under the guise of Fall Clause. This situation is also to be dealt with in similar manner as mentioned earlier in this paragraph. It is, however, very necessary that the purchase organizations keep special watch on the performance of such rate contract holders who reduce their prices on one pretext or other. If their performances are not up to the mark, appropriately severe action should be taken against them including deregistering them, suspending business deals with them, terminating the contract, etc.

8.7.3 Performance Security: Depending on the anticipated overall drawal against a rate contract and, also, anticipated number of parallel rate contracts to be issued for an item, the authority concluding the Rate Contract(s) may consider obtaining performance security of reasonable amount from the Rate Contract holders. A suitable clause to this effect is to be incorporated in the tender enquiry documents. Performance Security shall, however, not be demanded in the supply orders issued against rate contracts.

8.8 RENEWAL, EXTENSION, TERMINATION AND REVOCATION OF CONTRACTS:

8.8.1 Renewal and Extension: It should be ensured that new rate contracts are made operative right after the expiry of the existing rate contracts without any gap for all rate contracted items. In case, however, it is not possible to conclude new rate contracts due to some special reasons, timely steps are to be taken to extend the existing rate contracts with same terms, conditions etc. for a suitable period, with the consent of the rate contract holders. Rate contracts of the firms, which do not agree to such extension, are to be left out of consideration for renewal and extension. Period of such extension should generally not be more than three months. Also, while extending the existing rate contracts, it shall be ensured that the price trend is not lower.

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

8.9 PAYMENT:

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

- (a) Up to 95 % on receipt of stores at consignee's premises against dispatch document, provisional receipt and copy number 1 of Inspection Note. However, in case it becomes essential to dispatch stores by train, 90% payment can be released against proof of dispatch, i.e., copy of the RR and inspection note.
- (b) Balance on accounting of stores by the consignee.

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

8.9.2 Paying authority: The organization of the Principal Controller/ Controller of Defence Accounts concerned or an authority holding cash assignment/impres and duly authorized to make payment for such procurements will be the paying authority.

8.10 FORMAT OF THE SUPPLY ORDER:

8.10.1 Format of the Supply Order: The format of the Supply Order on which the orders against Rate Contract could be placed by the Direct Demanding Officers is given in **Annexure – 13**. For DGS&D RC cases, **FORM-131** of DGS&D may be used with suitable changes.

CHAPTER 9

PROCUREMENT OF GOODS AND SERVICES FROM FOREIGN COUNTRIES

9.1 INTRODUCTION:

9.1.1. Import of spares and equipment from the revenue budget constitutes a sizeable portion of the overall defence expenditure. The Defence Services have been acquiring latest state-of-the-art equipment and weapon systems from various foreign countries. To ensure their serviceability at all times, it is essential that the spares and equipment support is provided at the right time, ensuring value for money spent. Hence, it is of paramount importance to lay down comprehensive procedures and policies in respect of foreign procurement in line with international procurement practices for implementation by all concerned with the process. While proposals for procurement of goods and services are also to be processed generally as per the procedure laid down in **other Chapters** of the Manual, some special features of procurements from abroad are explained in this Chapter.

9.2 INDENTS:

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

- (a) Complete details like part numbers and specifications of the equipment indented.
- (b) A realistic estimate of the cost with basis of assessment so that back references to the indenter are avoided.
- (c) Where a demand is being indented for the first time, an indication to this effect.
- (d) When an item has been purchased before, the indent should indicate the price at which it was purchased and also give the contract /SO number and date and the source of supply.
- (e) Names of likely sources of supply, if available.
- (f) Reference to the page No. of publication where the item is described.
- (g) Code Head to which the expenditure is debitable.
- (h) Consignee factory/establishment
- (i) Desired Delivery Schedule.
- (j) Normally, items of similar or allied nature should be indented in one indent.

9.2.2 Documents etc. to be furnished along with the Indents: Every Indent should be accompanied by the following in the form of documents/records/inputs or endorsement in the case of automated inventory management system:

- (a) Schedule of Requirement of the indent
- (b) Complete Technical specifications of the items
- (c) A certificate expenditure of provision of funds to meet proposed

- (d) A copy of the financial concurrence to the indent
- (e) A copy of CFA's approval of the indent
- (f) A certificate of necessary import clearance, wherever applicable
- (g) Proprietary Article Certificate (PAC) given in the prescribed format, where applicable
- (h) Priority of the indent, i.e. whether normal or urgent.

9.3 REGISTRATION OF FOREIGN OEMS AND VENDORS:

9.3.1 Procedure for Registration: At present foreign OEMs and vendors are being registered by the Service Headquarters and Headquarters of other Departments. Till such time as common guidelines are formulated, these Registering Authorities would continue to register foreign OEMs and vendors as per the existing procedure followed by them.

9.3.2 Registration of Authorized Vendors/Stockists of Foreign OEMs by the Service Headquarters etc.: Widening of the foreign vendor base is a multi-disciplinary and techno-commercial exercise. Registration of foreign OEMs and their authorized vendors/stockists is to be undertaken as per laid down guidelines, with the help of the Defence Attachés and Commercial Counselors in the Indian Embassies/High Commissions abroad.

9.4 VENDOR SELECTION:

9.4.1 Prospective vendor(s) to be indicated in the Indent: Details of registered vendors and likely sources of supply are to be indicated in the indent. Vendors already registered with Army, Navy, Air Force, Ordnance factories, DRDO, DGS&D and Defence PSUs for similar items will be treated as registered vendors and may be considered for issue of Limited Tender Enquiry. The registering agency should include all foreign vendors registered with different departments of MOD. However, specific needs of the departments/wings are to be kept in mind and complied with.

9.4.2 Selection of vendor: A careful selection of the authorized and registered vendors is to be made for the range of spares for the purpose of issuing the TE. Widening of the foreign vendor base is a multi-disciplinary and techno-commercial exercise. Registration of foreign OEMs and their authorized vendors / stockists should be undertaken as per laid down guidelines with the help of our Defence Attaché and Commercial Counselors in our Embassies / High Commissions abroad.

The relevant TPC under whose financial powers the case falls will do the Vendor Selection for the floating tender Enquiries. For the cases beyond the powers of Factory (i.e. cases falling under the powers of OFB/MOD), Vendor Selection will be done by Factory Level – I TPC.

9.5 MODE OF TENDERING:

9.5.1 The mode of tendering should be decided with regard to factors like, whether the stores / equipment are general purpose or specialized, likely and known sources of supply, expected competition, delivery schedule desired, urgency of requirement, etc. In foreign procurements, one of the following methods of inviting tenders can be adopted.

- (a) Global Tender Enquiry
- (b) Limited Tender Enquiry
- (c) Single Tender Enquiry without Proprietary Article Certificate (PAC)
- (d) PAC Enquiry

9.5.2 Global Tender Enquiry: Global tendering, which is essentially the same as Advertised/Open tendering, is to be resorted to for items of foreign origin, where competition from more than one source from different countries is envisaged. Apart from publishing the tenders in newspapers and journals, copies of the global tender documents should be sent to respective Indian Embassies and High Commissions to seek offers through their liaison. The RFP should also be posted on the OFB website so that it could be downloaded by the prospective bidders for participating in the tender process. In cases of procurement of highly sensitive nature, which has national security implications, the tender documents are not to be posted on the web site. In such cases, specific reasons for not putting the TE on the web site should be recorded while seeking CFA's approval for the procurement proposal.

9.5.3 Limited Tender Enquiry: In all cases of foreign procurement, where the indenter has not furnished a PAC, Limited Tender Enquiry (LTE) should be the preferred mode of tendering as procurement is to be done from OEMs or authorized stockists only. LTE should be sent to as many registered/known suppliers as possible, but normally the number of firms should not be less than three unless the available sources are limited and less than three.

9.5.4 Certification by the Indenter: Where the indenter has specified that only the particular make mentioned in the indent should be procured, he must give detailed justification for the same.

9.5.5 PAC Tendering: This mode of tendering may be resorted to when the items to be procured are proprietary items of a particular firm or for reasons of standardization of machinery/spare parts so that these are compatible with the existing sets of equipment. STE with PAC for reasons of standardization should be resorted to on the advice of the competent technical experts. A Proprietary Article Certificate will be accorded by the competent authority as per the delegation of powers, establishing the monopoly of the product of a single manufacturer. For cases falling under the powers of OFB/MOD; PAC will be issued by GM/Head of the concerned establishments.

9.5.6 Single and Two Bid System: The circumstances in which single bid system or two bid system should be followed are explained in **paragraph 4.8 of this Manual**.

9.6 PROCESSING OF PROCUREMENT PROPOSALS AND CFA'S APPROVAL:

9.6.1 Processing of proposals: The manner of processing of proposals for procurement of goods and services from foreign sources and the procedure for obtaining CFA's approval are the same as mentioned in **other Chapters** of this Manual. Special attention, however, needs to be paid to preparation of Request for Proposal (TE) as mentioned in the following paragraph.

