

2024

TROOP COMFORTS LIMITED

PROCUREMENT MANUAL



LEVEL-V



CORPORATE HQRS & REGISTERED OFFICE

**TCL Corporate Bhawan,
G.T Road, Kanpur, (U.P)-208013**

Phone: 0512-2451781-82

FOREWORD



I am pleased that Troop Comforts Limited (TCL), has brought out its Procurement Manual 2024 (First Edition) which will serve as a set of guidelines and reference book to be followed for procurement of Goods and Associated Services as time is the essence of all contracts.

The purpose of this manual is to provide all personnel involved in procurement with an understanding of their responsibilities, objectives and duties within the overall policy framework and best business interest of the company. The significance of availability of quality raw material and supporting services at right time and at right price is of paramount importance. Considering the importance of timely delivery in the competitive scenario especially for Made-to-Order (MTO) items, expeditious processing of store procurement, faster decision making and timely availability of input material shall be facilitated through this manual.

This Manual attempts to incorporate various Policies/Guidelines/Instructions issued by Deptt. of Exp./MoF, MoD, DIPP and CVC keeping in view the specific requirements of manufacturing industry and to ensure timely availability of input materials in all kinds of circumstances for continuity of production, maintaining transparency and probity in procurement.

I complement the painstaking efforts taken by all concerned officers of TCL specially Finance Division in meticulously compiling such an array of updates and bringing out this First Edition of TCL Procurement Manual-2024.

I sincerely hope that this Procurement Manual stands up to its purpose and helps in effective and efficient procurement in a transparent manner.

A handwritten signature in blue ink, consisting of a stylized 'V' followed by a horizontal line and a small flourish.

(V. K. Tiwari)

Chairman & Managing Director

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Chapter 1

INTRODUCTION AND BASIC PRINCIPLES OF PROCUREMENT

1. Introduction

1.1 Challenges in procurement

a) Maintaining an uninterrupted and reliable flow of material of the requisite quality is an inescapable necessity for seamless manufacturing. Troop Comforts limited (TCL), being engaged in designing and manufacture of High Altitude Garments, Life Cycle Clothing, Extreme Cold Clothing, Special Clothing & Mountaineering Equipment's, Tentages, Water Storage Equipment's, Cover Water Proof, Ballistic Protection Gears (Bullet Resistance Jackets/Vest/Vehicles/Helmet), Supply Drop Equipment's, Parachutes, Drones (Unmanned Aerial Vehicles), Arrestor Barrier, General Stores, Boots, Equipment's and other Accessories has to adhere to this inescapable necessity. The challenges in material procurement in Factories are as follows:

- (i) Major input materials required for production of Military Grade Specifications are of very stringent specifications that are normally not applicable in commercial settings, and therefore are available only as Made-to-Order.
- (ii) Low quantity requirement and demand fluctuations restrict the interest of potential suppliers.
- (iii) Specifications of Inputs are mostly governed by CQA (T&C), JSS, GOST (Russian Standards) and other defence specifications, and do not have scope for use in other fields of application.
- (iv) Diverse product range with common procurement procedure.
- (v) The requirements of Troop Comforts limited is not always adequate for vendors to keep the production lines customised for a unique product range, running throughout the year.

b) The above indicated fundamental necessities and challenges comprise of the basic fabric of the procurement policy and govern the procurement decisions in Troop Comforts limited.

c) It is imperative that goods and services purchased be made following systematic, efficient and cost effective way, in compliance with laid down procedure in this Manual, while ensuring timely positioning of the material.

1.2 Terminology and Abbreviations

a) Standard terminologies have been adopted in the Manual. Important acronyms used in this Manual are listed as Annexure-1 for ready reference.

b) In certain areas, there may be two or more widely used terminologies bearing the same meaning as mentioned below:

Tender, Bid, Quotation	Offer received from a supplier
Tenderer, Bidder, Vendor	An entity who seeks to supply goods and services by sending tender/bid/offer.
Tender Enquiry Document, Tender Document, Bidding Document	Detailed document issued by the purchaser specifying his needs and the requirements that a potential tenderer/bidder must meet.
Notice Inviting Tenders, Request for Proposal (RFP), Invitation for Bids	Advertisement containing brief details of the requirement
Earnest Money Deposit, Bid Security	Monetary guarantee furnished by a bidder along with its tender
Security Deposit, Performance Security	Monetary guarantee furnished by the successful bidder for due performance of the contract concluded with it
Bid, Offer, Quotation	Offer from a vendor in response to a tender

1.3 Present Manual

This Manual has been formulated keeping in view the specific requirements of a range of products dealt by TCL and to ensure timely availability of material for continuity of their production. All the applicable provisions as stipulated by Government of India/MoD/MoF/CVC/CAG/GFR 2017 from time to time have been suitably incorporated.

- a) All due diligence has been taken while preparing the TCL Procurement Manual. However, if any deviation from GFR 2017 (or its subsequent amendments) is identified, the issue should be brought to the attention of TCLHQ for clarification. In case of any conflict between the provisions stipulated in this manual and in the original source such as GFR or the prevailing instructions from Government of India/MoD/MoF/CVC/CAG, the provisions contained in the extant law and the original instructions shall prevail.
- b) Stores procurement by the TCL including its Factories/Units/ Establishments shall be governed by the provisions of this Manual.
- c) All related SOPs, Delegation of Financial Powers (DFP), guidelines, instructions, orders, etc. issued by Troop Comforts Limited and its units may be deemed to have been modified by the provisions of this Manual, to the extent the former is not in conformity with this Manual. Accordingly, in case of any inconsistency, the provisions of this Manual shall prevail in the context of procurements covered under the scope defined in paragraph 1.4. These SOPs, guidelines, instructions, orders, etc., shall be updated in line with the provisions of this Manual.
- d) Updated extant CVC guidelines shall be applicable in all cases of procurement.
- e) For minor clarifications/ changes, Director/Finance is authorised to issue necessary amendments after approval of CMD. The same shall be brought to the notice of Board subsequently.

1.4 Scope of the Manual

Procedures detailed in the Manual are applicable for purchase of:

- (i) Inputs and aids for production such as all articles, material, commodity, livestock, furniture, fixtures, raw materials, spares, instruments, equipment, medicines, components, assemblies, sub-assemblies, tools, gauges, jigs, accessories, process materials, production consumables, indirect consumables, IT products/items, software, technology transfer, licences, patents or other intellectual properties purchased or otherwise acquired for the use of TCL etc. but excludes books, publications, periodicals, etc. for a library.
- (ii) Maintenance aids, including spares, tools & tackles, etc.
- (iii) Services (production related) which are incidental or consequential to the supply of such goods, i.e. conversion, job-work, packing, unpacking, preservation, transportation, insurance, delivery, maintenance support, technical assessment, consultation, system study, software development, maintenance and conservancy, etc.

1.5 Definition of Goods/Stores/Items

The term goods/stores/items/services used in this Manual are interchangeable and applies to all items mentioned at 1.4 above.

1.6 Transparency in Purchase

Procurement by the Troop Comforts Limited and its units are Public Procurement, and accordingly, should be conducted in a fair and transparent manner to bring competition, fairness and eliminate arbitrariness in the system.

1.7 Salient Feature of Bids Solicitation

- (i) The tender document should be comprehensive, unambiguous, and relevant to the objective of the purchase. The right and commonly used technical and industrial parlance need to be used.
- (ii) The specifications of the required goods should be framed giving adequate details. The specifications must be broad-based and meet the essential requirements, without including superfluous or non-essential features, which may result in unwarranted expenditure.

- (iii) The tender document should clearly mention the eligibility criteria such as minimum level of production experience, past performance, technical capability, manufacturing facilities, financial position, ownership or any legal restriction, etc. that need to be made by the bidders.
- (iv) Eligibility criteria should conform to extant Government policies (which includes the provisions of this Manual) and be judiciously chosen so as not to stifle competition amongst potential suppliers.
- (v) All aspects pertaining to tender preparations, submission, deadlines, acceptance, evaluation, ranking and conclusion of contract should be unambiguously and explicitly detailed.
- (vi) Offers should be invited following a fair, transparent and reasonable procedure. Tender enquiries (and subsequent amendments etc., if any) shall be given wide publicity.
- (vii) Sufficient time should be allowed to the bidders to prepare and submit their tenders. Suitable provisions should be kept in the tender document allowing the bidders a reasonable opportunity to enquire about the tender conditions, tendering process, and/ or rejection of its tender and the settlement of disputes, if any, emanating from the resultant contract.
- (viii) Bidders must not be permitted to alter or modify their tender responses after the expiry of their deadlines for submission; such modified bids will be summarily rejected.
- (ix) Tenders should be evaluated only as per the evaluation details provided in the tender documents. No new condition, which was not incorporated in the tender document, should be brought into consideration while evaluating the tenders.
- (x) Negotiations with the bidders must be avoided. However, under some circumstances, where price negotiations are considered unavoidable, they may be resorted to only with the lowest evaluated responsive bidder, with the approval of the CFA only after duly recording reasons for such action.

- (xi) At every stage of procurement, the procuring authority must place on record, in precise terms, the considerations which weighed with it while taking the procurement decision.
- (xii) The name of the successful bidder to whom the contract is awarded should be appropriately notified for the information of general public, through the TCL and Central Public Procurement portal. Wherever display in website is prescribed in this manual, it shall also imply mirroring at the Central Public Procurement Portal (CPP Portal).

1.8 e-Procurement

- (i) The e-procurement system available on either GeM/CPP Portal will be used for all procurement processes. The maximum threshold value of the procurement would be determined based on the estimated value (landed cost) of the procurement duly considering the option quantities also, if any. The system supports all modes of tendering like OTE, LTE, GTE, and STE. There may be instances (e.g. Vendors having national/ international repute) and certain Central/State Govt./CPSU/SPSU/Statutory bodies like DGR (Directorate General Resettlement) etc. not willing to on board GeM/e-proc. In such cases considering the type of product (or services)/procurement, e-procurement may not be the appropriate procurement process and manual tendering process may be followed with the prior approval of the Sr. GM/GM, in consultation with finance. The decision will be taken at Vendor selection committee level after recording the justification.
- (ii) The basic procurement procedures (unless repugnant to the context or not relevant in e-procurement being system performed) shall remain as contained in this manual even if procurement is through e-procurement.
- (iii) Procurement will be processed through e-procurement portal/GeM except LPC and cash and carry procurements.

