

**INVITATION TO TENDER AND INSTRUCTIONS TO TENDERS**

**REQUEST FOR PROPOSAL FORMAT**  
**(Particulars of the Buyer issuing the RFP)**

**Invitation of Bids for Supply of ..... (Title of Request for Proposal)**

**Request for Proposal (RFP) No \_\_\_\_\_ Dated \_\_\_\_\_**

1. Bids in sealed cover are invited for supply of items listed in Part III of this RFP. Please superscribe the above mentioned Title, RFP number and date of opening of the Bids on the sealed cover to avoid the Bid being declared invalid.
2. The address and contact numbers for sending Bids or seeking clarifications regarding this RFP are given below -
  - a. Bids/queries to be addressed to:
  - b. Postal address for sending the Bids:
  - c. Name/designation of the contact personnel:
  - d. Telephone numbers of the contact personnel:
  - e. e-mail ids of contact personnel:
  - f. Fax number:
3. This RFP is divided into five Parts as follows:
  - a. Part I – Contains General Information and Instructions for the Bidders about the RFP such as the time, place of submission and opening of tenders, Validity period of tenders, etc.
  - b. Part II – Contains essential details of the items/services required, such as the Schedule of Requirements (SOR), Technical Specifications, Delivery Period, Mode of Delivery and Consignee details.
  - c. Part III – Contains Standard Conditions of RFP, which will form part of the Contract with the successful Bidder.
  - d. Part IV – Contains Special Conditions applicable to this RFP and which will also form part of the contract with the successful Bidder.
  - e. Part V – Contains Evaluation Criteria and Format for Price Bids.
4. This RFP is being issued with no financial commitment and the Buyer reserves the right to change or vary any part thereof at any stage. Buyer also reserves the right to withdraw the RFP, should it become necessary at any stage.

## **Part I – General information**

### **1. Last date and time for depositing the Bids:**

\_\_\_\_\_ (Date to be mentioned in terms of DD MM YEAR)

The sealed Bids (both technical and Commercial, in case two bids are called for) should be deposited/reach by the due date and time. The responsibility to ensure this lies with the Bidder.

- 2. Manner of depositing the Bids:** Sealed Bids should be either dropped in the Tender Box marked as \_\_\_\_\_ or sent by registered post at the address given above so as to reach by the due date and time. Late tenders will not be considered. No responsibility will be taken for postal delay or non-delivery/non-receipt of Bid documents. Bids sent by FAX or e-mail will not be considered (unless they have been specifically called for by these modes due to urgency).

### **3. Time and date for opening of Bids:**

\_\_\_\_\_ (If due to any exigency, the due date for opening of the Bids is declared a closed holiday, the Bids will be opened on the next working day at the same time or on any other day/time, as intimated by the Buyer).

### **4. Location of the Tender Box:**

\_\_\_\_\_ Only those Bids that are found in the tender box will be opened. Bids dropped in the wrong Tender Box will be rendered invalid.

### **5. Place of opening of the Bids:**

\_\_\_\_\_. The Bidders may depute their representatives, duly authorized in writing, to attend the opening of Bids on the due date and time. Rates and important commercial/technical clauses quoted by all Bidders will be read out in the presence of the representatives of all the Bidders. This event will not be postponed due to non-presence of your representative.

- 6. Two-Bid system:** In case of the Two-bid system, only the Technical Bid would be opened on the time and date mentioned above. Date of opening of the Commercial Bid will be intimated after acceptance of the Technical Bids. Commercial Bids of only those firms will be opened, whose Technical Bids are found compliant/suitable after Technical evaluation is done by the Buyer.

- 7. Forwarding of Bids –** Bids should be forwarded by Bidders under their original memo / letter pad inter alia furnishing details like TIN number, VAT/CST number, Bank address with EFT Account if applicable, etc and complete postal & e-mail address of their office.

- 8. Clarification regarding contents of the RFP:** A prospective bidder who requires clarification regarding the contents of the bidding documents shall notify to the Buyer in writing about the clarifications sought not later than 14 (fourteen) days prior to the date of opening of the Bids. Copies of the query and clarification by the purchaser will be sent to all prospective bidders who have received the bidding documents.
- 9. Modification and Withdrawal of Bids:** A bidder may modify or withdraw his bid after submission provided that the written notice of modification or withdrawal is received by the Buyer prior to deadline prescribed for submission of bids. A withdrawal notice may be sent by fax but it should be followed by a signed confirmation copy to be sent by post and such signed confirmation should reach the purchaser not later than the deadline for submission of bids. No bid shall be modified after the deadline for submission of bids. No bid may be withdrawn in the interval between the deadline for submission of bids and expiration of the period of bid validity specified. Withdrawal of a bid during this period will result in Bidder's forfeiture of bid security.
- 10. Clarification regarding contents of the Bids:** During evaluation and comparison of bids, the Buyer may, at its discretion, ask the bidder for clarification of his bid. The request for clarification will be given in writing and no change in prices or substance of the bid will be sought, offered or permitted. No post-bid clarification on the initiative of the bidder will be entertained.
- 11. Rejection of Bids:** Canvassing by the Bidder in any form, unsolicited letter and post-tender correction may invoke summary rejection with forfeiture of EMD. Conditional tenders will be rejected.
- 12. Unwillingness to quote:** Bidders unwilling to quote should ensure that intimation to this effect reaches before the due date and time of opening of the Bid, failing which the defaulting Bidder may be delisted for the given range of items as mentioned in this RFP.
- 13. Validity of Bids:** The Bids should remain valid till \_\_\_\_\_(Date)\_\_\_\_\_ from the last date of submission of the Bids.
- 14. Earnest Money Deposit:-** Bidders are required to submit Earnest Money Deposit (EMD) for amount of \_\_\_\_ along with their bids. The EMD may be submitted in the form of an Account Payee Demand Draft, Fixed Deposit Receipt, Banker's Cheque or Bank Guarantee from any of the public sector banks or a private sector bank authorized to conduct government business as

per Form DPM-16 (Available in MoD website and can be provided on request). EMD is to remain valid for a period of forty-five days beyond the final bid validity period. EMD of the unsuccessful bidders will be returned to them at the earliest after expiry of the final bid validity and latest on or before the 30<sup>th</sup> day after the award of the contract. The Bid Security of the successful bidder would be returned, without any interest whatsoever, after the receipt of Performance Security from them as called for in the contract. EMD is not required to be submitted by those Bidders who are registered with the Central Purchase Organization (e.g. DGS&D), National Small Industries Corporation (NSIC) or any Department of MoD or MoD itself. The EMD will be forfeited if the bidder withdraws or amends, impairs or derogates from the tender in any respect within the validity period of their tender.

**Part II – Essential Details of Items/Services required**

1. **Schedule of Requirements** – List of items / services required is as follows:

**Name/Type of item/services/description of stores Qty required**

.....  
.....

2. **Technical Details:**

- (a) Specifications/drawings, as applicable
- (b) Technical details with technical parameters
- (c) Requirement of training/on-job training
- (d) Requirement of installation/commissioning
- (e) Requirement of Factory Acceptance Trials (FAT), Harbor Acceptance Trails (HAT) and Sea Acceptance Trials (SAT)
- (f) Requirement of Technical documentation
- (g) Nature of assistance required after completion of warranty
- (h) Requirement of pre-site/equipment inspection
- (i) Any other details, as considered necessary

3. **Two-Bid System** - In respect of Two-bid system, Bidders are required to furnish clause by clause compliance of specifications bringing out clearly the deviations from specification, if any. The Bidders are advised to submit the compliance statement in the following format along with Technical Bid –

Para of RFP specifications item-wise	Specification of item offered	Compliance to RFP specification – whether Yes / No	In case of non-compliance, deviation from RFP to be specified in unambiguous terms

4. **Delivery Period** - Delivery period for supply of items would be \_\_\_\_\_ from the effective date of contract. Please note that Contract can be cancelled unilaterally by the Buyer in case items are not received within the contracted delivery period. Extension of contracted delivery period will be at the sole discretion of the Buyer, with applicability of LD clause.

5. **INCOTERMS for Delivery and Transportation** – (“E” / “F” / “C” / “D” Terms).

Unless otherwise specifically agreed to by the Buyer and the Seller and incorporated in the contract, the applicable rules & regulations for transportation of goods from foreign countries will be as per the contemporary version of International Commercial Terms (INCOTERMS) evolved by International Chamber of Commerce, Paris. Definition of Delivery Period is given below –

TERMS OF DELIVERY	DATE OF DELIVERY
(a) Local Delivery at Site	The date on which the delivery is made at the consignee's site mentioned in the contract.
(b) Ex-works	The date the Seller delivers the goods to the Buyer at Seller's factory / premises.
c) F.O.R Station of Dispatch	The date on which the goods are placed by the Seller on rail with clear Rail Receipt.
d) By Post Parcel	The date of postal receipt.
e) Dispatch by Air	The date of Air-way Bill.
f) F.O.R. Destination	the date on which the goods reach the destination railway station specified in the contract, unless otherwise stated.
g) C.I.P. Destination	The date on which the delivery is effected at the destination mentioned in the contract.
h) F.A.S. Port of Shipment	The date on which the Seller deliver the goods alongside the vessel at the specified port of shipment. This date is reflected in Bill of Lading.
g) F.O.B. Port of Shipment	The date on which the Seller delivers the goods on vessel's board at the specified port of shipment. This date is reflected in Bill of Lading.
h) C.I.F. Port of Destination	The date on which the goods actually arrived at the Destination Port.