9.7 REQUESTS FOR PROPOSALS (TE):

9.7.1 TE format: The TE is a very important document and should be a true and complete reflection of the indent. A standard format of TE is given in **Annexure – 4**. The goods/services required, bidding procedures and contract terms are prescribed in the TE. Special attention should be paid to the following aspects while preparing the TE, keeping in view the provisions of **paragraphs 9.7.2 to 9.7.29** of this Manual:

- (a) Description of the required goods and services (**Paragraph 9.7.2**)
- (b) Date and time of opening of the tenders (**Paragraph 9.7.3**)
- (c) Desired period of validity of offers (**Paragraph 9.7.4**)
- (d) Technical specifications (**Paragraph 9.7.5**)
- (e) Inspection clauses (**Paragraph 9.7.6**)
- (f) Special Conditions of Contract (**Paragraph 9.7.7**)
- (g) Quality assurance requirements (**Paragraph 9.7.8**)
- (h) Source of supply in case of vendors/stockists (**Paragraph 9.7.9**)
- (i) Mode and terms of delivery (**Paragraph 9.7.10**)
- (j) Delivery Schedule (**Paragraph 9.7.11**)
- (k) Mode of payment and the paying authority (**Paragraph 9.7.12**)
- (l) Terms of payment and paying authority (**Paragraph 9.7.13**)
- (m) Evaluation parameters (**Paragraph 9.7.14**)
- (n) Performance Bank Guarantee, if applicable (**Paragraph 9.7.15**)
- (o) Arbitration Clause (**Paragraph 9.7.16**)
- (p) Liquidated damages clause (**Paragraph 9.7.17**)
- (q) Advance payments (**Paragraph 9.7.18**)
- (r) Installation, commissioning and AMC, if applicable (**Paragraph 9.7.19**)
- (s) Life time product support for spares, maintenance advice, defect investigation and information on product upgrade (**Paragraph 9.7.20**)
- (t) Repeat Order and Option Clause (**Paragraphs 9.7.21 to 9.7.23**)
- (u) Risk and Expense Clause (**Paragraph 9.7.24**)
- (v) Apportionment of Quantity (**Paragraph 9.7.25**)
- (w) Acceptance of excess or short deliveries (**Paragraph 9.7.26**)
- (x) Force Majeure (**Paragraph 9.7.27**)
- (y) Claims (**Paragraph 9.7.28**)
- (z) Applicability of Laws (**Paragraph 9.7.29**)

9.7.2 Details of Goods and Services: It is of paramount importance that the details of the required goods and services are mentioned in the TE in a manner which does not lend itself to varying interpretations by the prospective bidders in different countries. The description should be clear and precise.

9.7.3 Deadline for Submission of Quotations: Reasonable time should be allowed to the vendors to respond to the TE and submit their bids. Normally, six to twelve weeks should be allowed to foreign vendors for submission of offers. In case of urgent procurements, this may be reduced to four weeks or even less.

9.7.4 Period of Validity of Offers: The validity period of the quotations mentioned in the TE should be realistic. The period should be fixed keeping in view the nature and quantity of goods and services and the time anticipated in completing the post tender formalities. In case of foreign procurement, normally a period of ninety to one hundred and eighty days may be prescribed, as considered appropriate.

9.7.5 Technical Specifications: All verifiable technical parameters in terms of size, weight, performance, operating environment, power, utility life, storage and shelf life, etc., both in terms of ‘essential’ and ‘desirable’ levels, as applicable to the equipment being procured should be listed clearly and unambiguously.

9.7.6 Inspection Clauses: The TE should clearly provide for Pre-Dispatch Inspection (PDI) and/or Joint Receipt Inspection (JRI), as required. In the case of Pre-Dispatch Inspection, to the extent possible, the TE should mention the broad scope of such inspection, the likely number of such inspections, the composition of the team and duration of inspections.

9.7.7 Special Conditions: Any special conditions of contract which are applicable to the specific procurement or essential to the performance of a particular contract for justifiable reasons and/or are likely to have a financial bearing on the vendors’ bids should be mentioned clearly in the RFP, e.g., any special payment terms, need for lifetime product support, etc.

9.7.8 Quality Assurance: The goods supplied under the contract should conform to the standards, which should be clearly mentioned as a part of the technical specifications in the TE. The latest authoritative standards, issued by the concerned institution, applicable in the country of origin, to the goods to be procured could also be considered as acceptable standards and, if so decided, it should be mentioned in the TE. In such situations, the TE should also state that the details of such standards would be submitted by the prospective bidder while submitting his bid. All the items should be supplied and accepted along with OEM certification only. The quality assurance requirements should be specified both in terms of testing norms and methodology.

9.7.9 Source of Supply in Case of Vendors/Stockists: In case the bidder is not the OEM, it would be necessary for the bidder to furnish the agreement certificate with the OEM from whom the spares are to be sourced by the bidder. However, where OEMs do not exist, minor aggregates and spares can be sourced from authorized vendors subject to quality certification.

9.7.10 Mode and Terms of Delivery and Transportation: The mode of delivery could be either on CIF, CIP or FOB basis but it should be decided before floating the TE and clearly indicated therein. The mode of transportation should also be invariably indicated.

9.7.11 Delivery Schedule: The prescribed delivery schedule should be firm and not open-ended. Normally the delivery schedule should be fixed in such a manner that it is completed within ninety to one hundred and eighty days of the signing of contract, unless the circumstances warrant a longer delivery schedule. A staggered delivery schedule may be laid down, if necessary. It should be clearly mentioned in the TE that the delivery schedule shall be counted from the date of signing of the contract by both the parties and include a reasonable time (which should also be specified) for the supplier to affect the supplies and then claim the payment. The date of delivery of the goods will be the date of Freight Forwarder’s receipt, Master AWB or Bill of Lading as applicable.

(a) DBT Payments: - Preferably within three months of signing of the contract

9.7.12 Mode of payment: The normal mode of payment to foreign vendors is through irrevocable Letters of Credit or Direct Bank Transfer (DBT). The paying authority is the organization of the Principal Controller/Controller concerned. For contracts below USD 1,00,000.00, it should be specified in the TE that the payment would be made through DBT.

9.7.13 Terms of Payment:

- (a) Where the payment is to be made through Letter of Credit, it should be opened within forty five days of receipt of notification of readiness of goods for delivery from the foreign vendor. The vendor should normally be given forty five days from the date of signing of contract for notifying such readiness. The period may be varied, as per requirement, but it should be decided while processing the proposal and indicated in the TE. The period for notification of readiness of goods and opening of LC should be so fixed that LC is opened three months prior to the expiry of the delivery period. The period mentioned in the TE should not be varied, particularly in Global Tender Enquiry and Limited Tender Enquiry cases.
- (b) It should also be mentioned in the RFP that the LC would be valid for ninety days from the date of its opening, on extendable basis by mutual consent of both the buyer and the seller, unless it is a revolving LC. The period may also be varied, as per requirement, but it should be decided while processing the proposal and indicated in the RFP. All expenses related to Letters of Credit outside India should be borne by the foreign vendor.
- (c) In case of extension of delivery period, both LC and delivery period should be extended and the LC charges borne by the supplier.
- (d) Payment through Direct Bank Transfer (DBT) would be mandatory for all payments below USD one hundred thousand and such payments should be made within thirty days of receipt of clear payment documents or as specified in the contract.,

9.7.14 Evaluation parameters: Evaluation parameters should be clearly defined in the TE. Wherever required, a detailed technical evaluation matrix should be enclosed with the TE. [In a two-bid system, separate evaluation criteria should be laid down for technical evaluation and commercial-cum-price negotiation and only those offers should be evaluated which are found to be in compliance with the technical evaluation parameters as defined in the TE. Technical evaluation should be carried out by a Technical Evaluation Committee and approved by the competent authority. Procedure will be the same as laid down in Chapter 4 of this Manual.

9.7.15 Performance Bank Guarantee (PBG): Whenever considered appropriate in foreign procurement cases, especially of high value with long gestation period, performance security deposit in the form of bank guarantee should be taken from the supplier. The bank guarantee is to be issued in the prescribed format by an Indian Public Sector Bank or a Private Sector bank authorized to conduct government business or a First Class International bank of repute located abroad, acceptable to the purchaser within thirty days from the date of the signing of the contract. Guidelines on confirmation of Bank Guarantees of Foreign banks by Indian banks are given in **Annexures – 4 & 23**.

This deposit is meant to compensate the purchaser for any loss suffered due to failure of the supplier to complete his obligation as per the contract. The PBG amount should preferably be five percent of the value of the contract, if there is a Risk Purchase clause in the Contract. However, where Risk and Expense Purchase is unenforceable because of single vendor situation and remote possibility of recovering from an alternative source, the PBG should be for ten per cent to act as a financial cover in the event of failure of the firm to perform/recession. **[Provisions of Chapter 12 may also be referred to in respect of PBG].**

9.7.16 Arbitration: There should be an Arbitration clause in the TE. The provisions of **Chapter 10** may be referred to in this regard.

9.7.17 Liquidated Damages: Provision should also be made in the TE for payment of Liquidated Damages by the foreign supplier. The provisions of **Chapter 10** may be referred to in this regard.

9.7.18 Advance Payments: Normally no advance should be offered in the TE. However, if it is decided to provide advance payment, the percentage should be mentioned upfront in the TE. As regards the quantum of advance and the bank guarantee to secure it, relevant provisions of **Chapter 7** of this Manual may be referred to.

9.7.19 Installation, Commissioning and AMC: If the equipment/spare parts are required to be installed and/or commissioned, and training imparted relevant information in this regard should be provided in the TE and concomitant modifications made in other clauses of the TE. In case Annual/Composite Maintenance Contract is required, the period for which such contract is required and the scope of services expected of the vendor should be clearly spelt out.

9.7.20 Life Time Product Support: If there is a requirement for life time product support for spares, maintenance advice, defect investigation and information on product upgrade, etc., it should also be mentioned in the TE.

9.7.21 Repeat Order and Option Clauses: As in the case of indigenous procurement, in the case of procurement from foreign sources also, provision for repeat order and option clauses should not be made as a matter of course in the TE as these have a price implication. Either or both these clauses may be provided in the TE only in exceptional circumstances, where the consumption pattern is not predictable with the stipulation that while exercising one or both these clauses, the overall ceiling of fifty percent of the originally contracted quantity will not be exceeded. The provisions of **paragraph 7.14** of this Manual will be applicable in the case of foreign procurements also.