1.9 Considerations for Purchase Quantities

- (i) Purchase quantities in excess of requirement is not permitted.
- (ii) A demand should not be split into small quantities for the purpose of avoiding the necessity of taking approval of the higher authority required for sanctioning the purchase of the original demand.

1.10 Timely Procurement

- (i) To reduce delays, the time-frame stipulated for each stage of procurement should be adhered to.
- (ii) Contract should be concluded within the original validity of the tenders. Extension of tender validity must be discouraged and resorted to only in absolutely unavoidable, exceptional circumstances.

1.11 Competent Financial Authority

- a) Financial powers have been delegated to various authorities in TCL and its units, through the TCL-DFP 2021 and subsequent amendments. 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 CFA must ensure that financial propriety and probity are observed in all cases.
- b) 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 item/ head of delegation, authority with next higher delegated financial powers will constitute the 'next higher CFA'.
- c) The financial powers delegated by the Board of Directors of TCL to various authorities in the TCL and its factories/ units/ establishments cannot be further delegated. 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 Contract Agreement and related communication with the supplier on their behalf.
- d) The current approved system for TCL and its units is the CFA-in-committee i.e., TPC system. However, the recommendations of TPC will be concurred by Unit Level Finance Member and approved by CFA in the same TPC. CFA is the Chairman of relevant TPC/TEC. In case of dissent note/different opinion (TPC/TEC member), the decision of CFA will be final. CFA can overrule any TPC/TEC member after recording reasons for overruling as explained later on.

- e) The constitution of the TEC/TPC shall be as notified in the DFP. However, the Chairpersons of these Committees (CFA), if necessary, may co-opt other relevant experts on the Committee.
- f) The CFA will be decided taking into consideration, the value of the original quantity to be ordered plus the Option Clause quantity. In case of foreign procurements, the extant Exchange Rate of SBI, Parliament Street Branch as on Tender bid closing date, shall be taken into consideration for determining the CFA. For the purpose of cost reduction and convenience, number of items or group of items may be clubbed for tendering, provided the CFAs are defined in advance before floating the TE by Vendor Selection (VSL) TPC i.e. individual item wise or all items together.
- g) In umbrella agreements of multi years (including RCs), CFA shall be decided on the basis of average annual requirement and not the sum of annual contracts.
- h) In all recommendatory TPC cases (beyond the Financial Powers of Sr. GM/GM) subsequent operation of Option Clause, DP extension and other post contractual management shall be done by the factory TPC level-I unless decided otherwise by the CFA of TCL HQ level TPC.

1.12 Consultations with Finance

- a) Procurement above the prescribed threshold limit in the DFP shall be done only with the concurrence of the Finance at all the prescribed stages. Though Finance is an integral part of the TPC/TEC structure, a financial concurrence will also be required on the recommendations of the TPC prior to CFA's approval in the same TPC.
- b) In case of disagreement/ non concurrence by the Finance Member, the CFA can overrule the same after recording reasons for overruling the views of the Finance member.
- c) In all cases where the CFA has overruled the advice of Finance or any other member the Secretary of the TPC shall keep such records ready as and when required by TCLHQ, Kanpur and send a copy of the TPC minutes to the Director/Finance of TCL. The CFA is accountable and responsible for her/his decision and accordingly, the decision of the CFA (although by overruling) shall stand.

1.13 Responsibility of the Competent Financial Authority

- a) CFA is the Chairman of relevant TPC/TEC. The CFA must consider all aspects of the case, including the quoted price, terms and conditions of the contract, delivery period, warranty, freight, insurance and other charges and the compliance with the technical specifications/QR before a purchase decision is taken. Conditional offers and those with specifications not in conformity with the tendered specifications (Essential QRs), should not be considered. Wherever as per DFP, delegated powers are exercisable subject to financial concurrence, it shall be ensured before according sanction that the requisite financial consultations have been done at all the prescribed stages.
- b) While making the purchase decision, the CFA needs to satisfy himself/herself that (i) proper procedures have been followed at various stages of procurement, (ii) purchase policies of the Government have been complied with, and (iii) capacity and financial status of the firm have been checked. Purchase decisions should be communicated only through a formal order in a written form.

1.14 Difference of opinion in TEC/ TPC

- a) The designated CFA is accountable for all decisions taken by them while approving any measure involving TCL funds.
- b) In case of disagreement/ non concurrence by the Finance, the CFA can overrule after recording reasons for overruling the views of the Finance.

1.15 Exemptions/ Relaxation from some Tender Conditions to Certain Suppliers

Government of India has issued general directives on (i) mandatory/ preferential purchase of specified goods from specified suppliers (ii) extension of price preference (iii) exemptions/ relaxation from certain tender conditions like tender fee, EMD, PSD, etc., to certain categories of suppliers. In procurements attracting these general directives, the contemporary directives of the Government of India should be checked for necessary action.

These contemporary directives shall apply in the procurement of Commercially-off-the-shelf (COTS) as well as Made-to-order (MTO) items. DDP may issue separate directives indicating the eligibility and nature of concession/relaxation in order to promote MSEs (Micro & Small Enterprises), Start-ups, Stand-ups etc. to be followed.

1.16 Development of Micro, Small and Medium Enterprises

- a) The Micro, Small and Medium Enterprises Development Act 2006 provides that “For facilitating promotion and development of micro and small enterprises, the Central Government or the State Government may, by order notify from time to time, preference policies in respect of procurement of goods and services, produced and provided by micro and small enterprises, by its Ministries or departments, as the case may be, or its aided institutions and public sector enterprises”.
- b) Any order issued by Central Government in relation to Micro, Small or other sections of Industries relevant to procurement shall be followed. The Public Procurement Policy shall apply to Micro and Small Enterprises registered with District Industries Centres or Khadi and Village Industries Commission or Khadi and Village Industries Board or Coir Board or National Small Industries Corporation or Directorate of Handicrafts and Handloom or any other body specified by Ministry of Micro, Small and Medium Enterprises (MSME). Declaration of Udyog Aadhaar Memorandum(UAM) number by the MSME vendors on CPPP/GeM/e-procurement portal should be made. The MSE bidders who fail to submit UAM number will not be able to avail the benefits available to MSEs as contained in Public Procurement Policy for MSEs Order, 2012 (amended 2018 and 2021) issued by MSME for tenders invited electronically through CPPP/GeM/e-procurement portal.
- c) Public procurement policies for MSME to be followed as per the latest guidelines issued by the concerned ministry from time to time.

1.17 Development of Start-ups

For Startups (whether MSEs or otherwise), prior experience and turnover requirement may be relaxed subject to meeting of quality and technical specification in accordance with relevant provisions of GFR 2017 (or revised time to time) as per Ministry of Micro, Small and Medium Enterprises

Policy Circular No. 1(2)(1)/2016-MA dated 10th March 2016 and Ministry of Finance, Dept. of Expenditure O.M No. F.20/2/2014-PPD (Pt) dated 25th July 2016. Also as per MoF, Dept of Expenditure O.M. No. F.20/2/2014-PPD (Pt) dated 20th September 2016, the criteria of prior experience / turnover may not be relaxed for Startups, for procurement of items related to public safety, health, critical security operations and equipment's etc., where vendors with prior experience are preferred and adequate justification is available.

1.18 Procurement from Defence Public Sector Undertakings

a) Goods and Services may be procured from Defence Public Sector Undertakings through tender. Any items 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. These cases will not be treated as STE/PAC procurements as per TCL DFP. Reasons for invoking this provision shall, however, be recorded.

b) For cases other than category stated above, Defence Public Sector Undertakings will have to bid for contracts through a tendering process open to private sector enterprises, for supplying goods and services to TCL.

1.19 Standard Tender Documents

Standard forms of tender are to be used as enquiry documents and contracts in line with the extant rules, regulations, directives, procedures etc. Deviations in the standard provisions of the standard documents may be permitted by an authority competent to grant waiver/ relaxation for the provision as per the DFP. Extent of deviation that may be permitted by the said competent authority shall be as per the powers available to him under the DFP for granting waiver/ relaxation.

1.20 Time Frame for Processing

All activities must be undertaken expeditiously, and consultations/ advice rendered within a specified time frame. The time frame given in Annexure shall be adhered to 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, after recording valid reasons justifying extension of the said validity.

1.21 Amendments to the Manual

No modifications / amendments will be made to the TCL Procurement Manual 2024 (TCLPM 2024) without prior approval of TCL Board. However, changes in the policies issued by MoD/Gol/CVC necessitating amendments will be automatically applicable.

1.22 Applicability

This manual shall come into force with effect from the date of issuance. However, all on-going procurements where tender has been issued prior to date of effect of this Manual may continue to be regulated by the provisions of the OFBPM 2018.

Chapter 2

PROCUREMENT PROCEDURE

2. Procurement Procedure

2.1 a. Need for Procurement

The need for procurement of goods may arise for (i) catering to the annual production and allied activities (ii) building up authorized stocks (iii) repair and maintenance of assets. Similarly, the need for procurement of services may arise for (i) maintenance of equipment/assets (ii) outsourcing work that can be economically performed in trade or where facilities are not available/ not adequate in-house (iii) Engaging experts and consultants (iv) ToT with suitable partners for business/R&D growth.

2.1 b. Procurement of Items Ex-Import

An item already established by any of the Ordnance Factory of erstwhile OFB/TCL group of Factories or indigenized, should not be imported. However, decision to import can be taken considering the in-house production capacity, delivery timelines, the product mix, and availability of manpower, condition of plant & machinery etc. and after duly recording specific reasons with the approval of General Manager. While initiating the case, at the time of taking decision for placement of order as well as taking all subsequent decisions like extension/re-fixation of delivery period etc., all relevant aspects like capacity of factories, availability of indigenous sources, capacity and reliability of indigenous sources, cost of indigenous supplies v/s the import cost etc. should be kept in view. The supply position of indigenous sources should be ascertained at every stage of procurement. In order to promote import substitution, the norms detailed in this chapter shall be adopted.