Note - The FAS, FOB & CIF terms of delivery are applicable for goods which are directly imported from foreign countries against the subject contract and not imported already by the Seller under its own arrangement.

The CIP terms of delivery may be applied both for domestic as well as imported supplies.

**6. Consignee details - \_\_\_\_\_**

### **Part III – Standard Conditions of RFP**

The Bidder is required to give confirmation of their acceptance of the Standard Conditions of the Request for Proposal mentioned below which will automatically be considered as part of the Contract concluded with the successful Bidder (i.e. Seller in the Contract) as selected by the Buyer. Failure to do so may result in rejection of the Bid submitted by the Bidder.

1. **Law**: The Contract shall be considered and made in accordance with the laws of the Republic of India. The contract shall be governed by and interpreted in accordance with the laws of the Republic of India.
2. **Effective Date of the Contract**: The contract shall come into effect on the date of signatures of both the parties on the contract (Effective Date) and shall remain valid until the completion of the obligations of the parties under the contract. The deliveries and supplies and performance of the services shall commence from the effective date of the contract.
3. **Arbitration**: All disputes or differences arising out of or in connection with the Contract shall be settled by bilateral discussions. Any dispute, disagreement or question arising out of or relating to the Contract or relating to construction or performance, which cannot be settled amicably, may be resolved through arbitration. The standard clause of arbitration is as per Forms DPM-7, DPM-8 and DPM-9 (Available in MoD website and can be provided on request).
4. **Penalty for use of Undue influence**: The Seller undertakes that he has not given, offered or promised to give, directly or indirectly, any gift, consideration, reward, commission, fees, brokerage or inducement to any person in service of the Buyer or otherwise in procuring the Contracts or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the present Contract or any other Contract with the Government of India for showing or forbearing to show favour or disfavour to any person in relation to the present Contract or any other Contract with the Government of India. Any breach of the aforesaid undertaking by the Seller or any one employed by him or acting on his behalf (whether with or without the knowledge of the Seller) or the commission of any offence by the Seller or anyone employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act, 1986 or any other Act enacted for the prevention of corruption shall entitle the Buyer to cancel the contract and all or any other contracts with the Seller and recover from the Seller the amount of any loss arising from such cancellation. A decision of the Buyer or his nominee to the effect that a breach of the undertaking had been committed shall be final and binding on

the Seller. Giving or offering of any gift, bribe or inducement or any attempt at any such act on behalf of the Seller towards any officer/employee of the Buyer or to any other person in a position to influence any officer/employee of the Buyer for showing any favour in relation to this or any other contract, shall render the Seller to such liability/ penalty as the Buyer may deem proper, including but not limited to termination of the contract, imposition of penal damages, forfeiture of the Bank Guarantee and refund of the amounts paid by the Buyer.

5. **Agents / Agency Commission:** The Seller confirms and declares to the Buyer that the Seller is the original manufacturer of the stores/provider of the services referred to in this Contract and has not engaged any individual or firm, whether Indian or foreign whatsoever, to intercede, facilitate or in any way to recommend to the Government of India or any of its functionaries, whether officially or unofficially, to the award of the contract to the Seller; nor has any amount been paid, promised or intended to be paid to any such individual or firm in respect of any such intercession, facilitation or recommendation. The Seller agrees that if it is established at any time to the satisfaction of the Buyer that the present declaration is in any way incorrect or if at a later stage it is discovered by the Buyer that the Seller has engaged any such individual/firm, and paid or intended to pay any amount, gift, reward, fees, commission or consideration to such person, party, firm or institution, whether before or after the signing of this contract, the Seller will be liable to refund that amount to the Buyer. The Seller will also be debarred from entering into any supply Contract with the Government of India for a minimum period of five years. The Buyer will also have a right to consider cancellation of the Contract either wholly or in part, without any entitlement or compensation to the Seller who shall in such an event be liable to refund all payments made by the Buyer in terms of the Contract along with interest at the rate of 2% per annum above LIBOR rate. The Buyer will also have the right to recover any such amount from any contracts concluded earlier with the Government of India.
6. **Access to Books of Accounts:** In case it is found to the satisfaction of the Buyer that the Seller has engaged an Agent or paid commission or influenced any person to obtain the contract as described in clauses relating to Agents/Agency Commission and penalty for use of undue influence, the Seller, on a specific request of the Buyer, shall provide necessary information/ inspection of the relevant financial documents/information.
7. **Non-disclosure of Contract documents:** Except with the written consent of the Buyer/ Seller, other party shall not disclose the contract or any provision, specification, plan, design, pattern, sample or information thereof to any third party.

8. **Liquidated Damages**: In the event of the Seller's failure to submit the Bonds, Guarantees and Documents, supply the stores/goods and conduct trials, installation of equipment, training, etc as specified in this contract, the Buyer may, at his discretion, withhold any payment until the completion of the contract. The BUYER may also deduct from the SELLER as agreed, liquidated damages to the sum of 0.5% of the contract price of the delayed/undelivered stores/services mentioned above for every week of delay or part of a week, subject to the maximum value of the Liquidated Damages being not higher than 10% of the value of delayed stores.
9. **Termination of Contract**: The Buyer shall have the right to terminate this Contract in part or in full in any of the following cases :-
- (a) The delivery of the material is delayed for causes not attributable to Force Majeure for more than (\_\_\_ months) after the scheduled date of delivery.
  - (b) The Seller is declared bankrupt or becomes insolvent.
  - (c) The delivery of material is delayed due to causes of Force Majeure by more than (\_\_\_ months) provided Force Majeure clause is included in contract.
  - (d) The Buyer has noticed that the Seller has utilised the services of any Indian/Foreign agent in getting this contract and paid any commission to such individual/company etc.
  - (e) As per decision of the Arbitration Tribunal.
10. **Notices**: Any notice required or permitted by the contract shall be written in the English language and may be delivered personally or may be sent by FAX or registered pre-paid mail/airmail, addressed to the last known address of the party to whom it is sent.
11. **Transfer and Sub-letting**: The Seller has no right to give, bargain, sell, assign or sublet or otherwise dispose of the Contract or any part thereof, as well as to give or to let a third party take benefit or advantage of the present Contract or any part thereof.
12. **Patents and other Industrial Property Rights**: The prices stated in the present Contract shall be deemed to include all amounts payable for the use of patents, copyrights, registered charges, trademarks and payments for any other industrial property rights. The Seller shall indemnify the Buyer against all claims from a third party at any time on account of the infringement of any or all the rights mentioned in the previous paragraphs, whether such claims arise in respect of manufacture or use. The Seller shall be responsible for the completion of the supplies including spares, tools, technical literature and training aggregates irrespective of the fact of infringement of the supplies, irrespective of the fact of infringement of any or all the rights mentioned above.

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

14) **Taxes and Duties**

a) **In respect of Foreign Bidders**: All taxes, duties, levies and charges which are to be paid for the delivery of goods, including advance samples, shall be paid by the parties under the present contract in their respective countries.

b) **In respect of Indigenous bidders**

i) **General**

1. If Bidder desires to ask for excise duty or Sales Tax / VAT extra, the same must be specifically stated. In the absence of any such stipulation, it will be presumed that the prices include all such charges and no claim for the same will be entertained.
2. If reimbursement of any Duty/Tax is intended as extra over the quoted prices, the Bidder must specifically say so. In the absence of any such stipulation it will be presumed that the prices quoted are firm and final and no claim on account of such duty/tax will be entertained after the opening of tenders.
3. If a Bidder chooses to quote a price inclusive of any duty/tax and does not confirm inclusive of such duty/tax so included is firm and final, he should clearly indicate the rate of such duty/tax and quantum of such duty/tax included in the price. Failure to do so may result in ignoring of such offers summarily.
4. If a Bidder is exempted from payment of any duty/tax upto any value of supplies from them, he should clearly state that no such duty/tax will be charged by him up to the limit of exemption which he may have. If any concession is available in regard to rate/quantum of any Duty/tax, it should be brought out clearly. Stipulations like, the said duty/tax was presently not applicable but the same will be charged if it becomes leviable later on, will not be accepted unless in such cases it is clearly stated by a Bidder that such duty/tax will not be charged by him even if the same becomes applicable later on. In respect of the Bidders, who fail to comply with this requirement, their quoted prices shall be loaded with the quantum of such duty/tax

which is normally applicable on the item in question for the purpose of comparing their prices with other Bidders.