9.7.22 Conditions Governing Repeat Order: Repeat order against a previous order may be considered for approval by the CFA subject to the following conditions:

- (a) Items ordered against the previous order had been delivered successfully.
- (b) Original order had not been placed to cover urgent/ emergent demand.
- (c) There is no downward trend in the price of the item. A clear certificate should be recorded to that effect.
- (d) The requirement is for stores of identical nature/specifications, nomenclature etc. Minor improvements in spec(s) or phasing out of products due to obsolescence may not be precluded from the purview of repeat order.
- (e) The repeat order is placed within six months from the date of completion of the supply against the original order.
- (f) The repeat order quantity is restricted to a maximum of fifty percent of last order quantity, where the contract does not also include the option clause. In case of

small orders (quantity 1-7) the repeat order quantity may be rounded off to the next whole number.

- (g) The original order was placed on the basis of lowest price negotiated and accepted by the CNC, and was not on delivery or any other preference.
- (h) This provision could be exercised in case of PAC/Single vendor OEM also. However, care should be taken before exercising this provision in multi-vendor situation.
- (i) Where the contract also includes option clause, repeat order may be placed only for such quantity, which along with the quantity for which option clause may have already been exercised, does not result in the total quantity under option clause and the repeat order exceeding fifty percent of the originally ordered quantity.
- (j) The CFA will be decided taking into consideration the value of the original order quantity and the option cause/repeat order quantity.

9.7.23 Conditions Governing Option Clause: Against an outstanding indent for which acceptance of necessity has been approved by CFA, it may be advantageous to the purchaser to have an option clause in the main contract if agreed to by the supplier that will allow exercising of option clause up to fifty per cent of original contracted quantity in accordance with the terms and conditions of contract. This option clause may be exercised on approval of the CFA, within whose powers total value of original supplies plus value of option clause falls, in consultation with IFA where applicable, during currency of the contract. It should be ensured that there is no downward trend in the market prices; no fruitful result will accrue by floating fresh TE or when items are urgently required. This clause may be exercised in single vendor OEM cases also. However, where multiple vendors are available, necessary care should be taken in exercising the option clause. If the contract also contains the repeat order clause, it may be kept in mind while placing order under the option clause that the total quantity under the option clause and the repeat order cannot exceed fifty percent of the originally ordered quantity.

9.7.24 Risk & Expense Purchase Clause: In case of foreign contracts, risk and expense clause is generally not applicable. If, in exception circumstances, it is decided to include this clause in the TE, the provisions of Paragraph 7.15 of this Manual may be kept in view. The other remedies available to the purchaser in the absence of the Risk and Expense Clause are as follows:

- (a) Deduct the quantitative cost of discrepancy from any of the outstanding payments of the 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.
- (f) Consider deregistering the firm from the approved list of firms, if necessary.

9.7.25 Apportionment of Quantity: Provisions of **paragraph 7.16** of this Manual will be applicable in the case of foreign procurement also.

9.7.26 Acceptance of Excess or Short Deliveries: Provisions of **paragraph 7.17** of this Manual will apply in this regard.

9.7.27 Force Majeure: As mentioned in **paragraph 7.13** of this Manual, wherever considered necessary, this clause may be included in the TE and the contract relating to foreign procurements also as per the format given in **Part-IV of Annexure – 4**.

9.7.28 Claims: It should be clearly mentioned in the TE that the purchaser shall promptly notify the supplier in writing of any claims arising under the warranty. The time period generally acceptable for notifying the claim, which may be indicated in the TE, is as follows:

- (a) For quantitative discrepancy - Within ninety days from the date of delivery of the consignment in case of delivery by Air or road and within one hundred and twenty days from date of delivery in case of delivery by Sea.
- (b) For qualitative discrepancy - The warranty should remain valid for twelve months after the goods or any portion thereof, as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen months after the date of shipment from the place of loading, whichever period concludes earlier.
- (c) For quality claims on account of defects or deficiencies: The quality claims for defects or deficiencies in quality noticed during the JRI/PDI shall be presented within forty five days of completion of JRI/PDI and acceptance of goods. Quality claims shall be presented for defects or deficiencies in quality noticed during warranty period earliest but not later than forty five days after expiry of the guarantee period. The quantity and quality claims should be submitted to the seller in the prescribed format given in **Annexure 45 & 46** respectively.

9.7.29 Applicability of Law: It should be mentioned clearly in the TE that the contract will be made, interpreted and governed in accordance with the laws of the Republic of India.

9.8 PROCESSING OF PROPOSAL AFTER CFA'S APPROVAL :

9.8.1 Issue of Request for Proposal (TE): The decision regarding mode of tendering to be adopted in a particular case is required to be taken while seeking CFA's approval. The guidelines given in **Chapter 4** of this Manual regarding publicity and dispatch of TEs should be followed in foreign procurement cases also. As per those guidelines, the TEs to foreign vendors can be sent by registered post. In addition, these may be sent by fax or e-mail also, which should, however, be followed by a copy by registered post. TEs will not be given to Indian agents of foreign firms. However, if any foreign firm has its branch office in India, TEs can be given to it. Meticulous records of mode of issue/dispatch of TEs should be maintained.

9.8.2 Extension of Tender Opening Date, Clarification/ Amendment of Tender Documents and Modification/Withdrawal of Bids: The relevant provisions of **Chapter 4** should be followed in this regard.

9.8.3 Resultant Single Vendor Situation: Provisions contained in **para 4.15 of Chapter 4** will be applicable in the case of foreign procurements also.

9.8.4 Comparative Statement of Tenders: On receipt of all accepted tenders, the purchase section should collate them in the form of a Comparative Statement of Tenders (CST). The CST should be exhaustive and must include all details given in the quotations. Deviation from the tender documents is to be brought out in the CST. Last Purchase Price (LPP), wherever available,

should be indicated for a fair comparison of the offered prices. CST should be vetted by the IFA with reference to original quotations, indents and other supporting documents, where financial powers are to be exercised with the concurrence of integrated finance. The Purchase Officer should sign the CST.

9.8.5 Exchange Rate: Exchange Rate applicable for various currencies prevailing on the date of opening of commercial bid as indicated in the RFP for two bid cases and date of bid opening for single bids will be taken into account for working out the prices in Rupee Terms for comparison.

9.9 COMMERCIAL NEGOTIATIONS AND CONCLUSION OF CONTRACT/SUPPLY ORDER :

9.9.1 Commercial Negotiations: The procedure laid down in **Chapter 5** of this Manual for constitution of the CNC, commercial negotiations, determining price reasonableness and recording of minutes of CNC would be followed for foreign procurement also.

9.9.2 Obtaining best offer through Fax: In case of foreign firms, which do not have their regional offices in India, it may not be possible for their representatives to come for CNC meetings except for high value items. In such cases, CNC/CFA may obtain the best revised offer with all terms clarified from the lowest bidder through fax before finalizing the price.

9.9.3 Action by the CNC: CNC recommendation is to be clear and unambiguous. A counter offer may be made to the L1 firm only by the CNC. In case the CNC/CFA is unable to conclude the negotiations satisfactorily, it may refer the case to the next higher CFA for conducting negotiations. The minutes of all CNC meetings should be meticulously maintained and signed by all members.

9.9.4 Acceptance of Cost over Estimates: When it is proposed to accept an offer higher than the sanctioned indent price which may be based on last purchase price or assessed price, the empowered CFA may accept such an offer within delegated powers provided the increased amount is within his delegated powers and after recording reasons for doing so. Whenever the increased amount exceeds the financial powers of the CFA, approval of next higher CFA, within whose delegated powers the case falls, should be taken.

9.9.5 Acceptance of an offer other than L₁: In no case, an offer other than the lowest would be accepted.

9.9.6 Determination of L₁ on Entire Package: In case a TE contains a large number of items of spares and it is indicated in the TE that L1 will be decided based on the package price, the L1 offer should be determined on the basis of the cash outflow for the entire package. After determining L1 in this manner, negotiations should be held with that firm in respect of items for which rates quoted by the firm are higher than those quoted by other vendors.

In such cases, negotiation with L1 vendor would have to be done with reference to the lowest bid for that item (items). In case the L1 vendor does not reduce his price reasonably for high value item(s), possibility of concluding a fresh contract by issuing a separate TE for such item(s) may be considered keeping in view the operational requirements.

9.9.7 Purchase Decision: The CFA/Committee CFA must consider all aspects of the case including reasonability of offered prices, quoted terms and conditions, technical evaluation report etc. It has to be ensured that proper policies and procedure have been followed at various stages of procurement for determining L1 firm. The financial implication should be considered as the all-inclusive cost to the user on delivery to the designated consignee. Purchase decisions should be taken through a formal written order.

9.9.8 Signing of the Contract/Placement of Supply Order: The contract/supply order should be signed by an officer authorized to do so. The contract /supply order should be signed on each page by the authorized representative of the vendor and duly acknowledged as accepted.

9.9.9 Amendment to Contract: All amendments to contracts, which have financial implications, including short closing and delivery period extensions with or without imposition of liquidated damages, should be invariably approved by the CFA, and also in consultation with the IFA, wherever the original contract was concluded with the concurrence of integrated finance. Amendments affecting delivery period should not be made as a matter of routine. All cases for extension of delivery period should be processed with imposition of liquidated damages and other penalties as per the contract, except for the cases where the contract provides for waiving off of the liquidated damages on account of justified reasons.

9.9.10 Re-tendering: Re-tendering may be recommended by the CNC with caution and approved by the CFA with the concurrence of the IFA, wherever applicable, under the circumstances mentioned in **paragraph 4.17.1** of this Manual.

9.9.11 Standard Conditions of Contract -Foreign Procurement: The Standard conditions of contract will apply to all contracts made/supply orders placed as per the procedure laid down in this Manual, except to the extent that any clause thereof has been modified in any particular contract/supply order. The details of the standard conditions of contract are covered in **Chapter 10**. The specimen format of the TE given in **Annexure – 4** includes these standard conditions of contract. A few aspects of these standard conditions, which require special attention, are explained in **paragraph 9.7** of this Chapter for better understanding.