The decision for procurement through import to be taken after detailed deliberation by the Competent Authority/respective TPC in compliance with after taking into consideration various instructions issued by GoI and RBI from time to time.

2.2 Make or Buy Decision

- (i) Policy on make or buy (including import substitution) decision should be such that it not only promotes optimum utilization of in-house capacity in Factories but also lays equal emphasis on cost of production being reasonable. After weighing all facts, an appropriate make or buy decision shall be taken by the Sr. GM /GM at unit level.
- (ii) Non-core activities should as far as possible be outsourced, if cheaper options can be found outside scope of TCL & resources thus released should be utilised for core activities.

2.3 Authority for Procurement

Contract Agreements signed with any customer/IFD from sister units and other DPSUs/Orders received from any customers through competitive bidding /Nomination, SWOD and Annual Supply plans issued by TCLHQ/ Purchase Requisition raised by user section are the required authority for procurement.

2.4 Specifications

All procurements have to meet the stringent specifications prescribed. In addition to qualitative requirements, the specifications indicate the detailed qualitative requirements of the item being procured and shall indicate all relevant requirements/ parameters like (i) material composition (ii) physical (iii) dimensional (iv) performance (v) tolerances (if any) (vi) manufacturing process (where applicable) (vii) test/ inspection schedule (viii) acceptance criteria (ix) preservation & packing (x) transportation requirements (especially relevant for chemicals), etc, without any superfluous requirements that may have the effect of stifling competition or increasing expenses are as follows:

i) Proprietary Article Specification

These are available only with the proprietary firm and are protected by the intellectual property rights. PAC specifications are normally not available with the purchaser and therefore these stores may be accepted based on the firm's certificate of quality.

ii) Branded Product Specification

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.

iii) Industrial Specifications

There are standard industrial specifications like the Indian Standards (IS), British Standard (BS), German Standards (DIN) and Russian Standards (GOST) available for sale in the market. In the case of medical stores standard specifications are issued by World Health Organization (WHO), Food and Drug Administration (FDA), European Union's safety, health and environmental protection requirements (CE) etc. Every procuring and inspecting agency should acquire such specifications for reference to ensure quality standard of the product being procured.

iv) Defence Specifications

There are defence specifications for specialist items for use by the defence departments, particularly the defence services. These are Joint Services Specifications, Mil specs, CQA (T&C) etc. Copies of such specifications should be available with the procuring agency, inspecting authority and the AHSP.

v) Indigenized Item Specification

The manufacturing agency, QA agency, DRDO, TCL 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 TCL, manufacturing firms, QA agency, Design agency, Service Head Quarters (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.

vi) Ad-hoc Specifications

There may be items for which neither the industrial nor the defence specifications are available. In such cases, the Indentor must indicate the

general parameters, normally the dimensions, mechanical parameters, chemical composition, performance parameters, etc. 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.

vii) As per Sample Specification

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.

Viii) Common Use Items Specification

There are a large number of items used in the 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 to stifle competition.

2.5 Store Holders Inability Sheet

- a) The Store Holder Inability Sheet (SHIS) is the basic document used as a control mechanism for verifying the necessity for procurement of any item. The Store Holders Inability Sheet and the Material Planning Sheet together provide the complete details of the computation of quantities to be procured. For procurement of any item a Store Holder Inability Sheet/Material Planning Sheet shall necessarily be prepared, duly indicating the requirement, present stock, dues and the net requirement. SHIS for multiple year requirements can also be generated wherever relevant. Attention shall be paid to the shelf life (where relevant) of the item to eliminate avoidable losses in storage. In such cases staggered deliveries should necessarily be resorted to.
- b) If valid labour estimate exists in the factory for the item (or operation) being procured (or outsourced) from trade then justification for the procurement (or outsourcing) shall be recorded, and the factory shall

ensure that payments for the same work (or operations) are not claimed for departmental labour also.

- c)
 - i) The SHIS/MP Sheet has to be vetted by the Designated Office for the technical specification to ensure that material is procured as per the latest drawings/ technical specifications.
 - ii) SHIS of both Direct & Indirect material is not required to be vetted by Local Finance division, but to be signed by Group 'A' officer of MM Division.
 - iii) SHIS/MP Sheet will have a life of One year (i.e. SHIS generation to issue of tender) and will need revalidation by Sr. GM/GM thereafter.
- d) There may be requirement to initiate procurement action in anticipation of firm order/Contract from the customer besides other cases where receipt of Contracts from Services/Customers are delayed or existing supply orders not likely to fructify, then to expedite the process, procurement action can be initiated on provisional SHIS and can be processed up to Technical CST stage with the approval of Sr.GM/GM & beyond CST stage with the approval of Corporate HQ.

2.6 Quantity to be Purchased

- a) The procurement for direct material would be taken based on the delivery schedule indicated in the contracts/ agreements entered into by TCL and its units. This procurement could be covering one year or multiyear requirements with staggered deliveries. Availability of such multi-year plans does not imply that all procurements are to be necessarily made in one go for the entire multi-year period. The Vendor Selection Committee (VSL) TPC shall, as a part of due diligence, after considering the nature of the store, the lead-time, difficulty involved in procuring the store and cost aspects take an appropriate decision as to whether it would be advantageous to procure (i) the annual requirement *plus* coverage for the first quarter of the subsequent year *or* part of annual requirement or (ii) the multi-year requirement.

Prior approval of the Director/Operations shall however be taken for initiating multi-year proposals for their procurement after submitting justification for the same.

- b) Multi Year Procurement Procedure (Long-term Umbrella Agreement/Contracts for MTO items):
- i) Long-term Umbrella Agreement/Contracts may be concluded up to 5 years for MTO items.
 - ii) The Long-term Umbrella Agreement/Contracts shall be with the condition that Supply Order will be placed under the agreement on annual basis or as and when required based on agreed delivery schedule/period commensurate with production program.
 - iii) Long-term Umbrella Agreement/Contracts may even be concluded at the same rate parallel with multiple vendors to ensure reliability, continuity and ease of supply.
 - iv) CFA in the Long-term Umbrella Agreement/Contracts shall be decided on the basis of total value of contracts.
 - v) Supply Order may also be concluded with multiple vendors to ensure reliability, continuity and ease of supply.
 - vi) The Long-term Umbrella Agreement/Contracts shall contain:
 - Indicative total quantity and annual off-take.
 - PV Clause, wherever feasible.
 - Delivery & Supply Schedule
 - Fall Clause
 - EMD and PSD as applicable.
 - Provision of Option Clause up to 25% of the annual contract quantity may be provided and operated only in case of source development failures or to meet unforeseen requirement from the indenter.
 - vii) The Long-term Umbrella Agreement/Contracts does not make it binding for the purchaser to procure the indicated quantity of the tender.
 - viii) Para 6.17 on Long-term Umbrella Agreement/Contracts of this manual may also be referred for further details.

- c) SHIS/ MP Sheet shall be prepared to work out the requirement. The procurement lead-time and the production throughput-time should also be kept in mind while working out the requirement. Procurement shall be made for the Net Deficiency worked out based on the annual requirement or multiyear requirement where relevant.
- d) Staggered deliveries shall be insisted upon, especially when procurement is authorised for more than the annual requirement unless such staggering is not feasible or will result in additional expenditure with no specific benefits.
- e) IFD shall be placed for the firm/fixed quantity. Option clause is not relevant in case of IFD.
- f) Procurement of indirect materials (not required directly for production) shall be made on the basis of monthly average consumption during the preceding 24 months, duly making an allowance for relevant factors like the quantum of production, machines being utilised, product-mix, etc. For new indirect materials the necessity for procurement including new folio code shall be approved by the Sr. General Manager/General Manager only.
- g) The Vendor Selection TPC shall also deliberate on the justification for the quantities proposed for procurement for all items.
- h) In cases where despite covering full requirement through supply order (s), the materials are not being supplied by the suppliers as per contractual schedule. For such cases, if it is feasible to manufacture these input materials through in-house facility, the required raw material for equivalent quantity of the supply order(s) can be purchased with the approval of Sr. GM/GM after cancelling the supply order. Close monitoring would be required to check inventory levels vis-à-vis load position.

2.7 Procurement Lead Time

- a) Timely procurement action should be initiated duly taking into account the procurement lead-time and the production throughput-time so that the end-product issue-plan matches with the requirement projected by the

Indentor. Apart from initiating timely action, the case shall also be processed expeditiously at every stage of examination and the model time-frame indicated in the Annexure to the Manual shall be complied with.

- b) Prompt and timely action should be taken, for both indigenous as well as imported items, so that stock-out situations are avoided to ensure continuity of production while at the same time maintaining the overall SIH (Store In Hand) inventory for manufacturing within the authorized limit. The present authorized inventory level for TCL Group of Factories will be 04 months.
- c) The authorised inventory level as indicated above shall be reviewed monthly at factory level and at least quarterly by the Director/Operations in consultation with the Director/Finance to reduce the inventory carrying cost.
- d) Provisioning review shall be an annual exercise based on Supply 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 midcourse review.
- e) The provisioning period comprises of (i) the lead time, intended to cover all actions right from assessment of net requirement up to completion of delivery by the supplier, and (ii) the period of utilisation, which is the production period during which the entire ordered quantity (including the stocks and dues existing at the time of the provisioning action) will be utilised for meeting the production target.

2.8 Classification of Goods/ Stores

The revenue procurement made for normal business activity is distinct from capital procurement made by a business for acquiring fixed assets. Revenue stores in the context of TCL Group of factories come under two broad categories:

- (i) Commercially-off-the-Shelf (COTS) stores are available commercially and have application in fields other than defence also. Generally these stores are available easily.
- (ii) Made-to-Order (MTO) stores do not have commercial applications.

They are made specifically against detailed specifications/ drawings of TCL Group of factories (JSS/CQA (T&C) etc.) collaborators/ design agency and other specifications. MTO items, therefore, have limited sources and are difficult to procure. Consequently for timely & reliable positioning of MTO items for production, special procurement procedures are necessary without compromising on transparency, competition or fair treatment of vendors.