5. Any change in any duty/tax upward/downward as a result of any statutory variation in excise taking place within contract terms shall be allowed to the extent of actual quantum of such duty/tax paid by the supplier. Similarly, in case of downward revision in any duty/tax, the actual quantum of reduction of such duty/tax shall be reimbursed to the Buyer by the Seller. All such adjustments shall include all reliefs, exemptions, rebates, concession etc. if any obtained by the Seller.

**ii) Customs Duty –**

1. For imported stores offered against forward delivery, the Bidder shall quote prices thereof exclusive of customs duty. The Bidder shall specify separately the C.I.F. prices and total amount of customs duty payable. They will also indicate correctly the rate of customs duty applicable along with Indian Customs Tariff Number. Customs duty as actually paid will be reimbursed on production of necessary documents i.e. (i) Triplicate copy of the bill of entry; (ii) copy of bill of lading; (iii) a copy of foreign principal's invoice. However, if the Bidder imports the stores in question against his own commercial quota Import Licences, he will also be required to submit in addition the triplicate copy of bills of entry etc. a certificate from his Internal Auditor on the bill itself, to the effect that the following items/quantity in the bill of entry related to the stores imported against Defence Buyer contract number..... dated.....
2. Subsequent to the reimbursement of customs duty, the Bidder will submit to the concerned Payment Authority a certificate to the effect that he has not obtained any refund of customs duty subsequent to the payment of duty to the Customs authority by him. In addition, he shall also submit to the Paying Authority concerned a certificate immediately after a period of three months from the date of payment of the duty to customs authorities to the effect that he has not applied for refund of the customs duty subsequent to the payment of duty to the customs authorities by him.
3. In case the Bidder obtains any refund of customs duty, subsequently to the payment of the same by him to the customs authorities and reimbursement of the customs duty to him by the Payment Authority, he should forthwith furnish the details of the refund obtained and afford full credit of the same to the Buyer.

### **iii) Excise Duty**

1. Where the excise duty is payable on advalorem basis, the Bidder should submit along with the tender, the relevant form and the Manufacturer's price list showing the actual assessable value of the stores as approved by the Excise authorities.
2. Bidders should note that in case any refund of excise duty is granted to them by Excise authorities in respect of Stores supplied under the contract, they will pass on the credit to the Buyer immediately along with a certificate that the credit so passed on relates to the Excise Duty, originally paid for the stores supplied under the contract. In case of their failure to do so, within 10 days of the issue of the excise duty refund orders to them by the Excise Authorities the Buyer would be empowered to deduct a sum equivalent to the amount refunded by the Excise Authorities without any further reference to them from any of their outstanding bills against the contract or any other pending Government Contract and that no disputes on this account would be raised by them.
3. The Seller is also required to furnish to the Paying Authority the following certificates:
  - (a) Certificate with each bill to the effect that no refund has been obtained in respect of the reimbursement of excise duty made to the Seller during three months immediately preceding the date of the claim covered by the relevant bill.
  - (b) Certificate as to whether refunds have been obtained or applied for by them or not in the preceding financial year after the annual Audit of their accounts also indicating details of such refunds/applications, if any.
  - (c) A certificate along with the final payment bills of the Seller to the effect whether or not they have any pending appeal/protest for refund or partial refund of excise duties already reimbursed to the Seller by the Government pending with the Excise authorities and if so, the nature, the amount involved, and the position of such appeals.
  - (d) An undertaking to the effect that in case it is detected by the Government that any refund from Excise Authority was obtained by the Seller after obtaining reimbursement from the Paying Authority, and if the same is not immediately refunded by the Seller to the Paying Authority giving details and particulars of the transactions, Paying Authority will have full authority to recover

such amounts from the Seller's outstanding bills against that particular contract or any other pending Government contracts and that no dispute on this account would be raised by the Seller.

4. Unless otherwise specifically agreed to in terms of the contract, the Buyer shall not be liable for any claim on account of fresh imposition and/or increase of Excise Duty on raw materials and/or components used directly in the manufacture of the contracted stores taking place during the pendency of the contract.

**iv) Sales Tax / VAT**

1. If it is desired by the Bidder to ask for Sales tax / VAT to be paid as extra, the same must be specifically stated. In the absence of any such stipulation in the bid, it will be presumed that the prices quoted by the Bidder are inclusive of sales tax and no liability of sales tax will be developed upon the Buyer.
2. On the Bids quoting sales tax extra, the rate and the nature of Sales Tax applicable at the time of supply should be shown separately. Sales tax will be paid to the Seller at the rate at which it is liable to be assessed or has actually been assessed provided the transaction of sale is legally liable to sales tax and the same is payable as per the terms of the contract.

**v) Octroi Duty & Local Taxes**

1. Normally, materials to be supplied to Government Departments against Government Contracts are exempted from levy of town duty, Octroi Duty, Terminal Tax and other levies of local bodies. The local Town/Municipal Body regulations at times, however, provide for such Exemption only on production of such exemption certificate from any authorised officer. Seller should ensure that stores ordered against contracts placed by this office are exempted from levy of Town Duty/Octroi Duty, Terminal Tax or other local taxes and duties. Wherever required, they should obtain the exemption certificate from the Buyer, to avoid payment of such local taxes or duties.
2. In case where the Municipality or other local body insists upon payment of these duties or taxes the same should be paid by the Seller to avoid delay in supplies and possible demurrage charges. The receipt obtained for such payment should be forwarded to the Buyer without delay together with a copy of the relevant act or by-laws/notifications of the Municipality of the local body concerned to enable him to take up the question of refund with the concerned bodies if admissible under the said acts or rules.

15. **Pre-Integrity Pact Clause**: An “Integrity Pact” would be signed between the Ministry of Defence/Buyer and the Bidder for purchases exceeding Rs.100 crores. This is a binding agreement between the Buyer and Bidders for specific contracts in which the Buyer promises that it will not accept bribes during the procurement process and Bidders promise that they will not offer bribes. Under this Pact, the Bidders for specific services or contracts agree with the Buyer to carry out the procurement in a specified manner. The Format of Pre-Integrity Clause will be as per Form DPM-10 (Available in MoD website, and can be provided on request). The essential elements of the Pact are as follows:
- a. A pact (contract) between the Government of India (Ministry of Defence) (the authority or the “principal”) and those companies submitting a tender for this specific activity (the “Bidder”);
  - b. An undertaking by the Principal that its officials will not demand or accept any bribes, gifts etc., with appropriate disciplinary or criminal sanctions in case of violation;
  - c. A statement by each Bidder that it has not paid, and will not pay, any bribes;
  - d. An undertaking by each Bidder to disclose all payments made in connection with the Contract in question to anybody (including agents and other middlemen as well as family members, etc., of officials); the disclosure would be made either at the time of submission of Bids or upon demand of the Principal, especially when a suspicion of a violation by that Bidder emerges;
  - e. The explicit acceptance by each Bidder that the no-bribery commitment and the disclosure obligation as well as the attendant sanctions remain in force for the winning Bidder until the contract has been fully executed.
  - f. Undertaking on behalf of a Bidding company will be made “in the name and on behalf of the company’s Chief Executive Officer”.
  - g. The following set of sanctions shall be enforced for any violation by a Bidder of its commitments or undertakings:
    - i. Denial or loss of contracts;
    - ii. Forfeiture of the Bid security and performance bond;
    - iii. Liability for damages to the principal and the competing Bidders; and
    - iv. Debarment of the violator by the Principal for an appropriate period of time.

- h. Bidders are also advised to have a company code of conduct (clearly rejecting the use of bribes and other unethical behaviour and compliance program for the implementation of the code of conduct throughout the company).

## **Part IV – Special Conditions of RFP**

The Bidder is required to give confirmation of their acceptance of Special Conditions of the RFP mentioned below which will automatically be considered as part of the Contract concluded with the successful Bidder (i.e. Seller in the Contract) as selected by the Buyer. Failure to do so may result in rejection of Bid submitted by the Bidder.

1. **Performance Guarantee:**

- a. **Indigenous cases:** The Bidder will be required to furnish a Performance Guarantee by way of Bank Guarantee through a public sector bank or a private sector bank authorized to conduct government business (ICICI Bank Ltd., Axis Bank Ltd or HDFC Bank Ltd.) for a sum equal to 10% of the contract value within 30 days of receipt of the confirmed order. Performance Bank Guarantee should be valid up to 60 days beyond the date of warranty. The specimen of PBG is given in Form DPM-15 (Available in MoD website and can be provided on request).
- b. **Foreign cases:** The Seller will be required to furnish a Performance Guarantee by way of a Bank Guarantee from Seller's Bank through an internationally recognised first class Bank in favour of the Government of India, Ministry of Defence to be confirmed by public sector bank or a private sector bank authorized to undertake government transactions (ICICI Bank Ltd., Axis Bank Ltd or HDFC Bank Ltd.) equal to 10(five percent) of the total value of this contract i.e. for US \$ ..... (US Dollars (in words) ..... only). Performance Bank Guarantee should be valid up to 60 days beyond the date of warranty. The Performance Bank Guarantee shall be considered open upon receipt by the Buyer's Bank. In case any claims or any other contract obligations are outstanding, the Seller will extend the Performance Bank Guarantee as asked for by the Buyer till such time as the Seller settles all claims and completes all contract obligations. The Performance Bank Guarantee will be subject to encashment by the Buyer, in case the conditions regarding adherence to delivery schedule, settlement of claims and other provisions of the contract are not fulfilled by the Seller. The specimen of PBG is given in Form DPM-15 (Available in MoD website and can be provided on request).