9.10 PAC TENDERING :

9.10.1 Where OEMs are not permitted to deal directly: If the legislation of a foreign country does not permit the OEMs and/or other vendors/suppliers to respond directly to the TEs, as in the case of Russia, TEs may be issued to the government designated agency (e.g. Rosoboronexport in the case of Russia) on Single Tender Enquiry basis. TEs to such agencies may be issued in addition to the vendors who are permitted to respond directly to tender enquiries.

9.10.2 Procurements governed by General Contracts: In case of procurements under long term General/Umbrella contracts/Main agreements between the Government of India and the Government of the country concerned, provisions of the such contracts/agreements will prevail in respect of the format of the TE, quotations, general terms and conditions, time of submission of quotations, LD Clause, etc. However, provisions of this Manual shall apply in respect of those aspects that are not covered by such contracts/agreements.

9.10.3 Urgent procurement through Indian Embassies abroad: Spares/components that are required urgently from sources abroad may be procured through the Indian Embassies. On acceptance of necessity, an urgent indent should be forwarded to the concerned embassy for procurement under the financial powers of the concerned Commercial or Defence Attaché (DA). The concerned attaché should register the indent and obtain quotes. He should obtain the expenditure angle sanction in consultation with the Counsellor (Coord) or any other officer with technical/ procurement/financial background designated by the Ambassador/High Commissioner for this purpose. In case the quotes received are higher than the delegated financial powers of the DA and the vendor does not agree to reduce the cost, the case should be referred to the OFB for seeking expenditure angle approval of the appropriate CFA.

9.11 INCO TERMS :

9.11.1 Since 1936 INCO terms are used in International Documentary Credits in respect of mode/style of delivery of goods, which have been recognized as practical, cost saving tools, used worldwide for smooth international trading practice. The TE should indicate the applicable INCO terms for delivery of goods and incorporate them in the contract to avoid disputes at a later date. The INCO terms are described at **Appendix - IX**.

CHAPTER 10

STANDARD CONDITIONS OF CONTRACT -FOREIGN PROCUREMENT

10.1 INTRODUCTION :

10.1.1 Standard Conditions of Contract (SCoC): In order to facilitate a clear understanding of the conditions of contract, a set of standard conditions, generally applicable to all contracts, is formulated and made available to all firms dealing with the department. The Standard Conditions of Contract (SCoC) are made available to the firm at the **time of registration** itself. It is desirable that the SCoC are publicized on the OFB website also. The clauses pertaining to SCoC are given in **Part-III of Annexure – 11 & 12**. The Tender Enquiry should invariably make a reference to the applicability of SCoC and bidders are expected to conform to the SCoC. The contract must stipulate that the SCoC are applicable in addition to any special conditions specific to the contract, which might have been mutually agreed to between the parties. The terms and conditions that need special attention have been explained in **Chapter 9** of this Manual. **The provisions of this Chapter are supplementary to the provisions of Chapter 9 of this Manual.**

10.1.2 Conformity of the contract with agreed terms and conditions: All contracts must be in conformity with the standard and special conditions as mentioned in the TE and the recommendations of the CNC, if held, as accepted by the CFA.

10.1.3 Commencement and validity of the contract: A contract commences from the ‘effective date’ of the contract, which normally is the date on which the contract is signed, unless specified otherwise in the contract. A contract is valid from the date of its signing or as specified in the contract, till the fulfillment of all obligations under the contract by both the parties. Provisions of **paragraph 7.3.1** of this Manual will be applicable in the context of foreign procurement cases also.

10.2 PRICES :

10.2.1 Prices to be lowest and inclusive: Unless specifically agreed to, all prices to be quoted by the seller should be the seller’s lowest export price and would be as per required delivery terms. Prices should be fixed and firm and should be inclusive of packing charges, taxes and duties etc. levied in the country of supply.

10.3 TERMS OF PAYMENT:

10.3.1 Letters of Credit and Direct Bank Transfer: The payment should be arranged by way of Letter of Credit (LC)/ Direct Bank Transfer (DBT) through any Bank authorized by the Ministry of Defence to the bankers of the foreign supplier. The provisions of **paragraph 9.7.13** of this Manual may be kept in view as regards opening of the Letters of Credit. DBT payment should be made within thirty days of receipt of clean Bill of Lading/AWB/Proof of shipment and such other documents as are provided for in the contract, but such payments will be subject to the deductions of such amounts as the Seller may be liable to pay under the agreed terms of the contract. No advance payments should be made, unless specified in the RFP. If so specified in the RFP and the contract, advance payment, not exceeding fifteen percent of the total value of the contract, may be made against appropriate Bank Guarantee as per the terms of the contract. Payment against a contract, the value of which does not exceed USD one hundred thousand should be made by Direct Bank Transfer.

10.3.2 Intimation regarding readiness of goods for dispatch: The Seller will be required to notify the Buyer within a specified period about the readiness of goods for dispatch. Provisions of **paragraph 9.7.11** may be kept in view in this regard.

10.4 TERMS OF DELIVERY :

10.4.1 Standard Terms of Delivery: **Paragraph 9.7.10** of this Manual provides for the mode of transportation, which should be decided keeping in view that timely delivery is the essence of the contract. Standard terms governing delivery of goods are as follows:

- (a) Delivery of Goods shall be effected within specified days from the date of signing of the contract.
- (b) The date of delivery shall be the date of clean-on-board bill of lading/Air Way Bill.
- (c) Where inspection by the Purchaser prior to delivery is provided for, no stores will be considered ready for delivery until the Purchaser or his authorized representative certifies in writing that the stores have been inspected and approved by him.
- (d) Each contract will clearly specify the date of delivery/ date on which the items will be ready for inspection. The prescribed delivery schedule should be firm and not open-ended.
- (e) The stores will be shipped by sea/air as specified in the contract, all costs of packing, internal transportation, fees of forwarding agents, warehousing charges, port trust, dock and harbour dues and all other expenses, as may be incurred for the purpose and up to the point of delivery of the stores on board the nominated ship/air craft, shall be paid by the seller.
- (f) The contract or any part thereof, if delivered in more than one installment, shall be deemed to be complete, and the contract price for the delivered goods would become payable to the seller, only when all terms and conditions relevant to that delivery as per the provisions of the contracts have been completed.
- (g) The Goods are considered as delivered by the Sellers and accepted by the Buyer when they conform to the following:
 - (i) In respect of quantity – according to the number of packages in sound external condition and the weight shown in the shipping documents.
 - (ii) In respect of quality – according to the quality stated in logbooks/passports.

10.5 INSPECTION:

10.5.1 Self inspection: Under normal circumstances, the stores ordered may be accepted on the guarantee and warranty of the supplier. Towards this end, for acceptance of the inspected items or the entire batch/lot, the Seller shall also get the stores inspected by its Quality Assurance Department and furnish a certificate that the stores conform to the specifications laid down in the contract.

10.5.2 Inspection by the Buyer: However, where the contract specifies actual inspection by the Buyer, the Seller will arrange for the inspection, in consultation with the Buyer. Subject to the provisions of **paragraph 9.7.6** of this Manual, the following guidelines will apply where inspection is required to be carried out:

- (a) The stores shall be inspected in accordance with the provisions of the contract.
- (b) Where inspection by the inspector is specified, the seller will give him sufficient advance notice of the date in writing on which the goods will be ready for inspection. The seller will also provide the inspector all the necessary facilities including appliances, tools, material and labour at no extra cost, to carry out the specified inspection. When independent tests and analyses, in addition to those made by the inspector on the seller's or sub-seller's premises, are considered necessary, the seller shall provide testing at Seller's expense and deliver, free of charge, at such place as the purchaser may direct, such materials as he may require for tests or analysis.
- (c) If any of the products whether finished or in the course of production, are rejected by the inspector, they shall be marked and segregated in such a distinctive manner, to the satisfaction of the inspector, so as to ensure that they are identified as rejected products.
- (d) The Buyer shall not be liable for payment for any rejected supplies or any costs of inspection thereof.
- (e) The Seller shall at his own expenses and within the period of delivery, as specified in the contract, replace or make good, to the satisfaction of the inspector, any articles rejected on inspection.
- (f) The decision of the inspector regarding mode, method, rejection or acceptance of the specified items/ entire batch/ lot will be final.
- (g) The Buyer reserves the right to inspect the stores on arrival in India and discrepancy or defects found shall be reported to the Seller within fifteen months. The seller shall rectify the same within ninety days of receiving the intimation.

10.6 PACKAGING AND DESPATCH :

10.6.1 Packaging and Despatch: The stores are required to be packaged to withstand normal conditions of shipment and short term storage in transit and in the country of destination and the following conditions will apply:

- (a) The Seller shall be responsible for any loss or damage or expenses incurred by the Purchaser because of inappropriate packages.
- (b) Packages containing articles classified as hazardous should be packed and marked in accordance with the requirements of the appropriate regulations governing their despatch by sea or air.

- (c) The Seller shall also comply with the detailed packaging and despatch instructions, if specified in the contract.
- (d) The responsibility of sending despatch documents will rest with the Seller. Detailed shipping instructions issued from time to time by the Buyer will apply.

10.7 WARRANTY AND CLAIMS :

10.7.1 Warranty and Claims: All stores to be supplied should be free from all defects and faults in material workmanship and manufacture. They should be of the highest grade and consistent with the established and generally accepted standards for material of the type used and in full conformity with the specifications, drawings, or samples and shall, if operable, operate properly. The Seller shall be bound to furnish a clear written warranty regarding the same. In the event of the ultimate consignee in India not finding the stores in accordance with the order, the Seller will be required to replace them free of cost inclusive of all freight and handling charges. Such replacement will be done within ninety days of the claim report raised by the purchaser. These standard conditions will also apply in respect of replaced stores. This warranty shall remain valid for eighteen months after delivery or twelve months after their arrival at the ultimate destination in India, whichever is earlier, or as specified in the contract.