2.9 Channels of Procurement

Stores shall generally be procured by one of the following methods:

1) Open Tenders

- a) Open Tender Enquiry (OTE); and
- b) Global Tender Enquiry (GTE)

2) Procurement through Selected Suppliers

- a) Limited Tender Enquiry - LTE (up to Rs. 25 (Rupees twenty-five) lakh); and
- b) Special Limited Tender Enquiry (SLTE above Rs. 25 (Rupees twenty-five) lakh for MTO & COTS)

3) Nomination Basis Tenders

- a) Proprietary Article Certificate (PAC); and
- b) Single Tender Enquiry (STE) without PAC

4) Procurements without Calling Tenders

- a) Direct Procurement without Quotation;
- b) Direct Procurement by Purchase Committee;

5) Mandatory Procurement of Goods and Services for Goods or Services available on GeM.

2.9.1 Open Tender Enquiry (OTE)

2.9.1.1 In OTE, an attempt is made to attract the widest possible competition by publishing the Notice Inviting Tender (NIT) simultaneously on the designated websites. This is the default mode of procurement and gives

the best value for money but the procedure is relatively complex and prolonged. *The systemic cost of this procedure may be high enough to be unviable for smaller value procurements.* OTE procedures through e-procurement/GeM or through traditional tendering should be adopted in the following situations:

- i) Procurements exceeding the threshold of Rs. 25 lakh (Rupees Twenty Five Lakh);
- ii) All common use requirements with clear technical specifications;
- iii) For requirements that are ordinarily available in the open market but it is necessary to evaluate competitive offers to decide the most suitable and economical option available; and
- iv) In situations when requirements are not available from known sources or sources are presently limited and need to be broad based then even for procurements below Rs. 25 (Rupees twenty-five) lakh with due justification, OTE mode may be used, if warranted.

OTE is always the preferred mode of procurement. The CFA may resort to it even in those cases where other modes for procurement from trade have been prescribed in this manual. Wherever the CFA has objective evidence regarding the poor quality and or Cartel suspicion of established vendors, OTE to be resorted after recording the reasons. The entire deficient quantity with 25% option clause (read with relevant clauses of the manual) may be procured through OTE.

a) Against OTE, all the COTS and MTO items shall be procured through GeM/e-Proc, however competent authority (i.e. relevant TPC as per DFP of TCL) may decide to buy through other mode of e-procurement/ paper tender also after following the relevant instructions in the matter as notified by TCLHQ/Gol from time to time. Level of TPC is decided considering procurement value including option clause quantity.

b) The Source Development OTE (SDOTE) is also an OTE done to develop new sources for Made-to-order items. All the source development open tender enquiry (SDOTE) for MTO items shall be in two bid system.

2.9.1.2 Source Development Open Tender Enquiry (SDOTE)

- i) Only OEMs and manufacturers shall participate in the SDOTE. If the OEMs/ manufacturers deal only through their authorized dealers/ distributors/ stockists then SDOTE may be participated by such authorized entities.
- ii) SDOTE will be on the 2 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. The financial bid will contain (i) Item-wise price (ii) Details of applicable taxes & duties and (iii) All other commercial terms & conditions.
- iii) Indication of the long term requirement, if known, shall be indicated/specified in the SDOTE to evoke interest in sources to quote.
- iv) Established sources for an item will not be eligible to participate in the SDOTE for that item. The status whether a firm is established or not shall be reckoned as on the last date of the previous month in which vendor selection TPC is held.
- (v) There may be attempts by established manufacturers/ suppliers/ sources for an item to prevent new manufacturers/ sources from being developed. Therefore following precaution may be taken:
 - a) The open tender for establishing new sources will follow a two-bid system. In the technical bid evaluation, only firms possessing the necessary capacity in terms of machinery, capital, skilled manpower, technology, and related aspects for producing/developing the specified item will be shortlisted.
 - b) An Abnormally Low Bid is one in which the Bid price, in combination with other elements of the Bid, appears so low that it raises material concerns as to the capability of the Bidder to perform the contract at the offered price. Procuring Entity may in such cases seek written clarifications from the Bidder, including detailed price breakup of its Bid price in relation to scope, schedule, allocation of risks and responsibilities, and any other requirements of the bids document. If, after evaluating the price analyses, procuring entity determines that the

Bidder has substantially failed to demonstrate its capability to deliver the contract at the offered price, the Procuring Entity may reject the Bid/Proposal. However it would not be advisable to fix a normative percentage below the estimated cost, which would be automatically be considered as an abnormally low bid. Due care should be taken while formulating the specifications at the time of preparation of bid document so as to have a safeguard against the submission of abnormally low bid from the bidder.

- c) To have more firms developing an item and thereby improving the probability of developing new sources, SDOTE with 60:40 ratio between L-1 & L-2 wherein the L-2 firm may be given 40% of the tendered quantity on accepting the L-1 rates, provided this was indicated in the tender.
- vi) In case of retender or the next OTE, as mentioned in preceding paragraph, if firm that was unable to develop the particular item even with the extended timeframe that resulted in the retender shall not be allowed to participate.
- vii) To develop vendors for new items, development orders for value not exceeding delegated powers contained in the DFP, may be concluded when SDOTE efforts have not been successful.
- viii) If two SD Supply Order(s) for an item have already been placed against SDOTEs (irrespective of availability of number of established vendors), further SDOTE will not be processed till any of these SDOTE Supply Order is completed/ short closed/cancelled. The firm having one SDOTE supply order is also not allowed to participate in other SDOTE for same item, floated by same or any other Factory.
- ix) The manufacture of certain items sourced from trade may require multiple diverse technologies, e.g. manufacture of certain type of shells require forging as well as machining facilities/technologies. Trade firms generally do not possess the entire range of diverse technologies that are required for the manufacture of such items. In such cases, the appropriate Vendor Selection TPC after due deliberations may decide that firms not possessing required facilities

with them, but having agreement (self-declared by vendors) with other firm for these facilities can also participate in the tender. This is subject to the assessment that such bidding firm has adequate facilities to ensure the quantitative and qualitative output as per the tender enquiry. In case the TEC/TPC considers it necessary, the capacity of the firm(s) with whom the bidding firm has such agreement(s) can also be verified for the facilities outsourced by the bidding firm. The bidder shall facilitate such capacity verification. It should, however, be ensured that, the bidding firm has the capacity for the important operations in-house. The VSL TPC should deliberate and decide, prior to issue of the TE, the facilities are necessarily to be possessed by the bidding firm and should be duly incorporated in the tender enquiry.

- x) VSL TPCs may also consider for participation of firms those having facility/capabilities of integration with testing facilities (System Integrators). These firms may not have manufacturing facilities but have agreement (self-declared by vendors) for supplying of components/assemblies/sub-assemblies. The warranty of the integrated product shall be given by the integrator.

2.9.2 Global Tender Enquiry

GTE is similar to OTE but, through appropriate advertising and provision for payment in Foreign Currencies through Letter of Credit, it is aimed at inviting the participation of interalia foreign firms. *Development of local industry also needs to be kept in mind. Hence, it may be viable only in following situations:*

- i) Where Goods of required specifications/quality are not available within the country and alternatives available in the country are not suitable for the purpose;
- ii) Non-existence of a local branch of the global principal of the manufacturer/vendors/ contractors;
- iii) Requirement for compliance to specific international standards in technical specifications; and

- iv) Absence of a sufficient number of competent domestic bidders likely to comply with the required technical specifications, and in case of suspected cartel formation among indigenous bidders.

2.9.2.1 Terms and Conditions

- i) Advertisement in such cases should be given on Central Public Procurement Portal (CPPP) at www.eprocure.gov.in and on GeM. The procuring entity should also post the complete bidding document in its web site and on CPPP to enable prospective bidders to make use of the document by downloading from the web site. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded. In order to promote wider participation and ease of bidding, no cost of tender document may be charged for the tender documents downloaded by the bidders.; and
- ii) The availability for downloading of tender documents against NIT should not be restricted and should be available freely. Tender documents should preferably be available for download upto the date of opening of tenders; and
- iii) GTE tender documents must contain technical specifications which are in accordance with national requirements or else based on an international trade standard;
- iv) In such cases e-procurement may not be mandatorily insisted upon.
- v) The due date fixed for opening of the tender shall be minimum four weeks from the date of advertisement which may vary taking into account the nature of material called for as well as the time required to prepare the bids. The due date may be subsequently extended with the approval of the CFA only to promote better competition and also considering account delivery requirement; and Relevant INCOTERMS (International Commercial Terms) should be included in the tender.
- vi) In case of necessity of issuing Global Tender Enquiry (GTE) up to Rs. 200 crores or such limit as may be prescribed by the Department of Expenditure from time to time, Policy guidelines as circulated vide MoD ID

No. 8(25)/2023-D(Coord/DDP), Dated: 26-09-2023 shall be applicable. In cases where Global Tender Enquiry is inevitable due to non-availability of Indian Vendors, prior approval may be forwarded to TCLHQ with detailed justification for getting approval of Competent Authority at MoD. (Refer Annexure-41)

- vii) Procurement policies and procedures must comply with accessibility criteria which may be mandated by the Government from time to time. Keeping this in view, Department of Expenditure amended Rule 144 of GFR, 2017 and introduced a sub-rule imposing certain restrictions under the rule. The detailed provisions were notified through Department of Expenditure (DoE), Ministry of Finance (MoF) OM No. F.6/18/2019-PPD dated 23.07.2020. According to this rule any bidder from a country which shares a land border with India will be eligible to bid in any procurement whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with DPIIT. The detailed guidelines are enclosed as Annexure- 45.

2.9.2.2 No Global Tender Enquiry (GTE) up to Rs. 200 crores or specified by Gol/MoD from time to time shall be invited or such limit as may be prescribed by the Department of Expenditure from time to time. In exceptional cases where the Ministry or Department feels that there are special reasons for inviting GTE, for tenders below such limit, it may record its detailed justification and seek prior approval for relaxation from the Competent Authority specified by the Department of Expenditure.

a) The proposal for approval shall be submitted by Administrative Ministry with the concurrence of Financial Advisor and approval of Secretary concerned. The proposals submitted by individual offices/ organisation (e.g. autonomous bodies, Central Public Sector Undertakings and subordinate offices of Central Government etc.) will not be entertained.

b) The proposals shall be submitted along with duly filled format (placed at Annexure-41).