2. **Option Clause:** The contract will have an Option Clause, wherein the Buyer can exercise an option to procure an additional 50% of the original contracted quantity in accordance with the same terms & conditions of the

present contract. This will be applicable within the currency of contract. The Bidder is to confirm the acceptance of the same for inclusion in the contract. It will be entirely the discretion of the Buyer to exercise this option or not.

3. **Repeat Order Clause** – The contract will have a Repeat Order Clause, wherein the Buyer can order upto 50% quantity of the items under the present contract within six months from the date of supply/successful completion of this contract, the cost, terms & conditions remaining the same. The Bidder is to confirm acceptance of this clause. It will be entirely the discretion of the Buyer to place the Repeat order or not.
4. **Tolerance Clause** – To take care of any change in the requirement during the period starting from issue of RFP till placement of the contract, Buyer reserves the right to \_\_\_% plus/minus increase or decrease the quantity of the required goods upto that limit without any change in the terms & conditions and prices quoted by the Seller. While awarding the contract, the quantity ordered can be increased or decreased by the Buyer within this tolerance limit.
5. **Payment Terms for Indigenous Sellers** - It will be mandatory for the Bidders to indicate their bank account numbers and other relevant e-payment details so that payments could be made through ECS/EFT mechanism instead of payment through cheques, wherever feasible. A copy of the model mandate form prescribed by RBI to be submitted by Bidders for receiving payments through ECS is at Form DPM-11 (Available in MoD website and can be given on request). The payment will be made as per the following terms, on production of the requisite documents:
  - a. 95% Payment against Inspection note, Proof of despatch, duly supported by Xerox copy of the Bank Guarantee and against Consignee's provisional receipt. Balance of 5% will be paid on receipt of items in good condition by consignee(s) along with user's certificate of complete Installation and successful commissioning.

OR

- b. 100% payment on delivery and acceptance by the user.

OR

- c. Stage-wise payments (To be defined as per complexity of case)

OR

- d. Quarterly payments on submission of User clearance certificate in respect of AMC contracts.

6. **Payment terms for Foreign Sellers –**

- a. The payment will be arranged through Letter of Credit from Reserve Bank of India/State bank of India/any other Public Sector bank Bank, as decided by the Buyer, to the Bank of the Foreign Seller. The Seller will give a notification within a specified period about the readiness of goods. Letter of Credit is to be opened by the Buyer within \_\_\_\_\_ days on receipt of notification of readiness from the firm. The Letter of Credit will be valid for \_\_\_\_\_ days from the date of its opening, on extendable basis by mutual consent of both the Seller and Buyer.

OR

- b. If the value of the contract is up to US \$ 100,000, payments will be made by Direct Bank Transfer. DBT payment will be made within 30 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.

OR

- c. Stage-wise payments (To be defined as per complexity of case)

OR

- d. Quarterly payments on submission of User clearance certificate in respect of AMC contracts.

7. **Advance Payments:** No advance payment(s) will be made.

OR

- a. Advance payments may be made upto 15% against appropriate Bank guarantee or any authorised guarantee, as acceptable to the Buyer.

8. **Paying Authority:**

- a. Indigenous Sellers: (Name and address, contact details). The payment of bills will be made on submission of the following documents by the Seller to the Paying Authority along with the bill:

- i. Ink-signed copy of contingent bill / Seller's bill.
- ii. Ink-signed copy of Commercial invoice / Seller's bill.
- iii. Copy of Supply Order/Contract with U.O. number and date of IFA's concurrence, where required under delegation of powers.
- iv. CRVs in duplicate.
- v. Inspection note.
- vi. Claim for statutory and other levies to be supported with requisite documents / proof of payment 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, U.O. number and date of IFA's concurrence, where required under delegation of powers, indicating whether extension is with or without LD.
- xii. Details for electronic payment viz Account holder's name, Bank name, Branch name and address, Account type, Account number, IFSC code, MICR code (if these details are not incorporated in supply order/contract).
- xiii. Any other document / certificate that may be provided for in the Supply Order / Contract.
- xiv. User Acceptance.
- xv. Xerox copy of PBG.

(Note – From the above list, the documents that may be required depending upon the peculiarities of the procurement being undertaken, may be included in RFP)

- b. **Foreign Sellers** - (Name and address, contact details). Paid shipping documents are to be provided to the Bank by the Seller as proof of dispatch of goods as per contractual terms so that the Seller gets payment from LC. The Bank will forward these documents to the Buyer for getting the goods/stores released from the Port/Airport. Documents will include:
- i. Clean on Board Airway Bill/Bill of Lading
  - ii. Original Invoice
  - iii. Packing List
  - iv. Certificate of Origin from Seller's Chamber of Commerce, if any.
  - v. Certificate of Quality and current manufacture from OEM.
  - vi. Dangerous Cargo certificate, if any.
  - vii. Insurance policy of 110% if CIF / CIP contract
  - viii. Certificate of Conformity & Acceptance Test at PDI, if any.
  - ix. Physio-sanitary / Fumigation Certificate, if any.
  - x. Performance Bond / Warranty Certificate
9. **Fall clause** - The following Fall clause will form part of the contract placed\_on successful Bidder -
- a. The price charged for the stores supplied under the contract by the Seller shall in no event exceed the lowest prices at which the Seller sells the stores or offer to sell stores of identical description to any persons/Organisation including the purchaser or any department of the Central government or any Department of state government or any statutory undertaking the central or state government as the case may be during the period till performance of all supply Orders placed during the currency of the rate contract is completed.
  - b. If at any time, during the said period the Seller reduces the sale price, sells or offer to sell such stores to any person/organisation including the Buyer or any Deptt, of central Govt. or any Department of the State Government or any Statutory undertaking of the Central or state Government as the case may be at a price lower than the price chargeable under the contract, the shall forthwith notify such reduction or sale or offer of sale to the Director general of Supplies & Disposals and the price payable under the contract for the stores of such reduction of sale or offer of the sale shall stand correspondingly reduced. The above stipulation will, however, not apply to:-  
-

- i. Exports by the Seller.
  - ii. Sale of goods as original equipment at price lower than lower than the prices charged for normal replacement.
  - iii. Sale of goods such as drugs which have expiry dates.
  - iv. Sale of goods at lower price on or after the date of completion of sale/placement of the order of goods by the authority concerned under the existing or previous Rate Contracts as also under any previous contracts entered into with the Central or State Govt. Depts, including their undertakings excluding joint sector companies and/or private parties and bodies.
- c. The Seller shall furnish the following certificate to the Paying Authority along with each bill for payment for supplies made against the Rate contract – “We certify that there has been no reduction in sale price of the stores of description identical to the stores supplied to the Government under the contract herein and such stores have not been offered/sold by me/us to any person/organisation including the purchaser or any department of Central Government or any Department of a state Government or any Statutory Undertaking of the Central or state Government as the case may be upto the date of bill/the date of completion of supplies against all supply orders placed during the currency of the Rate Contract at price lower than the price charged to the government under the contract except for quantity of stores categories under sub-clauses (a),(b) and (c) of sub-para (ii) above details of which are given below - .....”.

10. **Exchange Rate Variation Clause:**

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

Year wise and major currency wise import content break up

Year	Total cost of material	FE content outflow (Equivalent in Rupees - crores)		
		Dollar denominated	Euro denominated	Other currencies denominated

(b) ERV will be payable/refundable depending upon movement of exchange rate with reference to exchange rate adopted for the valuation of the contract. Base exchange rate of each major currency used for calculating FE content of the contract will be the BC Selling rate of the State Bank of India on the date of the opening of Price Bids.

(c) The base date for ERV would be contract date and variation on the base date will be given upto the midpoint manufacture unless Bidder indicates the time schedule within which material will be exported by them. Based on information given above, the cut off date/dates within the Delivery schedule for the imported material will be fixed for admissibility of ERV.

(d) ERV clause will not be applicable in case delivery periods for imported content are subsequently to be refixed /extended.

(e) The impact of notified Exchange Rate Variation shall be computed on an yearly basis for the outflow as mentioned by the vendor in their tender and shall be paid / refunded before the end of the financial year based on the certification of the Buyer.