10.7.2 Warranty for use and storage in Indian conditions: The Warranty shall be applicable for use and storage of stores in Indian Climatic Conditions.

10.7.3 Technical Life: Technical life of the unit to be delivered for replacement will not be less than the remaining technical life of the faulty/defective/deficient unit being replaced, or the actual life of such a unit as specified in the contract, whichever is more.

10.7.4 Time-frame for raising the claim: The time frame for raising the claims for quantitative and qualitative claims, as well as quality claims on account of defects and deficiencies is given in **paragraph 9.7.28** of this Manual.

10.8 LIQUIDATED DAMAGES :

10.8.1 Liquidated Damages: In the event of the Seller's failure to deliver the goods by the date specified in the contract the Buyer may deduct from the Seller as liquidated damages the sum of 0.5 % of the contract price of the undelivered goods for delay of each week or part of week and the Seller shall submit the documents after deduction of the liquidated damages subject to a maximum of 10% of the contract price of the undelivered goods. But if the delay is on account of any cause, which *is not attributable to the seller and* the Seller promptly notifies to the Buyer and the Buyer admits as a reasonable ground for extending the time for delivery, no liquidated damages will be leviable during the additional time thus agreed to by the Buyer. In this context, provisions of paragraph 7.10 of this Manual may also be referred to.

10.9 FORCE MAJEURE :

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

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

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

10.9.4 Extension of Time: In such circumstances, the time stipulated for the performance of an obligation under the contract is extended correspondingly for the period of time of action of these circumstances and their consequences.

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

10.9.6 Standard format of the clause: The standard format of the clause to be included in the TE and the contract is given in **Part-III of Annexure – 4**.

10.10 TERMINATION OF CONTRACT :

10.10.1 Termination of Contract: The Buyer, without prejudice to any other remedy for breach of contract, by written notice of default sent to the Supplier, may terminate the contract in whole or in part:

- (a) If the Supplier fails to deliver any or all of the Goods within the period(s) specified in the Contract, or within any extension thereof granted by the Buyer.
- (b) If the Supplier fails to perform any other obligation(s) under the contract.
- (c) If the Supplier becomes bankrupt or otherwise insolvent.
- (d) If the Supplier, in the judgment of the Buyer, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

For the purpose of this clause:

“corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.

“Fraudulent practice” means misrepresentation of facts in order to influence the procurement process or the execution of a contract to the detriment of the Buyer, and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Buyer of the benefits of free and open competition.

10.11 ARBITRATION:

10.11.1 Arbitration: As mentioned in **paragraph 7.11.1** of these Manual, parties to a contract may opt for arbitration if any dispute arising between them does not get resolved through mutual discussion. The standard format of the Arbitration clause to be included in the TE and the contract is given at **Annexures – 50,51,52,53 and 54**. **It may be noted that there is a slight difference in the formats to be used for indigenous and foreign contracts.**

10.12 PENALTY FOR USE OF UNDUE INFLUENCE :

10.12.1 Undertaking by the Seller: The Seller would be required to sign an undertaking to refrain from use of undue influence. Breach of the undertaking would attract penal action. The standard text of the undertaking is given in **Part III of the draft TE given in Annexure – 11/12**.

10.13 ACCESS TO BOOKS OF ACCOUNTS :

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

10.13.2 Integrity Pact: This is to be signed by the Buyer and Seller for purchases exceeding Rupees one hundred crores as per the format given in **Annexure – 16**.

10.14 PATENTS AND OTHER INDUSTRIAL PROPERTY RIGHTS :

10.14.1 Quoted prices to be inclusive of charges on account of copy right etc.: The prices stated in the contract shall be deemed to include all amounts payable for the use of patents, copy right, registration charges, trade marks and any other industrial property rights.

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

10.15 GOVERNMENT REGULATIONS:

10.15.1 Export licenses: The Seller shall be responsible for obtaining and maintaining export licenses and permits, as also for complying with all the laws, orders, regulations or other instructions issued by the Government in the country of the manufacturer/supplier.

10.15.2 Passing on of the obligation to a third party: The Seller shall not give, bargain, sell, assign or sublet or otherwise dispose of the contract or any part thereof, or the benefit or advantage of the contract or any part thereof, to any third party.

10.16 CUSTOMS DUTY DRAWBACK:

10.16.1 Duty Drawback: If any of the contracted stores are, on exportation, entitled to a drawback of customs duty in respect of themselves or the raw materials involved in their manufacture, the price to be charged by the Seller should be the net price after the deduction of all the entitled custom duty drawbacks.

10.17 NONDISCLOSURE OF CONTRACTUAL DOCUMENTS-INFORMATION :

10.17.1 Nondisclosure of specifications etc.: Except with the written consent of the Buyer, the Seller shall not disclose the contract or any provision, specifications, plan, drawing, pattern, sample or information thereof, to any person, other than a person employed by the seller for executing the contract.

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

10.17.3 Nondisclosure of information given by the Buyer: Except with the written consent of the Buyer, the Seller shall not make use of any information supplied by the Buyer for purposes of the Seller or any specifications or other details mentioned in above clause otherwise than for the purpose of manufacturing the articles and the Seller shall not use any such information to make any similar article or part thereof for any other purpose, and shall not disclose to the third party.

10.18 TRAINING:

10.18.1 Training: The Seller shall, if so indicated in the TE, provide facilities for the practical training of trainees from India and/or their active employment on the manufacturing processes of the stores, as well as Quality Assurance procedures.

10.19 LAW :

10.19.1 Applicability of Laws: The contract will be governed by and construed in accordance with the laws of India.

CHAPTER 11

REPAIR CONTRACTS WITH FOREIGN AND INDIGENOUS FIRMS

11.1 INTRODUCTION:

11.1.1 Peculiarity of Repair Contracts With Foreign/Indigenous Firms: The contracts for repair of equipment by foreign/indigenous firms are generally formulated and processed in the same manner as the contracts for procurement of stores from foreign/indigenous sources. However, in some respects, repair contracts are different from procurement contracts as they have some unique features related to their processing, as also the terms and conditions of contracts, as set out in this chapter.

11.1.2 Applicability of this Chapter to Repair Contracts with Indian Firms: The provisions of this chapter **would also apply to repair contracts with indigenous firms.**

11.1.3 Terms used in this Chapter: The term “Customer” used in this Chapter shall mean the President of India acting through the officer signing the contract and the term “Contractor” would mean the firm undertaking the repair as per the contract.

11.2 UNIQUE FEATURES RELATED TO PROCESSING OF REPAIR CONTRACTS :

11.2.1 Preparation of Indents: The repair indent, to be sent by the Indentor to the Procuring Agency, should clearly specify the type of equipment, Quantity, type of repairs, history of previous major repair, name of the manufacturer, Total Technical Life (TTL), assessed cost of the repair, etc.,. The amount should preferably be assessed or, if such assessment is not feasible, obtained through a non-obligatory budgetary quote from all the possible sources, including the OEM.

11.2.2 Selection of Vender: The repair should be carried out by the original equipment manufacturer only. In case the original equipment manufacturer expresses inability to undertake the repairs, any agency authorized by the OEM may be approached. In the event of the OEM expressing difficulty to undertake repairs and there being no OEM authorized agency to undertake repairs, other possible sources may be approached. The contractor has to be made accountable for the performance of the equipments *after repair*. There should be suitable PBG and Warranty Guarantee provisions in the contract. In the case of Local Repair Contracts the repairs may be got done directly through trade, if considered feasible, within the delegated powers of the CFAs.

11.2.3 Request for Proposal: The Request for Proposal should be carefully drafted and should invariably include the following:-

- (a) Description/Part No. of item(s)/equipment for repair
- (b) Quantity
- (c) Year of manufacture of the equipment
- (d) Name of the manufacturer
- (e) Period of usage
- (f) Number and types of major repairs already carried out
- (g) Details of repairs/work required

- (h) Schedule for delivery of equipment for repair and completion of task
- (i) Any additional data/material, like photographs etc., indicating type of malfunction of the defective equipment
- (j) QA requirements including the acceptance testing norms and methodology of acceptance testing), wherever applicable
- (k) Any other relevant information

11.3 TERMS AND CONDITIONS UNIQUE TO REPAIR CONTRACTS :

11.3.1 Terms of Delivery: The following terms of delivery of equipment, which are specific to repair contracts, should be included in the TE and the contract:

- (a) The customer shall deliver the repairable equipment to the Contractor as per the terms of the Contract within thirty days of the signing of the contract. The period of delivery may be varied but it should be fixed in advance and indicated in the RFP.
- (b) The equipment shall be dispatched for repair in the condition as specified in the Contract, fully equipped with the details of all detachable and removable units/parts.
- (c) Together with the equipment, the Customer shall send the technical documentation (Certificates, Logbooks, etc.), containing the total usage time, the usage time after repair, the number of repairs, the reason for dispatching of the equipment for repair, and also information about the scheduled servicing. Documents shall have records of operating time and maintenance checks executed on the equipment.
- (d) The Customer shall not dispatch for repair incomplete or damaged equipment, which requires additional repair by the same Contractor and not provided for in the contract.
- (e) If available, the Customer shall provide the spares for replacement along with the equipment, as per the terms of the Contract.

11.3.2 Unforeseen Repairs: The following terms and conditions relating to unforeseen repairs should also be included in the RFP and the contract:

- (a) If during the process of repair it is found that the equipment is incomplete, damaged or cannot be repaired in terms of the contract, the Contractor shall, if possible, install missing parts of the equipment or change parts of the equipment which cannot be repaired only in consultation with the Customer.
- (b) The Customer shall pay additional cost to the Contractor for the new/changed spare parts (units, sub modules, PCBs, etc). The cost of such parts shall be mutually agreed upon by both the parties to the contract and an Additional Agreement shall be signed by the Customer within sixty days after the date of handing over of the equipment to the Contractor. If there is no possibility of installing missing parts, the Contractor shall inform the Customer about this within thirty days from determination of the technical condition of the equipment but not later than sixty days after receipt of the equipment for repair.