2.9.2.3 Before sending the proposals for approvals of the Global Tenders, following is to be ensured:

- a) Domestic open tender must be floated to identify the domestic manufacturers/ service providers for the items/ services for which approval is being sought for issuance of Global Tenders. In case, if the Ministry/ Department has not floated a domestic open tender after 15.05.2020 for the items to be procured through GTE, such proposals will not be entertained. The proposal must contain the details of domestic open tenders, issued after 15.05.2020. These details shall cover tender number, date of opening, number of offers received, details of offers received, reasons why domestic suppliers were not considered etc.
- b) The proposal must contain the details of deliberations with DPIIT/ relevant industrial bodies for identification of domestic manufacturers/ service providers.
- c) The 3/5-year procurement plan as mandated by Public Procurement (Preference to Make in India) (PPP-MII) order issued by DPIIT must be published on website, before forwarding proposals for the purpose of procurement through GTE. Web-link of published procurement plan should be provided in proposal.

2.9.3 Limited Tender Enquiry (LTE)

LTE is a restricted competition procurement, where a preselected list of vendors is directly approached for bidding; bids from uninvited bidders are treated as unsolicited. LTE procedures should be default mode of procurement when the estimated value of procurement is between Rs. 2.5 lakh to Rs. 25 lakh (Rupees two and a half Lakh to Twenty-five Lakh) including 25% Option Clause Qty. However depending upon the Quality of suppliers, suspecting cartel, Distant Delivery Period and if sufficient lead time is available to position the material then CFA can also decide to opt for OTE from case to case basis. Other applicable conditions are as follows;

- a) Copies of the bidding document should be sent free of cost, directly by speed post/ registered post/ courier/ e-mail, simultaneously to all the firms, which are borne on the list of registered suppliers for the stores after due consideration of their past performance/ response, if any.
- b) Maintenance of list of registered suppliers is a sine-qua-non for LTE. The List of registered vendors needs to be reviewed perpetually to ensure

adequate number of qualified suppliers to ensure sufficient response, in addition to mails/emails to selected vendors, web-based publicity should be given for limited tenders, with suitable clarifications that unsolicited bids shall not be considered. Further a limited tender which results in only one effective offer shall be treated as a single tender enquiry situation, with relevant powers of approval etc.

- c) All the units must keep a list of registered bidders for use in restricted bidding. Suppliers or contractors should be selected in a non-discriminatory manner. All past successful vendors/bidders should invariably be invited.

2.9.4 Special Limited Tender Enquiry

LTE mode, even for values higher than Rs. 25 Lakh (Rupees Twenty-five Lakh) (*Rule 162 of GFR 2017*), where normally OTE should have been done, is permissible in certain special circumstances as follows.

2.9.4.1 Procedure for COTS items (Other than MTO Items)

a) The standard procurement procedure contained in the preceding paragraphs shall apply while procuring other than MTO items. Advertised OTE shall be the preferred mode for procurement of common use items of generic or commercial specifications which are readily available in the market from a wide range of sources/ vendors. However, depending on the value of the procurement the appropriate mode of procurement i.e. OTE, LTE, STE, RC, CC and LPC as contained in the Manual may be followed within the financial limits therein specified. In procurement of direct material (falling in the category 'other than MTO') through LTE, only established vendors shall be allowed to participate.

OTE to be done generally through GeM, however competent authority (i.e. relevant TPC as per DFP of TCL) may decide to buy through other mode of e-procurement/ paper tender after following the relevant instructions in the matter as notified by GoI from time to time.

b) LTE may be adopted when estimated value of stores to be procured is up to Rs.25 lakh (including the OC quantity). Copies of the bidding document should be sent free of cost, directly by speed post/ registered post/ courier/ e-mail, simultaneously to all the firms, which are borne on the list of

registered suppliers for the stores after due consideration of their past performance/ response, if any. The number of supplier firms in LTE should invariably be three or more. Efforts should be made to identify a higher number of approved suppliers to obtain more responsive bids on competitive basis. LTE can be issued to foreign vendors also. Sufficient time should be allowed for submission of bids in Limited Tender Enquiry cases.

c) Purchase through LTE may also be adopted when the estimated value of the procurement is more than Rs. 25 lakh (including the OC quantity), and established sources for an item are three or more, in the following circumstances, with the approval of the next higher CFA:

- (i) The competent authority certifies that the demand is urgent and any additional expenditure involved by not procuring through advertised tender enquiry is justified in view of urgency. The competent authority should also put on record the nature of the urgency and reasons why the procurement could not be anticipated earlier.
- (ii) 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.
- (iii) The sources of supply are definitely known and possibility of fresh source(s) beyond those being tapped is remote.
- (iv) The item to be procured is such that pre-verification of competence of firm is essential, hence requires registration of firms.
- (v) To prevent stock out situations, to cater unforeseen requirements of the Armed Forces/ MHA and on the ground of national security as per directives of MoD besides emergent requirements to meet commitment with the customer. The CFA shall certify and record justification.

There will be no need for approval of next higher CFA in TPC-I Cases.

d) For items other than those exempted from SDOTE, as decided by Next Higher CFA respectively, following provision shall prevail:-

- i) 80% of the net deficiency shall be procured, with a 25% option clause, through LTE issued to only establish sources with valid registration. All the established sources, for that particular item, shall be allowed to participate in the LTE.

- ii) Balance 20% of the net deficiency shall be procured, with 25% option clause through SDOTE following a two-bid system where established sources shall not be allowed to participate.
- iii) With low volume/quantity, if considered necessary by Vendor Selection (VSL) TPC, LTE of 50% quantity with 100% option clause and SDOTE with balance 50% quantity without option clause can be initiated.
- e) Under advertised tenders (OTE/ GTE), the participating firm must be either OEMs/ Manufacturers or their authorised dealers/ distributors; if, it is the policy the OEM/ Manufacturer to deal through their authorised dealers/ distributor or the OEM/ Manufacturer specifically authorises his dealer/ distributor to quote in the tender.
- f) In case of raw materials/ tools & gauges/ machinery spares/ COTS items, procured indigenously, the participating firm must be either authorized dealers/ distributors of the OEMs/ Manufacturers.
- g) Similarly, in case of imported stores including raw material/ tools & gauges/ machinery spares, the participating firm must be either authorised dealers/entities if the OEMs/ Manufacturers deal through them.
- h) The long term requirement, if known, shall be indicated in the tender notice/ tender to attract more firms to quote.
- i) Sometimes due to short shelf-life (e.g. shellac), high volatility (e.g. denatured spirit) or high storage losses, difficulties are experienced in procurement, and vendors also normally provide very short validity for their bids. These items being commercially available there are normally adequate number of sources in the market. Therefore, there may not be a need for any special source development exercise. In such case procurement may be made from registered/ government licensed/ reputed vendors through LTE issued to minimum six vendors. Considering the shelf-life and storage losses, the Vendor Selection (VSL) TPC, after duly recording reasons, shall decide the optimal frequency at which the procurement will be made.

2.9.4.2 Procedure for Made-to-Order items

MTO items are specialised items that do not have commercial application. Therefore, keeping established sources active/alive is important, for the Companies engaged in Production of Goods. Established production lines in the trade remain alive when established sources get periodical orders to keep the facilities active. Thinning out orders on too many established sources has a potential risk of established sources dying out due to non-availability of adequate work to keep established facilities alive/active. These challenges necessitates special procedure for MTO items to ensure delivery of Quality end products according to the targeted production program. The following procedure shall be followed for procuring Made to Order (MTO) items;

- a) If the value of the net deficiency worked out for a MTO item is up to Rs.25 lakh (including the OC quantity), then without insisting on SDOTE, the entire net deficiency may be procured through LTE provided there are minimum 2 established vendors with valid registration and no cartel is suspected (to be recorded after due diligence by the relevant TPC). If the number of established vendors is less than 2, then registered vendors for the same range of products/ goods/ services/ technology can also be included for the LTE.
- b) for MTO items more than Rs. 25 lakh (including option clause quantity) AND established sources for an item are two or more, the Vendor Selection (VSL) TPC, after approval of next higher CFA and necessary due diligence with recording reasons, may decide not to undertake further source development, provided the existing established sources are not acting in collusion/ cartel. There will be no need for approval of next higher CFA in TPC-I Cases. In such cases also the entire net deficiency may be procured through LTE. The reasons of exemption from SDOTE shall be recorded in the TPC, including the conditions as illustrated under para 2.9.4.1(c) mentioned above.
- c) For items other than those exempted from SDOTE, as decided by Next Higher CFA respectively, following provision shall prevail:-

- i. 80% of the net deficiency shall be procured, with a 25% option clause, through LTE issued to only establish sources with valid registration. All the established sources, for that particular item, shall be allowed to participate in the LTE.
 - ii. Balance 20% of the net deficiency shall be procured, with 25% option clause through SDOTE following a two-bid system where established sources shall not be allowed to participate.
 - iii. With low volume/quantity, if considered necessary by Vendor Selection (VSL) TPC, LTE of 50% quantity with 100% option clause and SDOTE with balance 50% quantity without option clause can be initiated.
- d) Irrespective of the value, If the established & registered source is only one, then procurement shall be on Single Known Basis after rendering the requisite SKS Certificate for 80% Qty through LTE and remaining 20% through SDOTE.
 - e) Long-term Umbrella Agreement/Contracts can be concluded for MTO items up to 5 years.
 - f) Sources unambiguously approved for a particular item(s) by customer/end user, collaborators and design agencies shall also be considered as established sources for that item.
 - g) The OC is provided in the LTE to take care of the eventuality of the SDOTE supplies not materializing in time for meeting the targeted production. Accordingly the OC shall be exercised when it becomes evident that supplies from SDOTE will not materialize in time for meeting the targeted production including partial failure in supplies as per staggered deliveries. The OC may also be exercised in case the supply plan/ indent have been enhanced from that considered while calculating the net deficiency or new order is received. OC can also be exercised in case SDOTE has not been finalized and item is required for production. However in that case, SDOTE will be finalized from the quantity of the next procurement cycle

2.9.5 Proprietary Article Procurement

- a) Certain items, particularly equipment's, are the propriety product of a manufacturing firm. Such items are only available with that firm or their dealers or distributors since detailed specifications are not available to others for manufacturing the item. Situations may also arise when, for standardization of machinery or ensuring compatibility of spare parts with the existing sets of equipment, goods and services have to be obtained from a particular source. In such situations, a Proprietary Article Certificate may be issued to the original equipment manufacturer (OEM) and items procured on PAC basis from that particular firm or its authorized dealers or distributors. While PAC is issued only in favour of the concerned OEM, the item may be bought from any authorised dealer 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. In such cases, tender documents can be issued to the OEM and (or) Authorised dealer(s)/distributor(s) specified by the OEM. However, the purchase will be made as per the DFP for PAC cases only. These provisions would also apply to repairs and servicing of equipment through the sole dealer/ servicing agency, authorized by the OEM.
- b) PAC bestows monopoly and obviates competition. Therefore, PAC status should be granted only after careful consideration of all relevant factors like fitness, availability, standardization and value for money. CFA for issuing PAC shall be as notified in the DFP.
- c) It is common for OEMs to outsource their components/ sub-assemblies/ assemblies and not manufacture these themselves. Hence, such items may be available at a cheaper price with the actual manufacturers. The indenting/ procurement officers must, therefore, keep abreast of the probable sources and may procure items from the right source to protect the interest of the State. However, machinery spares should be sourced only from the OEM or OEM approved/ recommended manufacturers to make the OEM responsible for malfunctioning, if any, of the main equipment in which the spares will be fitted beyond warranty period.
- d) The standard format of PAC is enclosed as Annexure- 5. The validity of PAC shall ideally be not more than one year and to be reviewed by the factory management on yearly basis.