#### **11. Risk & Expense clause –**

1. Should the stores or any installment thereof not be delivered within the time or times specified in the contract documents, or if defective delivery is made in respect of the stores or any installment thereof, the Buyer shall after granting the Seller 45 days to cure the breach, be at liberty, without prejudice to the right to recover liquidated damages as a remedy for breach of contract, to declare the contract as cancelled either wholly or to the extent of such default.
2. Should the stores or any installment thereof not perform in accordance with the specifications / parameters provided by the SELLER during the check proof tests to be done in the BUYER's country, the BUYER shall be at liberty, without prejudice to any other remedies for breach of contract, to cancel the contract wholly or to the extent of such default.
3. In case of a material breach that was not remedied within 45 days, the BUYER shall, having given the right of first refusal to the SELLER be at liberty to purchase, manufacture, or procure from any other source as he thinks fit, other stores of the same or similar description to make good:-
  - a. Such default.
  - b. In the event of the contract being wholly determined the balance of the stores remaining to be delivered thereunder.

4. Any excess of the purchase price, cost of manufacturer, or value of any stores procured from any other supplier as the case may be, over the contract price appropriate to such default or balance shall be recoverable from the SELLER. Such recoveries shall not exceed \_\_\_\_% of the value of the contract.”

**12. Force Majeure clause**

- a. Neither party shall bear responsibility for the complete or partial non-performance of any of its obligations (except for failure to pay any sum which has become due on account of receipt of goods under the provisions of the present contract), if the non-performance results from such Force Majeure circumstances as Flood, Fire, Earth Quake and other acts of God as well as War, Military operation, blockade, Acts or Actions of State Authorities or any other circumstances beyond the parties control that have arisen after the conclusion of the present contract.
  - b. In such circumstances the time stipulated for the performance of an obligation under the present contract is extended correspondingly for the period of time of action of these circumstances and their consequences.
  - c. The party for which it becomes impossible to meet obligations under this contract due to Force Majeure conditions, is to notify in written form the other party of the beginning and cessation of the above circumstances immediately, but in any case not later than 10 (Ten) days from the moment of their beginning.
  - d. Certificate of a Chamber of Commerce (Commerce and Industry) or other competent authority or organization of the respective country shall be a sufficient proof of commencement and cessation of the above circumstances.
  - e. If the impossibility of complete or partial performance of an obligation lasts for more than 6 (six) months, either party hereto reserves the right to terminate the contract totally or partially upon giving prior written notice of 30 (thirty) days to the other party of the intention to terminate without any liability other than reimbursement on the terms provided in the agreement for the goods received.
- 13. Buy-Back offer - Buyer is interested to trade the existing old goods while purchasing the new ones. Bidders may formulate and submit their tenders accordingly. Interested Bidders can inspect the old goods to be traded through this transaction. Buyer reserves its right to trade or not to trade the old goods while purchasing the new ones and the Bidders are to frame their bids accordingly covering both the options. Details for buy-back offer are as under –**
- a. Details of Items for buy-back scheme – Make/Model, Specs, Year of Production/Purchase, Period of Warranty/AMC, etc.

- b. Place for inspection of old items – Address, Telephone, Fax, e-mail, Contact personnel, etc.
  - c. Timings for Inspection – All weekdays between \_\_\_\_ to \_\_\_\_\_.
  - d. Last date for inspection – 1 day before the last date of submission of bids.
  - e. Period of handing over old items to successful bidder – Within 15 days of placement of order.
  - f. Handling charges and transportation expenses to take out the old items will be on account of the successful bidder.
14. **Specification**: The following Specification clause will form part of the contract placed on successful Bidder - The Seller guarantees to meet the specifications as per Part-II of RFP and to incorporate the modifications to the existing design configuration to meet the specific requirement of the Buyer Services as per modifications/requirements recommended after the Maintenance Evaluation Trials. All technical literature and drawings shall be amended as the modifications by the Seller before supply to the Buyer. The Seller, in consultation with the Buyer, may carry out technical upgradation/alterations in the design, drawings and specifications due to change in manufacturing procedures, indigenisation or obsolescence. This will, however, not in any way, adversely affect the end specifications of the equipment. Changes in technical details, drawings repair and maintenance techniques alongwith necessary tools as a result of upgradation/alterations will be provided to the Buyer free of cost within (\_\_\_\_) days of affecting such upgradation/alterations.
15. **OEM Certificate**: In case the Bidder is not the OEM, the agreement certificate with the OEM for sourcing the spares shall be mandatory. However, where OEMs do not exist, minor aggregates and spares can be sourced from authorized vendors subject to quality certification.
16. **Export License**: The Bidders are to confirm that they have requisite export license from their Government and Authorization from the manufacturing plant, in case they are not the OEM, to export the military / non-military goods to India.
17. **Earliest Acceptable Year of Manufacture**: \_\_\_\_\_ Quality / Life certificate will need to be enclosed with the Bill.
18. **Buyer Furnished Equipment**: The following equipment will be provided by the Buyer at his expense to the Seller:  
 .....  
 .....
19. **Transportation**: The following Transportation clause will form part of the contract placed on successful Bidder –

a. **CIF/CIP** – The stores shall be delivered CIF/CIP \_\_\_\_\_(Port of destination). Seller will bear the costs and freight necessary to bring the goods to the port of destination. The Seller also has to procure marine insurance against the Buyer's risk of loss of or damage to goods during the carriage. The Seller will contract for insurance and pay the insurance premium. Seller is also required to clear the goods for export. The stores shall be delivered to the Buyer by Indian ships only. The date of issue of the Bill of Lading shall be considered as the date of delivery. No part shipment of goods would be permitted. Trans-shipment of goods would not be permitted. In case it becomes inevitable to do so, the Seller shall not arrange part-shipments and/or transshipment without the express/prior written consent of the Buyer. The goods should be shipped by Indian vessels only. However, the Seller can still utilize the services of the MoD, Govt of India Freight Forwarding Agent details for which will be provided by the Buyer. Seller will be required to communicate the following information invariably by telex/signed in case of import of Defence Stores being brought in commercial ships to Embarkation Head Quarters concerned well in advance before the Ship sails the port of loading:

- i. Name of the Ship
- ii. Port of Loading and name of Country.
- iii. ETA at port of Discharge i.e. Bombay, Calcutta, Madras and Cochin.
- iv. Number of Packages and weight.
- v. Nomenclature and details of major equipment.
- vi. Special instructions, if any stores of sensitive nature requiring special attention.

OR

b. **FOB/FAS** -- The stores shall be delivered FOB ..... (as per INCOTERMS 2000, or latest version). The stores shall be delivered to the Buyer by Indian Ships only. In case of FOB/FAS contracts, shipping arrangements shall be made by the Shipping Co-ordination and Chartering Division/Shipping Co-ordination and Officer, Ministry of Surface Transport, New Delhi, India. Notice about the readiness of Cargo for shipment shall be given by the supplier from time to time at least eight weeks in advance for finalizing the shipping arrangement, through Fax/Telex and courier, to the Chief Controller of Chartering, Shipping Co-ordination Officer, Ministry of Surface Transport, Government of India, New Delhi. Within 3 (three) weeks of receipt of the advance notice, as above, the said Chief Controller of Chartering, Shipping Coordination Officer will advise the supplier, through Fax/Telex and courier when and

on board what vessels, these goods or such part thereof are to be delivered. If the advice for shipping arrangement is not furnished to the Seller within 3 (three) weeks as aforesaid or if the vessel arranged is scheduled to arrive at the specified port of loading later than 15 (fifteen) days of the date of readiness of cargo, as aforesaid, the Seller may arrange for such transport on alternative carriers with the prior written consent of the Buyer. Where the Seller is required under the contract to deliver the goods on FOB/FAS basis and to arrange on behalf and at the expense of the Buyer for ocean transportation on Indian flag vessels or vessels of conference lines in which India is a member country, the Seller may arrange for such transportation on alternate carriers if the specified Indian flag vessels or conference vessels are not available to transport the goods within the time period(s) specified in the contract, with the prior written consent of the Buyer. Should the goods or any part thereof be not delivered on the nominated vessel (except in case where prior written consent of the Buyer was obtained), the Seller will be liable for all payments and expenses that the Buyer may incur or be put to, by reason of such non-delivery including dead and extra freight, demurrage of vessels and any other charges, whatsoever incurred by the Buyer. The date of issue of the Bill of Lading shall be considered as the date of delivery. No part shipment of goods would be permitted. Trans-shipment of goods would not be permitted. In case it becomes inevitable to do so, the Seller shall not arrange part-shipments and/or transshipment without the express/prior written consent of the Buyer. The Seller may contact Shipping Officer, Ministry of Surface Transport, Chartering Wing, Transport Bhavan, Parliament Street, New Delhi-110011 (Telegraphic Address: TRANSSHIP, NEW DELHI-1, Telex "VAHAN" In 31-61157 OR 31-61158, Phone 2371 9480, Fax 2371 8614).