11.4 DELIVERY:

11.4.1 Date of Delivery to the Contractor: The date of delivery of the equipment for repair is the date on which the delivery-acceptance report is signed by representatives of the Contractor and the Customer.

11.4.2 Date of Delivery to the Customer: The date of delivery of the equipment after repair is the date on which the delivery-acceptance report is signed by representatives of the Contractor and the Customer.

11.4.3 Period of Delivery to Customer: The Contractor should deliver the duly repaired equipment to the Customer - *as per the* period as specified in the Contract. The delivery should normally be effected on CIP/CIF Indian Airport/Seaport in case of foreign contracts, unless specified otherwise in the Contract.

11.5 TERMS OF PAYMENT:

11.5.1 In the Case of Contracts with Foreign Firms: Payment for repair of the equipment should be effected by the Customer by opening irrevocable divisible Letter of Credit or by Direct Bank Transfer in favour of the Contractor for the full contracted cost of repair, or for such other amount(s) linked with clearly identifiable milestones as is agreed upon and provided for in the contract. The Letter of Credit should be opened within the period specified in the contract after the receipt of equipment by the Contractor for repair.

11.5.2 In the case of Contracts with Indian firms: Payment to indigenous firms should be made as per the terms of the contract through the paying authorities concerned.

11.6 ACCEPTANCE OF QUANTITY AND COMPLETENESS OF EQUIPMENT:

11.6.1 Acceptance of Quantity and Completeness of Equipment in Case of Foreign Contracts: The equipment shall be considered as delivered by the Contractor and accepted by the Customer with regard to the quantity and completeness of the equipment in accordance with the quantity and completeness of equipment specified in the corresponding shipping documents.

11.6.2 Acceptance of Quantity and Completeness of Equipment in Case of Indigenous Contracts: The equipment shall be considered as delivered by the Contractor and accepted by the Customer with regard to the quantity and completeness of the equipment in accordance with the provisions of the contract.

11.7 CLAIMS:

11.7.1 Claim of the Customer: It should be specifically provided for in the TE and included in the contract that the Customer has the right to make claim on the Seller for:

- (a) Quality of the Repaired Equipment – in case of its nonconformity to the quality specified in the Customer's Quality Assurance norms for repairs/overhaul/storage of the equipment, as specified in the Contract;

- (b) Quantity of the Repaired Equipment – in case of nonconformity of quantity to those specified in the packing list (shortage inside packing) on condition that the repaired equipment arrived at the place of destination in undamaged packing or in case the responsibility of the Carrier has not been specified/provided in this regard.

11.7.2 Period for Lodging Claims: The claims for shortfall in quality and quantity of the repaired equipment should be lodged (in case of proven fault of the Contractor) not later than sixty, ninety or one hundred twenty calendar days as per deliveries by Road (in the case of repair contracts with indigenous Contractors), Air or Sea respectively, from the date of receipt of repaired equipment by the ultimate consignee. This should be specified in the TE and the Contract.

11.7.3 Particulars to be specified in the Claim: The claim should specify the quantity and description of the defective repaired equipment, subject of and reason for the claim.

11.8 GUARANTEES:

11.8.1 Guarantees regarding Technical Life, Breakdown, etc.: The following terms relating to guarantee of the repaired equipment should be included in the TE and the contract:

- (a) Technical life period of the repaired equipment shall be stated in passports, logbooks and other technical documents submitted by the Contractor to the Customer.
- (b) All the breakdowns and deficiencies which may occur within the warranty period without a fault of the Customer shall be set right within ninety days, all the expenses being paid by the Contractor.

11.8.2 Warranty/Guarantee to be specified: Warranty and Guarantee periods of repaired/replaced parts should be specified in the RFP and the repair contract.

CHAPTER 12

BANKING INSTRUMENTS

12.1 GENERAL:

12.1.1 Import Regulation: Import is regulated by the Directorate General of Foreign Trade (DGFT) under Ministry of Commerce and Industry, Department of Commerce, Government of India. Authorized dealers, while undertaking import transactions, should ensure that the imports into India are in conformity with the Foreign Trade Policy in force (as decided and framed by DGFT) and Foreign Exchange Management (Current Account Transactions) Rules, 2000 framed by Government of India vide Notification No G.S.R. 381(E) dated 03 May 2000 and the directions issued by Reserve Bank of India under Foreign Exchange Management Act from time to time.

12.1.2 Uniform Customs and Practices for Documentary Credits: Importer should follow normal banking procedures and adhere to the provisions of Uniform Customs and Practices for Documentary Credits (UCPDC) while opening Letters of Credit for import into India.

12.2 LETTER OF CREDIT (LC) AND THE REASONS FOR USING THEM:

12.2.1 A letter of credit is a written understanding given by the buyer's bank (the issuing bank) on behalf of and at the request of its customer (the applicant) routed through the agency of a bank in the seller's country (advising bank) to the seller that it (issuing bank) guarantees to pay the seller for the goods within a specified time provided that the conditions laid down in documentary credit are fully satisfied. While an LC can be established in any of the 27 Public Sector banks besides SBI, it has been decided after careful consideration that for the present LCs may be opened only through the State Bank of India, Bank of Baroda and Canara Bank. The format for LC is given at **Annexure – 17**.

12.2.2 Reasons for using LC: In international trade, buyer and seller being located in different countries may not know each other well. The two countries would have different legal systems, currencies and trade and exchange regulations. Due to this fact, both the Buyer and the Seller, need some conditions to be fulfilled, to suit their requirements, before releasing the payments and goods respectively. The buyer and seller want the following:

- (a) A Seller would want:
 - (i) To be paid as soon as he ships the goods.
 - (ii) An assurance that he will be paid by the buyer or his bank as per contractual obligations.
 - (iii) Convenience of receiving payments in his own country.
- (b) A Buyer would want:
 - (i) To pay for the goods only after they are shipped by the seller.
 - (ii) An assurance that the seller will ship the goods ordered for and deliver them in time.

12.3 FORMS OF LETTER OF CREDIT:

12.3.1 Basic forms of Letters of Credit (L of C): Basic forms of LCs as applicable to Defence Departments are as follows:

- (a) Revocable letter of credit.
- (b) Irrevocable letter of credit.
- (c) Confirmed letter of credit.
- (d) Revolving letter of credit

12.3.2 Revocable Letter Of Credit: A revocable letter of credit is one which may be amended or cancelled by the issuing bank at any moment without prior notice to the beneficiary. Therefore, such a type of letter of credit does not give complete sense of security to the beneficiary. However, the notice of amendment or cancellation is effective only upon receipt of such notice by the advising bank. If the advising bank has undertaken liability (i.e. paid, negotiated or accepted) against documents, which appear on the face of it to be in conformity with the terms and conditions of the credit, before receiving notice of amendment/cancellation, the issuing Bank is bound to reimburse the advising bank. If the letter of credit is silent as to whether it is revocable or irrevocable, the credit is deemed to be irrevocable.

12.3.3 Irrevocable Letter Of Credit: When the issuing Bank gives a definite, absolute and irrevocable undertaking to honour its obligations, provided the beneficiary complies with all the terms and conditions, such a credit is known as an irrevocable letter of credit. It means that the letter of credit cannot be amended, cancelled or revoked without the consent of the parties to the letter of credit. This gives the beneficiary a definite protection.

12.3.4 Confirmed Letter Of Credit: A confirmed letter of credit is one in respect of which another Bank in the beneficiary's country adds its confirmation at the request of the issuing Bank. This undertaking of the confirming Bank to pay/ negotiate/accept is in addition to the undertaking of the issuing bank. This is an added protection to the beneficiary. This is not to be agreed to as it undermines the credibility of our Nationalized Banks.

12.3.5 Revolving Letter Of Credit: In such Letters of Credits, the amount is restored, after it has been utilized, to the original amount. Such credits are used when the buyer is to receive partial shipment of goods at specific intervals over a long duration. It can be cumulative or non-cumulative in nature. It avoids opening letter of credit for each and every consignment.

12.3.6 Divisible and non-divisible LCs: The above mentioned Letters of Credit could be divisible or non-divisible. Divisible Letters of Credit could be opened when more than one beneficiary is allowed and payment has to be made as per the consignment.

12.4 PROCEDURE FOR OPENING LETTERS OF CREDIT AND WORKING OF THE LC MECHANISM:

12.4.1 Opening of Letters of Credit: The procedure for opening of an LC would generally include steps as given below: -

- (a) Step-1: Receipt of PBG and intimation from the Supplier regarding readiness of goods for dispatch by the contract concluding authority as per contractual terms from the supplier.
- (b) Step-2: The contract concluding authority seeks FFE release from the appropriate authority.

- (c) Step-3: On release of FFE the contract concluding authority forwards the case for opening of LC to the Principal Controller/Controller of Defence Accounts concerned, who after proper scrutiny of all details for correctness, authorizes the bank to open the LC. The bank establishes the LC and intimates the Principal Controller/ Controller of Defence Accounts concerned and the contract concluding authority.

12.4.2 Payment through Letter of Credit: The letter of credit mechanism operates as follows:

- (a) The Buyer requests the issuing bank to open an LC.
- (b) The Issuing Bank conveys LC through the Advising bank.
- (c) The Advising bank advises the credit to the beneficiary.
- (d) The Beneficiary, after complying with terms and conditions against stipulated documents, gets the value either from the Advising bank or the Nominated bank as per the terms of the LC.
- (e) After passing on the value, the negotiating advising Bank claims reimbursement from the issuing Bank or nominated bank as per the terms of LC.
- (f) Ultimately, the issuing Bank recovers the amount from the applicant. It is the definite commitment of the issuing Bank to reimburse to the negotiating advising bank whether applicant provides the value of negotiation or not.