- e) In case of PAC/single tender procurements:
 - a) Reports relating to such awards should be submitted to the TCLHQ every quarter;
 - b) Internal audit may be required to check at least 10 (ten) per cent of such cases; and
 - c) Details of such contracts should be published on the website of the Procuring Entity

2.9.6 Single Tender Enquiry (STE)

- a) Obtaining quotation against tender enquiry issued to an identified source amounts to purchase without generating competition. Therefore, this mode of purchase should be resorted to only in unavoidable situations in the following conditions
 - i) It is in the knowledge of the user department that only a particular firm is manufacturing the required goods. The reason for arriving at this conclusion is to be recorded and approval of the competent authority obtained.
 - ii) In a case of emergency, where the item is known to be in short supply and its stock happens to be available only with source at the time of purchase, subject to the reason for such decision being recorded and approval of the competent authority obtained.
 - iii) For standardization of machinery or components or spare parts to be compatible to the existing sets of machinery/ equipment (on the advice of a competent technical expert and approved by the competent authority), the required goods are to be purchased only from a selected firm.
 - iv) In cases of urgent requirement to meet the production commitment to the customer keeping in view of the potential loss in business/ lost opportunities due to unavailability of the input material/Tender not materialized/ Retendered/ Vendor delayed or failed. Reasons (i.e. stores not materializing / retendered cases/ vendors delayed or failed) to be recorded in Vendor Selection TPC stage.
 - v) All indigenous & export orders received through competitive bidding

where shorter delivery periods of customers to be met as per commitment.

- vi) Considering the business requirement of acquiring new Products/Services/Technologies STE can also be issued to PSU/DPSU/Companies having National/Inter National reputation/MoU Partners depending upon the Technological/Functional/Strategic requirements provided they have expertise for the same. Proper justification to be recorded.
 - vii) Procurements on a STE basis should be made only after determining proper reasonability of rates. All the guidelines as stipulated under clause 5.22 of this manual for benchmarking of prices must be followed while finalizing the case.
- b) The relevant Proprietary Article/ Single Known Source Certificate (in the format given at the end of this Manual) should be provided by the Sr. General Manager/General Manager (with the approval of the Director/Operations if the case exceeds the financial powers delegated to Sr. General Manager/General Manager) before procuring the goods from a single source under the provision of sub-paragraphs (i) & (iii) above as applicable.
- c) Suitable tender document, containing required terms & conditions are to be issued to the selected firm for preparing and sending its quotation.
- d) PAC/ SKS sources at times do not accept some of the standard tender conditions. In such cases the firms should be persuaded to comply with the standard terms & conditions. If they are still unwilling to accept the standard terms & conditions, then, since no other alternative source is available, Sr.GM/GM (for Factory level cases) and Director/Operations (for TCLHQ level cases) can grant relaxation/ exemption. In such cases of SKS procurements the factory shall necessarily increase its efforts to develop alternate sources.
- e) All contracts awarded on nomination basis (i.e. PAC/STE etc.) should be brought to the notice of TCLHQ for information of Board of Directors.

2.9.6.1 Procurement from a Single Known Source

New sources are to be developed through Open Tender Enquiry (OTE). At times OTEs may result in development of only one source. Pending

development of more sources, 80% of requirement with 25% option clause may be procured on Single Known Source mode on the basis of an SKS Certificate to be issued in the prescribed format by the Competent Authority notified in the DFP. The balance 20% of the requirement may be procured through SDOTE, without option clause.

2.9.6.2 Procurement from sources having MoU

Sources need to be identified in niche segments to bridge the gap between available and desired capacity, thereby facilitating penetration into new markets. These sources shall be identified through a transparent method of floating Expressions of Interest (EOI). An MoU shall be signed with the sources shortlisted through this EOI. The MoU shall clearly define the shared vision and objectives, including joint participation in domestic/international bidding to secure orders. Work share between TCL and the MoU partner will be pre-decided before TCL's participation in any upcoming bid. Samples, semi-finished/finished goods (sub-assemblies, assemblies, components) may be procured from the MoU Partner on a single-tender basis for participating in tenders or fulfilling orders received through joint bidding, adhering to the pre-decided work sharing ratio and within the validity of MoU period. Furthermore, if there are two or more MoU partners for same range of products/stores then LTE to be issued.

These MoU partnerships will be subject to regular reviews to ensure their continued effectiveness. Additionally, procurement of materials from MoU partners will be limited to the specific requirements and delivery timelines of identified projects.

Regular/generic stores with established and registered vendors will remain outside the scope of this MoU procurement process.

2.9.7 Direct Procurement without Quotation

In line with Rule 154 of GFR-2017(or amended time to time), the competent authority (as per DFP) may purchase stores (goods & services) up to the value of Rs. 25,000 (Rupees twenty-five thousand only) on each occasion without inviting quotations or bids, on the basis of a certificate to be recorded by him (or her) in the format given below.

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

2.9.8 Direct Procurement by Purchase Committee

In line with Rule 155 of GFR-2017 (or amended time to time), purchase of stores (goods & services) costing above Rs. 25,000 (Rupees twenty five thousand only) and up to Rs. 2,50,000 (Rupees two lakh fifty thousand 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 Department. The committee will survey the market to ascertain the reasonableness of rate, quality and specifications; and identify the appropriate supplier. Before recommending placement of the purchase order, the members of the committee will jointly record a certificate as under: "Certified that we, members of the purchase committee are jointly and individually, satisfied that the goods/services recommended for purchase are of the requisite specification and quality, priced at the prevailing market rate and the supplier recommended is reliable and competent to supply the goods /services in question, and it is not debarred by Department of Commerce or Ministry of Defence or DDP or TCL Group of Factories."

2.9.9 Procurement of Goods and Services for Goods or Services available on Government e-Marketplace GeM

Government of India has hosted an online Government e-Marketplace (GeM) for common use Goods and Services. As per Rule 149 of GFR 2017, GeM has been made mandatory for procurement of Goods and Services available on GeM. The procuring authorities will certify the reasonability of rates. The GeM shall be utilised by TCL Group of Factories/Units for direct on-line purchases as under or as per issued instructions by GoI/TCLHQ from time to time:-

- i) *Up to {Rs.25,000/-} through any of the available suppliers on the GeM, meeting the requisite quality, specification, and delivery period (in case of procurement of Automobiles only the ceiling of direct purchase will be Rs.30 lakh instead of Rs. 25,000/-);*

- ii) *Above Rs.25,000/- and up to Rs.5,00,000/- through the GeM Seller having lowest price amongst the available sellers (excluding Automobiles where current limit of 30 lakh will continue), of at least three different manufacturers, on GeM, meeting the requisite quality, specification, and delivery period. The tools for online bidding and online reverse auction available on GeM can be used by the Buyer even for procurements less than Rs 5,00,000.*
- iii) *Above Rs.5,00,000/- through the supplier having lowest price meeting the requisite quality, specification, and delivery period after mandatorily obtaining bids, using online bidding or reverse auction tool provided on GeM (excluding Automobiles where current limit of 30 lakh will continue).*
- iv) *The invitation for the online e-bidding/reverse auction will be available to all the existing Sellers or other Sellers registered on the portal and who have offered their goods/services under the particular product/service category, as per terms and conditions of GeM.*
- v) *The above mentioned monetary ceiling is applicable only for purchases made through GeM. For purchases, if any, outside GeM, relevant GFR Rules shall apply.*
- vi) *The Buyers may ascertain the reasonableness of prices before placement of order using the Business Analytics (BA) tools available on GeM including the Last Purchase Price on GeM, Department's own Last Purchase Price etc.*
- vii) *A demand for goods shall not be divided into small quantities to make piecemeal purchases to avoid procurement through L-1 Buying / bidding / reverse auction on GeM or the necessity of obtaining the sanction of higher authorities required with reference to the estimated value of the total demand."*

It may be noted that it is the responsibility of the Procuring Entity to do due diligence for ensuring reasonableness of rates.

GeM Portal: <https://gem.gov.in>. Detailed instructions for user organization registration, supplier registration, listing of products, terms and conditions, online bidding, reverse auction, demand aggregation, call centre, etc. are

available on this portal. All units must adhere to the latest guidelines issued by the concerned ministry/GeM.

2.9.10 Other Methods of Procurement;

2.9.10.1 IFD on Sister Factories

- a) Indenting factory (user), after ensuring that the particulars mentioned in the IFD are correct, shall place IFD on the supplying factory in the prescribed form giving inter-alia, the following particulars:
 - (i) Related Extract No. and Date
 - (ii) Correct nomenclature of the stores demanded together with the relevant manufacturing particulars etc.
 - (iii) Purpose for which the stores are required
 - (iv) Delivery Schedule
- b) Indenting factory shall also provide the feeder factory with all particulars/ drawings/ specifications referred in the IFD and are required for execution of the IFD. Copies of IFDs should be endorsed, among others, to the concerned AHSP/ QA of indenting factory/Finance section of indenting & supplying factories for necessary action by these authorities.