OR

- a. **FCA** - The delivery of the goods shall be FCA \_\_\_\_\_ Airport. The dispatch of goods shall be made by air to port consignee. The Buyer shall advise full details of its freight forwarder to the Seller no later than 60 days prior to the delivery of the first consignment otherwise the Seller may nominate the freight forwarder which shall be at the Buyer's expense. Any delay in advising or delay by the freight forwarder shall be at the responsibility of the Buyer. The date of issue of the Air Way Bill shall be considered as the date of delivery.
20. **Air lift:** The following Airlift clause will form part of the contract placed on successful Bidder - Should the Buyer intend to airlift all or some of the stores, the Seller shall pack the stores accordingly on receipt of an intimation to that effect from the Buyer. Such deliveries will be agreed upon well in advance and paid for as may be mutually agreed.
21. **Packing and Marking:** The following Packing and Marking clause will form part of the contract placed on successful Bidder –

- a. The Seller shall provide packing and preservation of the equipment and spares/goods contracted so as to ensure their safety against damage in the conditions of land, sea and air transportation, transshipment, storage and weather hazards during transportation, subject to proper cargo handling. The Seller shall ensure that the stores are packed in containers, which are made sufficiently strong, and with seasoned wood. The packing cases should have hooks for lifting by crane/fork lift truck. Tags with proper marking shall be fastened to the special equipment, which cannot be packed.
- b. The packing of the equipment and spares/goods shall conform to the requirements of specifications and standards in force in the territory of the Seller's country.
- c. Each spare, tool and accessory shall be packed in separate cartons. A label in English shall be pasted on the carton indicating the under mentioned details of the item contained in the carton. A tag in English with said information shall also be attached to six samples of the item. If quantity contracted is less than six then tag shall be affixed to complete quantity contracted of the item. The cartons shall then be packed in packing cases as required.
  - i. Part Number :
  - ii. Nomenclature :
  - iii. Contract annex number :
  - iv. Annex serial number :
  - v. Quantity contracted :
- d. One copy of the packing list in English shall be inserted in each cargo package, and the full set of the packing lists shall be placed in Case No.1 painted in a yellow colour.
- e. The Seller shall mark each package with indelible paint in the English language as follows:-
  - i. EXPORT
  - ii. Contract No. -----
  - iii. Consignee -----
  - iv. Port / airport of destination -----
  - v. Ultimate consignee -----
  - vi. SELLER -----
  - vii. Package No. -----
  - viii. Gross/net weight : -----
  - ix. Overall dimensions/volume : -----
  - x. The Seller's marking.

- f. If necessary, each package shall be marked with warning inscriptions: <Top>, “Do not turn over”, category of cargo etc.
- g. Should any special equipment be returned to the Seller by the Buyer, the latter shall provide normal packing, which protects the equipment and spares/goods from the damage of deterioration during transportation by land, air or sea. In this case the Buyer shall finalize the marking with the Seller.
22. **Quality**: The quality of the stores delivered according to the present Contract shall correspond to the technical conditions and standards valid for the deliveries of the same stores for in Seller’s country or specifications enumerated as per RFP and shall also include therein modification to the stores suggested by the Buyer. Such modifications will be mutually agreed to. The Seller confirms that the stores to be supplied under this Contract shall be new i.e. not manufactured before (Year of Contract), and shall incorporate all the latest improvements and modifications thereto and spares of improved and modified equipment are backward integrated and interchangeable with same equipment supplied by the Seller in the past if any. The Seller shall supply an interchangeability certificate along with the changed part numbers wherein it should be mentioned that item would provide as much life as the original item.
23. **Quality Assurance**: Seller would provide the Standard Acceptance Test Procedure (ATP) within \_\_\_ month of this date of contract. Buyer reserves the right to modify the ATP. Seller would be required to provide all test facilities at his premises for acceptance and inspection by Buyer. The details in this regard will be coordinated during the negotiation of the contract. The item should be of the latest manufacture, conforming to the current production standard and having 100% defined life at the time of delivery.
24. **Inspection Authority**: The Inspection will be carried out by \_\_\_\_\_. The mode of Inspection will be Departmental Inspection / User Inspection / Joint Inspection / Self-certification.
25. **Pre-Dispatch Inspection** - The following Pre-dispatch Inspection clause will form part of the contract placed on successful Bidder -
- a. The Buyer’s representatives will carry out Pre-Despatch Inspection (PDI) of the stores/equipment in order to check their compliance with specifications in accordance with its usual standard procedures. Upon successful completion of such PDI, the Seller and Buyer will issue and sign a Certificate of Conformity as per the specimen at Form DPM-21 (Available in MoD website and can be given on request).

- b. The Seller shall intimate the Buyer at least 45 days before the scheduled date of PDI. The time required for completing visa formalities by the Seller should not be included in this notice. The Buyer will send his authorised representative(s) to attend the PDI.
  - c. The list of Buyer's representatives together with their particulars including name, title, date and place of birth, passport numbers including date of issue and date of expiry, address, etc. must be communicated by the Buyer at least \_\_\_\_\_(No of days) in advance to apply for the necessary authorisations and clearances to be granted.
  - d. The Buyer reserves the right not to attend the PDI or to request for postponement of the beginning of the PDI by a maximum of fifteen (15) days from the date fixed for such PDI in order to allow his representative(s) to attend such tests, in which cases he shall inform in writing the Seller within 15 days before the date of the beginning of the PDI. Should the Buyer request for such postponement, liquidated damages, if any, shall not apply. In case the Buyer informs the Seller within the period mentioned hereinabove that he cannot attend the PDI or in case the Buyer does not come at the postponed date requested by him for performance of the PDI as mentioned above, the Seller shall be entitled to carry out said tests alone as scheduled. The Certificate of Conformity and the Acceptance Test Report will be signed by the Seller's QA representative alone and such documents bearing the sole signature of the Seller's QA representative shall have the same value and effect as if they have been signed by both the parties. In case Buyer does not elect to attend the PDI, the Buyer shall intimate the Seller in writing that it does not wish to attend the PDI.
  - e. The Seller shall provide all reasonable facilities, access and assistance to the Buyer's representative for safety and convenience in the performance of their duties in the Seller's country.
  - f. All costs associated with the stay of the Buyer's Representative(s) in the country where the PDI is to be carried out, including travel expenses, boarding and lodging, accommodation, daily expenses, shall be borne by the Buyer.
  - g. The Seller shall provide Acceptance Test Procedure to the Buyer's QA Agency within one month from the signing of the Contract.
26. **Joint Receipt Inspection**: The following Joint Receipt Inspection clause will form part of the contract placed on successful Bidder –
- a. The Parties agree that the Joint Receipt Inspection (JRI) of delivered goods shall be conducted on arrival in India at location to be nominated by

the Buyer. JRI shall be completed within 120 days (for armament/ammunition)/ 90 days (for other than armament/ammunition) of arrival of good at the Port Consignee. JRI will consist of

- i. Quantitative checking to verify that the quantities of the delivered goods correspond to the quantities defined in this contract and the invoices.
  - ii. Complete functional checking of the stores/equipment as per specifications in the contract and as per procedures and tests laid down by Buyer but functional checking of spares shall not be done.
  - iii. Check proof and firing, if required.
- b. JRI will be carried out by the Buyer's representative(s). The Buyer will invite the Seller with a prior notice of a minimum of fifteen (15) days to attend the JRI for the delivered goods. The Seller shall have the right not to attend the JRI. The bio data of the Seller's representative will need to be communicated fifteen (15) days prior to the despatch of goods to the Buyer for obtaining necessary security clearance in accordance with the rules applicable in the Buyer's country.
- c. Upon completion of each JRI, JRI proceedings and Acceptance Certificate will be signed by both the parties. In case the Seller's representative is not present, the JRI proceedings and Acceptance Certificate shall be signed by the Buyer's representative only and the same shall be binding on the Seller. Copy of JRI proceedings and Acceptance Certificate shall be despatched to the Seller within 30 days of completion of the JRI. In case of deficiencies in quantity and quality or defects, details of these shall be recorded in the JRI proceedings, Acceptance Certificate shall not be issued and claims raised as per the Article on Claims in the contract. In case of claims, Acceptance Certificate shall be issued by Buyer's representative after all claims raised during JRI are settled. If the Buyer does not perform the JRI as mentioned above for reasons exclusively attributable to him, the JRI in India shall be deemed to have been performed and the stores/equipment fully accepted.

27. **Franking clause** – The following Franking clause will form part of the contract placed on successful Bidder –

- a. **Franking Clause in the case of Acceptance of Goods** “The fact that the goods have been inspected after the delivery period and passed by the Inspecting Officer will not have the effect of keeping the contract alive. The goods are being passed without prejudice to the rights of the Buyer under the terms and conditions of the contract”.