12.5 ESSENTIAL ELEMENTS OF LC:

12.5.1 The format of the Letter of Credit is given at Annexure –17. Following essential elements are to be clearly stipulated while opening a Letter of Credit:

- (a) Type of LC
- (b) Name and address of applicant and beneficiary
- (c) Amount of credit and currency
- (d) Validity of LC
- (e) Latest shipment date (delivery date as per contract)
- (f) Basis of delivery (FOB/FCA/CIP/CIF)
- (g) Contract No. and date
- (h) Shipment from To
- (i) Consignee and ultimate Consignee
- (j) Part shipment allowed/not allowed
- (k) Documents required to be produced by the beneficiary for release of payment against LC
- (l) LD Clause
- (m) Any other special instructions.

12.6 DOCUMENTS TO BE PROVIDED BY THE SELLER:

12.6.1 Documents to be provided by the Seller: Paid shipping documents are required to be provided to the advising Bank by the Supplier as proof of dispatch of goods as per contractual terms to get his payment against the Letter of credit. The advising Bank forwards one set each of these documents to the Issuing Bank and the Landing Officer, as specified in the Contract, for getting the goods/stores released from the Port/Airport. These documents, the details of which should be specified in the contract, include:

- (a) Clean on Board Airway Bill/Bill of Lading
- (b) Original Invoice

- (c) Packing List
- (d) Certificate of Origin from Seller's Chamber of Commerce
- (e) Certificate of Quality and current manufacture from OEM
- (f) Dangerous Cargo Certificate, if any.
- (g) Insurance Policy of 110% if CIF/CIP contract.
- (h) Certificate of Conformity & Acceptance test at PDI, signed by Buyer's and Seller's QA Deptt.
- (i) Phyto-sanitary/Fumigation Certificate, if applicable
- (j) Performance Bond/Warranty Certificate
- (k) Authenticated signature of the supplier or his authorized representative should be available with the bank and verified by them before releasing LC payment.

12.7 EXTENSION OF LC:

12.7.1 Points to be checked: The following points should be checked by the Contract concluding authority before initiating the case for extension of LC:

- (a) Extension of delivery date in the contract and corresponding amendment in LC for latest date of shipment.
- (b) Performance Bank Guarantee (PBG) extension.
- (c) Onus of charges for LC extension.

12.7.2 Approvals Required: An LC may be extended only with the prior concurrence of the IFA, where the LC was originally opened with the concurrence of integrated finance, and approval of the CFA.

12.8 DIRECT BANK TRANSFER:

12.8.1 Direct Bank Transfer (DBT): A transferable credit is a credit under which the Beneficiary may request the bank authorized to pay, incur a deferred payment undertaking, accept or negotiate or in the case of a freely negotiable credit, the bank specifically authorized in the credit as a transferring bank to make the credit available in whole or in part to one or more than one beneficiaries. Direct Bank Transfer shows high degree of trust between parties. Buyer ensures that the payment is released only after receipt of the documents listed in paragraph 12.6.1 and confirmation from the Supplier that one set of the documents has been sent to the port consignee immediately after dispatch of the stores.

12.8.2 Advice to the Principal Controller/Controller: After obtaining the above mentioned documents, the details of which should form part of the contract, the contract concluding authority advises the Principal Controller/ Controller of Defence Accounts concerned to effect Direct Bank Transfer. The Principal Controller/Controller concerned, in turn, authorizes the Buyer's bank to make direct transfer of funds to the Seller's bank account.

12.8.3 Advantages of DBT: In comparison with payments through Letters of Credit, payment through DBT has the following advantages:

- (a) Payment is released only after receipt of goods.
- (b) Payment is made only after full satisfaction to the quality, quantity etc.
- (c) It is cost-effective as compared with LCs.

12.8.4 DBT for Contracts below USD 1,00,000: For contracts below USD 100,000 DBT payment terms should be insisted upon at the time of concluding the contract.

12.9 DELIVERY SCHEDULES:

12.9.1 Delivery of goods: The normal schedule for delivery of goods in case of LC and DBT payment terms should be as follows:

- (a) L/C Payments: Six months from the date of signing of the contract which will include:
 - (i) Obtaining export license and giving notification of readiness for opening of L/C by the seller – 45 days.
 - (ii) Obtaining Foreign Exchange Release and opening of L/C through the Principal Controller/Controller by the buyer – 45 days
 - (iii) Validity period of L/C – 90 days. The LC will be opened three months prior to the expiry of the delivery period only. In case the spares under procurement are in large quantity or their technical production cycle is long as specified by the seller in the RFP, the LC shall be opened for more than one quarter as per the terms of the contract.
- (b) DBT Payments: Preferably within three months of the signing of the contract

12.10 PERFORMANCE BANK GUARANTEE (PBG):

12.10.1 Definition: PBG is a written undertaking obtained from the Supplier through his bank as a guarantee that he would perform the promise/terms and conditions of the contract and to ensure the discharge of liability of the Supplier in case of his default. The guidelines and format of performance bank guarantee are given in **Annexures 23, 24 & 25**.

12.10.2 Essential Elements of PBG: The essential elements of PBG are as follows:

- (a) Amount
- (b) Address of the Beneficiary, Applicant and the Bank
- (c) Validity date
- (d) Contract Number and Date

12.11 GUARANTEES:

12.11.1 The salient features of Guarantees are as follows:

- (a) Guarantees are absolute in character and independent of the underlying contract.
- (b) Guarantees imply obligation to pay and not to perform.
- (c) Guarantees also imply unconditional and without demur payment against a valid claim.
- (d) Guarantees are for specified amount and period
- (e) Guarantees are issued against matching counter-guarantee from the applicant.

12.11.2 Invocation of Guarantees: Guarantees can only be invoked after fulfilling the following conditions:

- (a) The claim/intimation should reach the issuing Bank on or before the expiry date.

- (b) The claim/intimation should be in strict conformity with the terms of the Guarantee.
- (c) Issuing Bank cannot enquire into merits of the claimant or take views on any dispute between the applicant and the beneficiary.
- (d) On compliance of terms of the guarantee, payments are to be effected immediately and unconditionally.

12.12 CONFIRMATION OF VARIOUS TYPES OF GUARANTEES:

12.12.1 Confirmation of Guarantees: Confirmation of Performance Bank Guarantee/ Advance Bank Guarantee/ Warranty Bond for indigenous and foreign vendors should be undertaken as follows:

- (a) Indigenous Vendors: Bank guarantee issued by any of the Public Sector Banks or private banks duly authorized to conduct government transactions would be accepted.
- (b) Foreign Vendors: Advice of the SBI should be taken whether the foreign bank providing bank guarantee for advance is a first class bank of International repute before taking a decision whether such PBG should be further confirmed by any Public Sector Bank or private bank duly authorized to conduct government transactions.

* ICICI Bank Ltd., Axis Bank Ltd and HDFC Bank Ltd are at present the private sector banks authorized to conduct government transactions.

CHAPTER 13

EVALUATION OF QUOTATIONS AND PRICE REASONABILITY

13.1 INTRODUCTION:

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

13.2 COSTING OF PROCUREMENT PROPOSALS:

13.2.1 Need for costing: The first stage at which costing needs to be done is when the proposal is initiated by the Procuring Agency. It is necessary to work out the complete cost of a procurement proposal to determine availability of funds to meet the expected cash outflow and the level at which it would need to be approved. It is, therefore, essential that the cost is assessed realistically and comprehensively. The entire, all inclusive assessed cost should be the basis for determining the CFA.

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

13.2.3 Cost to be worked out in INR: Wherever applicable, the assessed cost should be converted into the common denomination of Indian Rupees (INR) and shown both in terms of the foreign currency and INR while seeking CFA's approval. The exchange rate adopted should be as on the date of opening of the price bids. The conversion factor should be clearly indicated. The method of conversion is given in this Chapter.

13.3 EVALUATION OF QUOTE:

13.3.1 Evaluating financial implication of offers: While RFP is issued on the basis of the assessed cost, as approved by the CFA, the next important stage in the process is the stage at which the bids received in response to the RFP are required to be evaluated to work out the total financial implication and reasonability of each offer. The first step in arriving at the decision regarding reasonability of price or otherwise is to determine the exact cost of the proposal. In order to ensure that all offers are compared in an equitable and fair manner and the vendors are provided a level playing field, all elements of cost, including the terms and conditions with financial implications are to be taken into account. The criteria to be adopted for this purpose should be indicated in the RFP and the quotations should be ranked as per those criteria. In the case of medical equipment where five years warranty/guarantee is provided for, firms may be asked to quote comprehensive AMC rates for five years on expiry of warranty/ guarantee and

these may be loaded in CST and taken into consideration while deciding the L1 vendor. However, this evaluation criterion would be clearly indicated in the RFP in such cases.

13.3.2 Basis of comparison of cost: The basis for comparison of cost in different situations would be as follows:

- (a) When the competition is only among the Indian Suppliers, the F.O.R Prices at destination (Consignee's premises) should be the basis for ranking of quotations.
- (b) If the competition is amongst foreign suppliers, the basis for comparison should be the landed price at the destination (designated port) only.
- (c) When the competition is amongst indigenous and foreign suppliers, the basic cost (CIF) quoted by the foreign suppliers should be the basis for comparison with the basic cost offered by the indigenous suppliers, after offloading the Excise Duty (ED), Central Sales Tax/VAT and other local taxes and levies. The term 'indigenous supplier' would include Defence PSUs and the Indian Ordnance Factories (OFs).

13.3.3 Determining CIF cost: When the quotations of foreign vendors are also to be compared with the quotation of indigenous suppliers, CIF cost of foreign supplier is to be taken into account but difficulty arises when only FOB/FCA cost is indicated by a foreign supplier. There cannot be any standard formula for arriving at the CIF value in such cases. It would not be desirable to add a notional additional cost as a percentage of FOB/FCA cost to arrive at the CIF cost. To avoid a situation like this, it should be clearly indicated in the RFP that the foreign vendors should indicate the CIF cost.