2.9.10.2 RC concluded by TCLHQ/TCL Group of Factories

- a) TCLHQ/TCL Group of Factories may, where feasible, conclude RCs through OTE on a 2-bids system for stores of standard type that are identified as common user items and are needed on recurring basis by various Factories. RCs can also be finalized through LTE with PSUs in respect of items which are known to be manufactured only by them. The TCL Group of Factories, as Direct Demanding Officer, can procure the items under the RC concluded by TCLHQ/TCL Group of Factories. The TCL Group of Factories can also conclude RCs under their delegated powers, if not covered under RC of TCLHQ.

b) When RCs are concluded the specifications, prices and other salient details of the rate contracted items shall be posted on the official website of TCL, and appropriately updated, for use by all factories/ units under the TCL.

2.9.10.3 Cash and Carry Procurement

Cash and carry purchase upto Rs 25,000/- (within the delegated financial powers under cash purchase) is resorted to in cases of extreme urgency or when the supplier is not willing to supply the required item on credit. Such procurement should be made only in exceptional cases. The cash payment is initially made from the Imprest fund of the unit and the same, on being claimed, is reimbursed by the paying authority after due audit of the transaction.

2.10 Procurement for R&D Stores

As far as In-House R&D /DRDO developed stores is concerned 100% quantity of their basic input material/sub-assemblies/assemblies/components will be covered by placing Supply Order on the In-House R&D/DRDO developed sources (Associated during Development phase) in the first cycle of procurement. In the 2nd cycle of procurement 50% of the annual requirement with 100% option clause will be covered through LTE on the In-House R&D/DRDO developed firms. For remaining 50% quantity to develop new sources Open Tender will be issued excluding DRDO/ In-House R&D developed sources for the particular store. On developing new sources through second cycle of tendering, subsequent sources development actions will be followed on the basis of 80% on Established Sources through LTE and 20% for new source development through OTE.

2.11 Deciding the Mode of Purchase

The Vendor Selection(VSL) TPC, after considering (i) the necessity for the procurement (ii) whether the store is COTS or MTO (iii) the quantity to be procured (iv) the value of the procurement (v) the period of supply and (vi) special terms & conditions (if any) for the procurement, shall decide the mode of procurement. It should also be ensured by the Vendor Selection (VSL) TPC

that the demand for the store is not divided into smaller quantities for making piece meal purchases for the sole purpose of avoiding the necessity of obtaining the sanction of a higher authority with reference to the estimated value of the total demand.

However, in cases of urgent need (to meet production commitment to the customer keeping in view the potential loss in business/ lost opportunities due to unavailability of the input material/ Tender not materialized/ Retendered/ Vendor delayed or failed) of stores where delivery period is to be maintained, can be met through separate procurement action (out of original SHIS qty.), limited up to LPC value, with the approval of GM/Sr.GM duly recording the reasons. Due Care should be taken to avoid over procurement.

In stores procurement bids shall be obtained through e-procurement System/GeM else through conventional tender method, on single or two bid system (refer paragraphs 2.16 and 2.17, respectively). However, in certain unavoidable situations, Manual Tenders (e.g. Vendors having national/ international repute not willing to on board GeM/e-proc and Central/State Govt./CPSU/SPSU/ Statutory bodies like DGR (Directorate General Resettlement) etc.) can also be adopted post approval of Sr.GM/GM of unit and recording the reason.

2. 12 Public Procurement (Preference to Make in India), Order 2017

To encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment, Department of Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India, issued Public Procurement (Preference to Make in India), Order 2017. The order is issued pursuant to Rule 153 (iii) of GFR, 2017. The Order is applicable on the procurement of Goods, Works and Services. A detailed chapter as enclosed in Annexure-15 to be referred for detailed guidelines. Further revised guidelines, if any, issued by Govt. of India from time to time to be followed.

2.13 Identification of Suppliers

Good awareness and identification of right suppliers capable of fulfilling the product qualitative requirements is a very vital function in competitive procurement of quality goods. Further, ensuring transparency, equal

opportunity and fair play are fundamental in procurement. Therefore, transparent, equitable and fair procedure for selection, registration, performance appraisal, etc., of firms is absolutely necessary, which should also be disseminated.

2.14 Registration of Firms

- a) Registration of firms shall be done as per the TCL Standard Operating Procedure for Vendor Registration as updated/issued from time to time. Please refer Annexure-42 for SoP on Vendor Registration. However, for the items valuing up to Rs. 2,50,000 (Rupees two lakh fifty thousand only) the said SOP shall not be mandatory as it is within the limit for purchase through Local Purchase Committee.
- b) A firm registered with any unit of TCL for a particular range of products/ goods/ services shall be considered as a registered firm for procuring the same range of products/ goods/ services by all other units.
- c) Guidelines of TCL SOP for Vendor registration shall be sacrosanct for performance evaluation/De-registering/renewals etc.
- d) In addition to provisions contained in the “TCL SOP on Vendor Registration” of the firms, for de-registration of a firm due to misconduct (suspension/banning/debarment), the existing guidelines issued by DoE vide No. F.1/20/2018-PPD dated 02.11.2021 (or revised time to time) should be followed along with the clarification dated 27.09.2022 issued by TCL (refer Anneure-14). Action may be taken by the Head of Department by issuing a show cause notice to the firm(s) and after due consideration of all relevant facts and circumstances of the case, an appropriate decision may be taken. The reasons for the decision should be duly recorded in detail. If the Competent Authority is of the view that the gravity of misconduct justifies penal action involved more than one Factory/Unit, then the case shall be referred to TCLHQ for appropriate action by Director/Operations.
- e) The list of registered suppliers for the subject matter of procurement be exhibited on websites / e-Procurement portal.

2.15 Vendor Selection (VSL)

The relevant TPC under whose financial powers the case falls will do the vendor selection for the procurement. For cases beyond the powers of the factory (i.e. cases falling under the powers of TCLHQ), vendor selection will be done by Factory Level – I TPC. In addition to various other points, the Vendor Selection TPC shall necessarily deliberate on the (i) justification for the quantities proposed for procurement, (ii) categorisation of the item as MTO or other than MTO, (iii) adequacy of vendor base, (iv) estimated cost, (v) mode of procurement with OTE percentage, (vi) realistic delivery period (vii) identification of essential parameters of the tender, if necessary; if no specific essential parameter has been identified then, to eliminate arbitrariness, all parameters of the tender shall be treated as essential. The Vendor Selection (VSL) TPC minutes shall contain complete details of the deliberations with justification/ reasons.

2.16 Single Bid System

Single bid system may be followed in LTEs or where only established manufacturers are participating. In single bid system since the technical and financial terms figure in the same bid, their evaluation as contained in paragraphs 2.18 and 2.19 shall be done together.

2.17 Two Bid System

- a) The two bid system is used in procurements that are complex and technical in nature. Two bid system may be followed in all tenders other than that specified in paragraph 2.16. In such cases bids should normally be obtained in two parts, namely (i) Technical Bid and (ii) Financial Bid.
- b) The technical bid and the financial bid should be sealed by the bidder in separate covers duly super-scribed to indicate the appropriate bid. Both these sealed covers are to be put in a bigger cover which should also be sealed and super-scribed to indicate the tender reference, date of opening etc. Only the technical bids are to be opened and evaluated in the first instance.
- c) The technical bid should establish the capability of the participating firm to manufacture & supply the specified item of the requisite quantity and in the required time frame. The manufacturing facilities of the participating

firms shall also be got verified if they have not been verified earlier. The technical bid must, amongst other things ascertain that:

- (i) The firm has the required financial capability, assessed by the turnover in the last three years or certificate of solvency issued by Bank or any other documents to the satisfaction of TEC.
- (ii) It has the minimum critical manufacturing capability as indicated in the RFP/TE, assessed by listing out the required machines/ manufacturing facilities and ascertaining the legal ownership thereof. In case the firm (including integrator) outsources certain operations, evidence of agreement (self-declared by vendors) for such outsourcing should be obtained.
- (iii) The firm is properly registered for GSTIN, Income Tax, Excise and Sales Tax (as and whenever applicable).
- (iv) It has the proper licence to operate.

d) At the second stage, the financial bids of only the technically acceptable offers should be opened for further evaluation. The financial bid shall indicate the (i) item-wise price (ii) details of applicable taxes & duties and (iii) all other commercial terms & conditions.

2.18 Evaluation of Technical Bids

a) If tenders are invited in 2 bids, in the first instance, the technical bids shall be opened. The bidders or their duly authorized representatives shall be permitted to witness the tender opening. Thereafter, technical evaluation shall be carried by the appropriate Technical Evaluation Committee (TEC) notified in the DFP. TEC has representatives of the user, designated inspecting agency, procurement agency, Finance and CFA. Finance representative need not be associated in the TEC if the deliberations are purely technical like assessing conformity to technical specifications and other related technical aspects. Finance representative shall, however, be associated if commercial parameters such as EMD, PSD, Payment Terms, Warranty/ Guarantee clauses, commercial viability of the firm, registration with Tax Authorities, any aspects having financial implication, etc., are indicated in the technical Bid and, these or compliance aspects (other than technical conformity) are required to be deliberated at the TEC meeting.

- b) 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. All offers conforming to essential parameters should be accepted. The essential parameters should have been identified and recorded in the vendor selection TPC, if not all parameters are to be treated as essential to eliminate arbitrariness.
- c) The TEC should prepare a compliance statement bringing out the extent of variations and differences, if any, with the qualifying parameters specified. If considered necessary, the TEC may invite the vendors who meet essential parameters for technical presentation/ clarification.
- d) However, during these clarifications the basic profile/ character of technical offer submitted shall not be permitted to undergo a change. Original Financial bid should remain firm & fixed and no alteration in price should be permitted as a consequence of presentations/ clarifications sought by the TEC from the vendor. Conditional offers shall not be accepted.
- e) The TEC should prepare a compliance statement in respect of commercial terms and conditions, such as EMD, PSD, Insurance Security Bonds, Payment Terms, Warranty/ Guarantee clauses, etc., included in the technical bid as per the tender and deliberate on these.
- f) The member secretary of the TEC shall ensure timely recording of the deliberations of the TEC meeting in the form of a minutes of the meeting and get it signed by the TEC members and Chairperson. Thereafter, same shall be concurred by Finance Member and approved by CFA in the same meeting. The minutes of the meeting shall also record a confirmatory statement that none of the TEC members have any personal interest in any of the participating company/ agencies. Status of compliance/ deviations from tender clauses in the form of CST that was considered by the TEC in its deliberations shall be recorded. Cases beyond the powers of Factory, recommendatory TEC-I shall be forwarded to TCLHQ.
- g) Financial bids of offers evaluated as technically compliant by the TEC shall only be opened.