- b. **Franking Clause in the case of Rejection of Goods** “The fact that the goods have been inspected after the delivery period and rejected by the Inspecting Officer will not bind the Buyer in any manner. The goods are being rejected without prejudice to the rights of the Buyer under the terms and conditions of the contract.”
28. **Claims:** The following Claims clause will form part of the contract placed on successful Bidder –
- a. The claims may be presented either: (a) on quantity of the stores, where the quantity does not correspond to the quantity shown in the Packing List/Insufficiency in packing, or (b) on quality of the stores, where quality does not correspond to the quality mentioned in the contract.
- b. The quantity claims for deficiency of quantity shall be presented within 45 days of completion of JRI and acceptance of goods. The quantity claim shall be submitted to the Seller as per Form DPM-22 (Available in MoD website and can be given on request).
- c. The quality claims for defects or deficiencies in quality noticed during the JRI shall be presented within 45 days of completion of JRI and acceptance of goods. Quality claims shall be presented for defects or deficiencies in quality noticed during warranty period earliest but not later than 45 days after expiry of the guarantee period. The quality claims shall be submitted to the Seller as per Form DPM-23 (Available in MoD website and can be given on request) .
- d. The description and quantity of the stores are to be furnished to the Seller along with concrete reasons for making the claims. Copies of all the justifying documents shall be enclosed to the presented claim. The Seller will settle the claims within 45 days from the date of the receipt of the claim at the Seller’s office, subject to acceptance of the claim by the Seller. In case no response is received during this period the claim will be deemed to have been accepted.
- e. The Seller shall collect the defective or rejected goods from the location nominated by the Buyer and deliver the repaired or replaced goods at the same location under Seller’s arrangement.
- f. Claims may also be settled by reduction of cost of goods under claim from bonds submitted by the Seller or payment of claim amount by Seller through demand draft drawn on an Indian Bank, in favour of Principal Controller/Controller of Defence Accounts concerned.

- g. The quality claims will be raised solely by the Buyer and without any certification/countersignature by the Seller's representative stationed in India.

29. **Warranty** –

- a. The following Warranty will form part of the contract placed on the successful Bidder –
  - i. Except as otherwise provided in the invitation tender, the Seller hereby declares that the goods, stores articles sold/supplied to the Buyer under this contract shall be of the best quality and workmanship and new in all respects and shall be strictly in accordance with the specification and particulars contained/mentioned in contract. The Seller hereby guarantees that the said goods/stores/articles would continue to conform to the description and quality aforesaid for a period of 12 months from the date of delivery of the said goods stores/articles to the Buyer or 15 months from the date of shipment/despatch from the Seller's works whichever is earlier and that notwithstanding the fact that the Buyer may have inspected and/or approved the said goods/stores/articles, if during the aforesaid period of 12/15 months the said goods/stores/articles be discovered not to conform to the description and quality aforesaid not giving satisfactory performance or have deteriorated, and the decision of the Buyer in that behalf shall be final and binding on the Seller and the Buyer shall be entitled to call upon the Seller to rectify the goods/stores/articles or such portion thereof as is found to be defective by the Buyer within a reasonable period, or such specified period as may be allowed by the Buyer in his discretion on application made thereof by the Seller, and in such an event, the above period shall apply to the goods/stores/articles rectified from the date of rectification mentioned in warranty thereof, otherwise the Seller shall pay to the Buyer such compensation as may arise by reason of the breach of the warranty therein contained.
  - ii. Guarantee that they will supply spare parts, if and when required on agreed basis for an agreed price. The agreed basis could be and including but without any limitation an agreed discount on the published catalogue or an agreed percentage of profit on the landed cost.
  - iii. Warranty to the effect that before going out of production for the spare parts they will give adequate advance notice to the Buyer of the equipment so that the latter may undertake the balance of the lifetime requirements.

- iv. Warranty to the effect that they will make available the blue prints of drawings of the spares if and when required in connection with the main equipment.

**OR**

- b. The following Warranty will form part of the contract placed on successful Bidder –

- i. The Seller warrants that the goods supplied under the contract conform to technical specifications prescribed and shall perform according to the said technical specifications.
- ii. The Seller warrants for a period of \_\_\_\_\_ months from the date of acceptance of stores by Joint Receipt Inspection or date of installation and commissioning, whichever is later, that the goods/stores supplied under the contract and each component used in the manufacture thereof shall be free from all types of defects/failures.
- iii. If within the period of warranty, the goods are reported by the Buyer to have failed to perform as per the specifications, the Seller shall either replace or rectify the same free of charge, within a maximum period of 45 days of notification of such defect received by the Seller, provided that the goods are used and maintained by the Buyer as per instructions contained in the Operating Manual. Warranty of the equipment would be extended by such duration of downtime. Record of the down time would be maintained by the user in the logbook. Spares required for warranty repairs shall be provided free of cost by the Seller. The Seller also undertakes to diagnose, test, adjust, calibrate and repair/replace the goods/equipment arising due to accidents by neglect or misuse by the operator or damage due to transportation of the goods during the warranty period, at the cost mutually agreed to between the Buyer and the Seller.
- iv. The Seller also warrants that necessary service and repair back up during the warranty period of the equipment shall be provided by the Seller and he will ensure that the downtime is within \_\_ % of the warranty period.
- v. The Seller shall associate technical personnel of the Maintenance agency and Quality Assurance Agency of the Buyer during warranty repair and shall also provide the details of complete defects, reasons and remedial actions for defects.
- vi. If a particular equipment/goods fails frequently and/or, the cumulative down time exceeds \_\_\_% of the warranty period, the

complete equipment shall be replaced free of cost by the Seller within a stipulated period of \_\_\_ days of receipt of the notification from the Buyer. Warranty of the replaced equipment would start from the date of acceptance after Joint Receipt Inspection by the Buyer/date of installation and commissioning.

- vii. In case the complete delivery of Engineering Support Package is delayed beyond the period stipulated in this contract, the Seller undertakes that the warranty period for the goods/stores shall be extended to that extent.
- viii. The Seller will guarantee the shelf life of ( \_\_\_\_\_) years under the Indian tropical condition as given below:
  - 1. Minimum temperature - -
  - 2. Maximum temperature ---
  - 3. Average Humidity ---
- ix. For procurement of oils and lubricants, the following will be applicable –
  - 1. The Seller warrants that the special oils and lubricants required during the warranty period of the equipment shall be provided by the Seller himself.
  - 2. The penalty amounting to (\_\_\_\_\_ %) of the value of the equipment shall be imposed on the Seller in case the Seller refuses or fails to meet the requirement of oils and lubricants during the warranty period of the equipment.
  - 3. The Seller shall make available the detailed specifications of all oils and lubricants required to be used in the equipment at the line of initial delivery of equipment to facilitate identification and development of indigenous equivalents to be used after the expiry of the warranty period.

30. **Product Support**: The following Product Support clause will form part of the contract placed on successful Bidder –

- a. The Seller agrees to provide Product Support for the stores, assemblies/subassemblies, fitment items and consumables, Special Maintenance Tools(SMT)/Special Test Equipments (STE) subcontracted from other agencies/ manufacturer by the Seller for a maximum period of \_\_\_\_\_years including \_\_\_\_\_ years of warranty period after the delivery of \_\_\_\_\_ (name of equipment).

- b. The Seller agrees to undertake Maintenance Contract for a maximum period of \_\_\_\_\_ months, extendable till the complete Engineering Support Package is provided by the Seller.
  - c. In the event of any obsolescence during the above mentioned period of product support in respect of any component or sub-system, mutual consultation between the Seller and Buyer will be undertaken to arrive at an acceptable solution including additional cost, if any.
  - d. Any improvement/modification/ up gradation being undertaken by the Seller or their sub suppliers on the stores/equipment being purchased under the Contract will be communicated by the Seller to the Buyer and, if required by the Buyer, these will be carried out by the Seller at Buyer's cost.
  - e. The Seller agrees to provide an Engineering Support Package as modified after confirmatory Maintenance Evaluation Trials (METs). The SELLER agrees to undertake the repair and maintenance of the equipment, SMTs/STEs test set up, assemblies/sub assemblies and stores supplied under this contract for a period of \_\_\_\_\_ years as maintenance contract as specified or provision of complete Engineering Support Package to the Buyer whichever is later, as per terms and conditions mutually agreed between the Seller and the Buyer.
31. **Annual Maintenance Contract (AMC) Clause** - The following AMC clause will form part of the contract placed on successful Bidder -
- a. The Seller would provide comprehensive AMC for a period of \_\_\_\_ years. The AMC services should cover the repair and maintenance of all the equipment and systems purchased under the present Contract. The Buyer Furnished Equipment which is not covered under the purview of the AMC should be separately listed by the Seller. The AMC services would be provided in two distinct ways:
    - i. **Preventive Maintenance Service:** The Seller will provide a minimum of four Preventive Maintenance Service visits during a year to the operating base to carry out functional check ups and minor adjustments/ tuning as may be required.
    - ii. **Breakdown maintenance Service:** In case of any breakdown of the equipment/system, on receiving a call from the Buyer, the Seller is to provide maintenance service to make the equipment/system serviceable.