13.3.4 Comparative Statement of Tenders: On receipt of all accepted tenders, the Procuring Agency should collate them in the form of a Comparative Statement of Tenders (CST). The prices quoted in foreign currencies should be converted into INR indicated in the CST. The rate of conversion of foreign currency into INR prevailing on the date of opening of the price bid may be taken into account for converting the quoted price into INR. The rate can be obtained from SBI Parliament Street, New Delhi. The CST should be exhaustive and it must include all details given in the quotations. Any deviation from the tender documents is to be brought out in the CST. LPP, wherever available, should be indicated in the CST for a fair comparison of the offered prices. The purchase officer should sign the CST and it should be vetted and countersigned by the IFA/IFA's representative with regard to original quotations, indents and other supporting documents, where financial powers are to be exercised with the concurrence of integrated finance.

13.3.5 Determination of lowest acceptable offer: What would be done on the file is the preparation of comparative statement, checking of calculations, the premises on which the comparative statement of tenders has been prepared and prima facie determination of L1 offer. However, it would be the CNC only which will finally determine the lowest acceptable offer (L1 vendor).

13.3.6 Negotiations and benchmarking: In multi-vendor cases, on opening of commercial offers, once L1 vendor is identified, the contract should be concluded with him and there would be no need for any further price negotiations. However, negotiations can be held in exceptional circumstances where valid logical reasons exist and such negotiations should be held only with L1. The exceptional situations include procurement of proprietary items, items with limited sources of supply and items where there is suspicion of cartel formation. The justification and

details of such negotiations should however be duly recorded and documented without loss of time and convincing reasons must be recorded by the authority recommending the negotiation. Negotiations through a CNC/PNC should be conducted in case of single tender situations including PAC cases. Negotiations may also have to be conducted in multi-vendor cases where the offered price is considered high with reference to the assessed reasonable price taking into account inter alia, the competition observed from the response of the trade to the inquiry. In each case the CNC/PNC should record its recommendations regarding the reasonableness of the price offered by the L1 bidder and the need for negotiation or otherwise with detailed justification. Based on the recommendation of TPC/CNC/PNC, negotiation may be undertaken in consultation with the Integrated Finance and approval of the CFA. In cases where a decision is taken to go for re-tendering, but the requirements are urgent, negotiations may be under taken with L1 bidder(s) for the supply of a bare minimum quantity in accordance with **para 3 of CVC instructions dated 3rd March 2006** (not reproduced in this Manual).

13.3.7 Bench Marking : Before scheduled negotiation, (wherever considered necessary), it would be advisable to work out the estimated reasonable rate or the benchmark, to judge acceptability of the L1 offer based on available information. The approach to be adopted for assessing reasonability in different contingencies is given below.

13.4 REASONABLENESS OF PRICES IN COMPETITIVE TENDERING:

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

- (a) Evaluation of tenders is to be made on the basis of the ultimate cost to the user.
- (b) As a general principle, no offer involving any uncertain or indefinite liability or any condition of unusual character should be considered.
- (c) The reasonableness of the price proposed has to be established by taking into account the competition observed from the response of the trade to the enquiry, last purchase price, estimated value as given in the indent, database maintained on costs based on the past contracts entered into, market price, wherever available and changes in the indices of various raw materials, electricity, whole sale price index, and statutory changes in wages, rates etc.
- (d) For procurement of spare parts, consumables and small value contracts which are supplied in the past, the price reasonableness can be determined after comparing with last purchase price and factoring in changes in price indices published by the Government sources.
- (e) The reasonableness of price may also be examined by resorting to Cost Analysis in situations where there is a wide variance over the LPP, not explained by corresponding changes in indices.
- (f) Effort should be made to check cost break up details as per format of cost-analysis given in Annexure – 10 to the extent possible.

13.5 LAST PURCHASE PRICE (LPP):

13.5.1 Last Purchase Price as a determinant of reasonable price: LPP is one of the relevant factors in deciding price reasonableness. However, following needs to be considered while comparing the quoted rates with the LPP:

- (a) LPP of more than three years vintage is not a real scale for comparison. However, such LPP could be used as an input for assessing the rates by adding yearly escalation, if considered necessary. The rate of escalation may differ from case to case depending on the type of goods being procured. This escalation factor should be carefully worked out on the basis of data of past purchases of the same/similar items or as per the Pricing Policy Agreements, if any. The escalation factor should be worked out by Procuring Agencies of the Services after mutual consultation so that different escalation factors are not applied by different Procuring Agencies for the same/ similar items and in respect of the same source or should be worked out as per pricing policy where such pricing IGA is in place.
- (b) LPP should pertain to a past successfully executed order of similar magnitude and scope of supply.
- (c) Factors like basket price and bulk discount offered need to be taken in to account while using LPP as a scale for comparing prices.
- (d) Price variation clause, if any, and the final cost paid by the user in respect of last purchase to which LPP pertains needs to be considered.
- (e) Factors like items supplied against LPP being of current production or ex-stock supply need to be taken into account.
- (f) Market conditions and other factors like re-starting production lines due to obsolescence may also have to be considered.
- (g) Where no other option to assess reasonable rate is feasible, LPP of more than three year vintage may also be taken into account but such situations should be rare.

13.6 ADOPTION OF DISCOUNTED CASH FLOW TECHNIQUE (DCF):

13.6.1 Discounted Cash Flow : The Discounted Cash Flow is defined in the Glossary of Management Accounting Terms, published by the Institute of Cost and Works Accountants of India, as “the method of evaluation by which cash flow of the future are discounted to current levels by the application of a discount rate with a view to reducing all cash flow to common denomination and make comparison”. DCF is also defined as “a method of investment appraisal under which today’s cash outflows are compared with today’s cash inflows”

13.6.2 Net Present Value Analysis : The Net Present Value (NPV) is a variant of DCF method, which is to be used for evaluation of tender. The NPV of a contract is equal to the sum of the

present values of all the cash flows associated with it. The following formula is to be used for calculating NPV of a tender bid:

$$NPV = \sum_{t=1}^N \frac{A_t}{(1+i)^t}$$

Where:

NPV	=	Net Present Value
A	=	Expected cash flow for the period mentioned by the subscript
I	=	Rate of interest or discounting factor
T	=	the period after which payment is done
N	=	Payment Schedule as per the payment terms and conditions

When choosing among the various bids for the contract, the bid with the lowest NPV should be selected.

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

- Step 1: Selection of the discount rate
- Step 2: Identifying the cash out flows to be considered in the analysis
- Step 3: Establishing the timing of the cash outflow
- Step 4: calculating the NPV of each alternative
- Step 5: Selecting the offer with the least NPV

13.6.4 Discounting Rate: Discounting rate to be used under the method is to be the lending rate of the Government of India on loans given to the State Governments. These rates are notified by the Budget Division of Ministry of Finance annually.

13.6.5 Models for structuring cash flows: Following are the suitable models for structuring cash flows for tenders/bids:

- (a) Structuring cash flows for tenders/bids received in the same currency
 - (i) The first step would be to exclude the unknown variables like escalation factors etc while determining the cash flows.
 - (ii) Thereafter the cash out flow expected as per the contract schedule from different tenders should be taken into consideration and where the cash out flows are not available from the tender documents, the same should be obtained from the vendors.
 - (iii) Once the out flows of different tenders become available, NPV of different tenders is to be calculated using the formula given above and the one with the lowest NPV is to be selected.
- (b) Structuring cash flows for tenders/bids received in different currencies
 - (i) Where bids are received in different currencies/combination of currencies, the cash out flow may be brought to a common denomination in rupees by adopting a Base Exchange rate as on the day of opening of

price bid. Thereafter, the procedure as described above in the case of tender bids received in the same currency should be applied to arrive at NPV. Conversion of foreign currency bid into rupees is to be done by taking into account the BC selling rate of the Parliament Street Branch of State Bank of India, New Delhi on the date of the opening of the Price bid.

- (ii) Any standard software, pre-loaded as part of a personal computer could be used for NPV analysis.

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

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

13.6.7 Determination by adding Arithmetic Values: Determination of L1 by merely adding arithmetic values spread over 12 to 13 years (2 years warranty and 10 to 11 year AMC) would be an incorrect procedure for determining L1 and the correct procedure would be to reduce cash out flows into present values through the DCF technique, for which the discount rate to be adopted should form part of the TE.

13.7 ANALYSIS OF OFFERS FROM FOREIGN SUPPLIERS:

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

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

13.7.2 The foreign vendor may be asked to provide the details of past supplies and contract rates, if any, of similar kind of product to other buyers. DRDO and Production Agencies should be involved in assessing the reasonability of prices in such cases of high value.

13.8 Price Indices: For price indices, internet should be accessed by officers dealing with purchases/associated with CNC from important sites. In regard to price indices of indigenous items, website of Ministry of Industry www.eaindustry.nic.in should be accessed for the latest indices/trends. For metals and other minerals access www.mmr.online.com for updates. The other useful sites are www.tradintelligence.com and www.cmie.com. The monthly report of CMIE (Centre for Monitoring Indian Economy). **PROWESS Package of CMIE** giving updates on performance of listed Indian companies, **RBI monthly bulletin**, **Economic survey and its Appendix** containing statistical tables are excellent reference material for market trends. The **World Economic Outlook – a monthly report from IMF**, gives inputs on price trends of different countries. **LME (London Metal Exchange)** gives price trends of nonferrous details,

which often show volatile trends. Indices of electronic items often show lower trends. Instructions issued by Ministry of Finance on its web site www.finmin.nic.in should be assessed as also CVC's site www.cvc.nic.in. Important publications like RBI Monthly Bulletin, CMIE'S monthly report, business/commercial newspapers, MMR etc should be subscribed to.

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

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

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