- b. Response time: The response time of the Seller should not exceed \_\_\_\_\_ hours from the time the breakdown intimation is provided by the Buyer.
- c. Serviceability of \_\_\_% per year is to be ensured. This amounts to total maximum downtime of \_\_\_days per year. Also unserviceability should not exceed \_\_\_days at one time. Required spares to attain this serviceability may be stored at site by the Seller at his own cost. Total down time would be calculated at the end of the year. If downtime exceeds permitted downtime, LD would be applicable for the delayed period.
- d. Maximum repair turnaround time for equipment/system would be \_\_\_\_\_ days. However, the spares should be maintained in a serviceable condition to avoid complete breakdown of the equipment/system.
- e. Technical Documentation:All necessary changes in the documentation (Technical and Operators manual) for changes carried out on hardware and software of the equipment will be provided.
- f. During the AMC period, the Seller shall carry out all necessary servicing/repairs to the equipment/system under AMC at the current location of the equipment/system. Prior permission of the Buyer would be required in case certain components/sub systems are to be shifted out of location. On such occasions, before taking over the goods or components, the Seller will give suitable bank guarantee to the Buyer to cover the estimated current value of item being taken.
- g. The Buyer reserves its right to terminate the maintenance contract at any time without assigning any reason after giving a notice of \_\_\_ months. The Seller will not be entitled to claim any compensation against such termination. However, while terminating the contract, if any payment is due to the Seller for maintenance services already performed in terms of the contract, the same would be paid to it as per the contract terms.

32. **Engineering Support Package (ESP) clause** - The following ESP clause will form part of the contract placed on successful Bidder –

- a. **Repair Philosophy:** The Engineering Support Philosophy shall conform to the repair philosophy as follows:
  - i. Unit level repairs - These are repairs carried out within the unit holding this equipment with tools generally held within the unit or supplied by the manufacturer with each equipment or as per scaling of 1:10 or any other scaling recommended by the manufacturer as per population held in the unit. These pertain to cleaning, lubrications, minor repairs and replacement of components and minor assemblies that can be carried out in field without any

sophisticated tools or test equipment. For carrying out such repairs, the manufacturer is required to provide the following:-

1. Table of Tools and Equipment (TOTE) with each equipment including operators manual.
2. Scaling of special tools and spares as mentioned above including Maintenance manual.

ii. **Field Repairs** – These are repairs carried out in the field by technicians specially trained for this purpose and where the required special tools and spares have to be provided. These repairs comprise replacement of major assemblies and other components beyond the scope of unit level repairs. Normally a field work shop that carries out such repairs looks after three to four units holding the said equipment. The manufacturer is required to provide the following:-

1. Quantity and specification of spares that need to be stocked for a population of \_\_\_\_\_ equipment.
2. Special Maintenance Tools and Test Equipment that need to be provided to each such field work shop. (The total number of such facilities would also have to be stated based on deployment pattern of the concerned equipment to carryout total costing).

iii. **Base overhaul** - All repairs including repairs to components, subassemblies and overhaul of the complete equipment are carried out by this facility. Depending on the population of the equipment, one to five such facilities may be established in India for this purpose (The actual No would have to be stated for costing).The manufacturer is required to provide the following:-

1. All Special Maintenance Tools, jigs, fixtures and test equipment for carrying out repairs up to component level.
2. Quantity and specification of spares, sub assemblies as per population expected to be maintained.
3. Oils and lubricants necessary for overhaul.
4. All necessary technical literature.
5. Calibration facilities for test equipment.This level of repair defines stripping and rebuilding of equipment in a Base workshop.

b. **Manufacturers Recommended List of Spares (MRLS)**. - Based on the explanation given above, Bidders are requested to provide MRLS to sustain the equipment for a period of ---- years for various levels of repair as per format given at Form DPM-19 (Available in MoD website and can be given on request). Bidders will be required to provide these both with Technical and Commercial proposals. (In case where the equipment has been in usage the spares would be sought by Buyer, on the recommended list to be furnished by the maintenance agency, based on the exploitation of the equipment, and NOT as per MRLS). While with the commercial proposal, the actual costs of each component/spare will be provided, in the case of Technical Proposal these will be reflected as Low Cost/ Medium Cost/High Cost. A guideline for this purpose is as under:-

i. Low Cost. Less than 2 % of the unit cost of the equipment/sub system.

ii. Medium Cost. 2 to 10% of the unit cost of the equipment/sub system.

iii. High Cost. Greater than 10 % of the unit cost of equipment/subsystem.

If the complete equipment comprises a number of different sub systems, for eg it is coming mounted on a vehicle or is provided with a stand for mounting or is inclusive of a generator or an air conditioner or has a sight, the MRLS must be provided separately for each such sub system.

c. **Special Maintenance Tools and Test Equipment** - This is to be formulated in a similar manner as explained for MRLS. A suggested format is given at Form DPM-17 (Available in MoD website and can be given on request) and is to be included in both Technical and Commercial Proposals. The cost column may be left blank in the Technical Proposal.

d. **Technical Literature** - The details of technical literature to be supplied with the system should be listed as per the suggested format at Form DPM-18 (Available in MoD website and can be given on request). This should be provided with both Technical and Commercial Proposals. The cost column may be left blank in the Technical Proposal.

e. **Miscellaneous Aspects** (Applicable only when trials are required) - In cases where the equipment is required to undergo trials, the equipment will also be put through Maintenance Evaluation Test. Based on this evaluation and in consultation with the supplier, the MRLS may be refined. During user trials it may be brought out that the equipment is acceptable subject to carrying out certain modifications / improvements.

- f. **Maintainability Evaluation Trials (MET).** This is carried with a view to facilitate provisioning of effective engineering support during life cycle of the equipment. This would involve stripping of the equipment and carrying out recommended tests and adjustments and establishing adequacy of maintenance tools, test equipment and technical literature. MET details will be given as per format given at Form DPM-20 (Available in MoD website and can be given on request). To facilitate this process the Bidder is required to provide the following :-
- i. Technical Literature.
    1. User Handbook/Operators Manual in English and Hindi.
    2. Design Specifications.
    3. Technical Manuals.
      - a. Part I Tech description, specifications, functioning of various systems.
      - b. Part II Inspection/Maintenance tasks repair procedures, materials used, fault diagnosis and use of Special Maintenance Tools (SMTs)/Special Test Equipment (STEs).
      - c. Part III Procedure for assembly/disassembly, repair up to component level, safety precautions.
      - d. Part IV Part list with drawing reference and List of SMTs/STEs Test Bench.
    4. Manufacturers Recommended List of Spares (MRLS).
    5. Illustrated Spare Parts List (ISPL) and along with the prices in the Commercial offer.
    6. Technical Manual on STE with drawing reference.
    7. Complete Equipment Schedule.
    8. Table of Tools & Equipment (TOTE) & carried spares.
    9. Rotable list, norms of consumption, mandatory/ non mandatory spares list for each system.
  - ii. One set of Gauges
  - iii. One set of Special Maintenance Tools (SMTs).
  - iv. One set of Special Test Equipment (STEs).
  - v. Servicing Schedule.
  - vi. Condemnation limits.
  - vii. Permissive repair schedule.
  - viii. Packing specifications /instructions.
  - ix. Design Specifications.
  - x. Any additional information suggested by the OEM.
- g. Vendors quoting lesser ESP / MRLS in terms of range and depth will have to make good the deficiency. The vendors quoting surplus items in ESP / MRLS should agree to buy back the surplus spares.

33. **Price Variation (PV) Clause** – The following PV clause will form part of the contract placed on successful Bidder (Note - DGS&D Manual provides Standardised Price Variation Clauses. Any of those clauses could be considered for inclusion. A sample clause is indicated below) –
- a. The formula for Price Variation should ordinarily include a fixed element, a material element and a labour element. The figures representing the material element and the labour element should reflect the corresponding proportion of input costs, while the fixed element may range from 10 to 25%. That portion of the price represented by the fixed element, will not be subject to variation. The portions of the price represented by the material element and labour element along will attract Price Variation. The formula for Price Variation will thus be :-

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

Where  $P_1$  is then adjustment amount payable to the supplier (a minus figure will indicate a reduction in the Contract Price)

$P_0$  is the Contract Price at the base level.

F is the Fixed element not subject to Price Variation

a is the assigned percentage to the material element in the Contract Price.

b is the assigned percentage to the labour element in the Contract Price.

$L_0$  and  $L_1$  are the wage indices at the base month and year and at the month and year of calculation respectively.

$M_0$  and  $M_1$  are the material indices at the base month and year and at the month and year of calculation respectively.

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

- b. Following conditions would be applicable to Price Adjustment –
- i. Base dates shall be due dates of opening of price bids.
  - ii. Date of adjustment shall be mid point of manufacture.
  - iii. No price increase is allowed beyond original DP unless the delay is attributable to the Buyer.
  - iv. Total adjustment will be subject to maximum ceiling of \_\_\_\_%.
  - v. No price adjustment shall be payable on the portion of contract price paid to the Seller as an advance payment.

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