2.19 Evaluation of Financial Bids

- a) Financial evaluation shall be carried by the appropriate Tender Purchase Committee (TPC) notified in the DFP. TPC shall evaluate (financial) all bids

evaluated as technically compliant by the TEC, and unambiguously determine the L1 duly recording the reasons. The TPC shall deliberate on the procurement, and its members shall render advice/ opinion freely/ frankly in their respective domains to arrive at a well-considered decision.

b) On opening the financial bids (of technically compliant bidders) the comparative statement of tenders should be prepared. The CST should be prepared with due care showing each element of cost (basic cost of items, freight, insurance, other requirements except levies, taxes and duties levied by Central/State/Local governments such as GST etc on final product) separately against each bidder where only Indian bidders are participating. The CST should be got vetted by the factory Finance section as to its correctness, where delegated powers are to be exercised with the concurrence of finance. Evaluation of financial bids is a very critical activity in procurement, therefore, due care should be exercised to evaluate the bids strictly as per the tender conditions.

c) Price negotiations should not be held in OTEs and LTEs where adequate response has been received and the L1 price is assessed as reasonable. In case firm is called for price/ commercial negotiations, the reasons for taking such a decision should be recorded by the TPC. Price/ commercial negotiation may, however, become necessary when there is lack of competition like single tender situations (including PAC, SKS and RST) or when (irrespective of the mode of tendering) the price quoted by L1 is assessed as unreasonable. Price/ commercial negotiations shall be conducted by the appropriate TPC.

d) The primary objective of commercial negotiation is to conclude a reasonable price and commercial terms for the procurement. This is a very complex task requiring careful consideration of numerous diverse factors. Some indicative factors that need to be considered while assessing the reasonableness of price & other commercial terms are the last purchase price, movement of relevant price indices, market intelligence regarding cost of the store or similar surrogate stores, material composition, cost analysis of raw materials, technological intricacies/ complexities of the store or (and) the process of manufacturing it, processing cost in manufacture of the store, whether the stores are in current production or otherwise, maintenance requirements, spares requirement, warrantee, etc.

e) Abnormally low bids are sometimes quoted by vendors that frustrate the whole tendering process. This is more likely to happen in source

development where established vendors (Indian or foreign) may have an interest to engineer entry barriers by persuading pliable firms to quote unreasonably low. Such orders remain unexecuted for long resulting in blocking of quantities and a roadblock on source development. Therefore it is essential to periodically review the progress of source development orders and take necessary steps for short closure/closure of order after appropriate opportunity given to the firm.

f) The member secretary of the TPC shall ensure timely recording of the deliberations of the TPC (including Vendor Selection (VSL) TPC) meeting in the form of a minutes of the meeting and get it signed by the TPC members and Chairperson. Thereafter, same shall be concurred by Finance Member and approved by CFA in the same meeting. The minutes of the meeting shall also record a confirmatory statement that none of the TPC members have any personal interest in any of the participating company/ agencies. Status of compliance/ deviations from tender clauses in the form of CST that was considered by the TPC in its deliberations shall be recorded.

g) Consideration of Lack of Competition in OTE/ GTE and LTE:

Sometimes, against advertised/limited tender cases, the procuring entity may not receive a sufficient number of bids and/or after analysing the bids, ends up with only one responsive bid – a situation referred to as ‘Single Offer’. As per Rule 21 of DFPR (explanation subpara), such situation of ‘Single Offer’ is to be treated as Single Tender. It has become a practice among some procuring entities to routinely assume that open tenders which result in single bids are not acceptable, and to go for re-tender as a ‘safe’ course of action. This is not correct. Re-bidding has costs: firstly the actual costs of retendering; secondly the delay in execution of the work with consequent delay in the attainment of the purpose for which the procurement is being done; and thirdly the possibility that the re-bid may result in a higher bid. Even when only one Bid is submitted, the process may be considered valid provided following conditions are satisfied:

- i) The procurement was satisfactorily advertised and sufficient time was given for submission of bids.
- ii) The qualification criteria were not unduly restrictive; and

- iii) Prices are reasonable in comparison to market values

2.20 Discounted Cash Flow technique for evaluation of price bids

- a) There may be situations when suppliers may not agree to the standard payment terms of factories and insist on their own payment terms. Since payment terms have financial implication, proper evaluation of the offers becomes difficult when the payment terms differ from bid to bid. In such situations, the Discounted Cash Flow technique can be effectively applied for determining the L1 status. The DCF is the method of evaluation by which cash outflow of the future are discounted to current levels by the application of a discount rate (as per Prime Lending Rate of RBI on the last day of submission of bid), with a view to reducing all cash flow to a common denomination to enable comparison.
- b) Evaluation of price bids is done by calculating the Net Present Value (NPV) of the quoted cash outflows and evaluating the L1. DCF technique can also be utilised to evaluate offers when the deliveries/ payments are spread over multiple years and the quoted price varies year-to-year.
- c) Evaluation using NPV involves the following steps (i) selection of the discount rate (ii) identifying the cash out flows to be considered in the analysis (iii) establishing the timing of the cash outflow (iv) calculating NPV of each alternative (v) selecting the offer with the least NPV. Discounting rate to be used in the calculation is the PLR of RBI on the last day of submission of bid.
- d) When bids are received in the same currency the cash outflows can be structured by (i) excluding the unknown variables like escalation factors, etc., for determining the cash outflow (ii) considering the cash outflows as per the schedule indicated in different bids (the tender should provide a clause that the bidder shall indicate the cash outflow schedule in the offer) (iii) calculating the NPV of different bids (iv) selecting the bid with the lowest NPV as the L1 bid. If the bids are received in the different currencies the cash outflows can be structured as above after the cash outflows indicated in the various bids are converted to INR. The BC (Base Currency) selling rate of the Parliament Street Branch of SBI, New Delhi on the last date of the submission of bids shall be taken as the exchange rate. Any standard software, pre-loaded may be used for the NPV analysis.

2.21 Resultant Single Tenders

a) There are instances when only a single quote or a single valid acceptable quote is received against LTE or OTE. Such situations may arise in single bid tendering as well as in two-bid tendering (before or after technical evaluation). In such circumstances indicating lack of competition, the following aspects shall be examined:

- (i) 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.
- (ii) Whether the tender had been properly dispatched to prospective vendors.
- (iii) Whether the specifications, particularly in the LTE cases, could be reformulated and made broader based to generate wider competition.
- (iv) Whether time and criticality of requirement permits reformulation of the specifications.

b) If the examination reveals that (i) & (ii) have been complied with, and (iii) & (iv) are not feasible, then the proposal may be processed further by the appropriate TPC as per the DFP. If there is any doubt about the tendering process or it is considered feasible to reformulate specifications without compromising on operational requirement, the tender should be retracted and re-issued after rectifying the deficiencies and (or) reformulating the specification.

2.22 Option Clause

a) Suitable condition of Option Clause to be incorporated in all the Tender Enquiries. Under this clause, the purchaser retains the right to place orders for an additional quantity up to a specified percentage of the originally contracted quantity at the same rate and terms of the contract, during the currency of the contract. This clause and percentage should be part of the Bid Document and the contract and ideally should not exceed 25%. Whenever further requirement of the stores under procurement exist against quantities of outstanding Contracts/agreements then it may be advantageous to have an option clause in the contract. Therefore, in all

such cases where regular repeated requirements exist, provision for 25% option clause, shall be made in the tender/ contract and may be exercised till final delivery period (or the extended delivery period of the contract). The option clause can be exercised (if necessary more than once) provided the cumulative of the option clause quantities exercised does not exceed the option clause quantity provided in the contract.

- b) All tenders (where subsequent requirement of the item being purchased, exists or is expected) should include a provision for an option clause stating “the purchaser (during the original DP or the extended DP, if any DP extension/ re-fixation are granted) retains the right to exercise an option to increase the ordered quantity up to a maximum option clause quantity of the originally contracted quantity at the same rate and terms of contract”.
- c) The purchaser may operate the option clause within the original DP as well as Re-Fixed/Extended DP subject to (i) there being a requirement for the item (ii) incorporation of Option clause in the contract (iii) there being no downward trend in price (consent of the supplier is not necessary) or if there is a downward trend, the supplier agreeing to reduce the price for the enhanced quantity duly matching with the fall in prices, and (iv) when the store is urgently required for meeting production targets.
- d) In case of a downward trend and the supplier agreeing for a matching reduction in prices for the enhanced quantity, the TPC, before exercising the option clause, should carry out the necessary due diligence and unambiguously record that the reduced price is reasonable. While carrying out assessment of downward trend, if any, provisions of the para 5.23 and 5.24 shall be considered.
- e) In contracts with PV formula, the PV formula being the terms & conditions of the contract, shall apply during the Option Clause period also.
- f) Option Clause has a price implication, therefore, in multi-vendor situations, to provide a level playing field to all vendors, if the tender specifies an Option Clause, bids received without compliance to the same shall be considered as unresponsive. This shall be clearly mentioned in the tender document. In case none of the participating vendors have complied to the OC, then the concerned TPC, after due deliberations, may consider

all the bids as responsive on the principle of equitable treatment of vendors.

g) Option Clause can be exercised in case of STE/PAC/SKS also.

h) There should be no option clause in Development orders.

2.23 Retendering

a) Retendering may be resorted to under the following circumstances:

- (i) None of the offer(s) conform to qualitative requirements and other terms & conditions set out in the tender.
- (ii) There are major changes in specifications and quantity that may have considerable impact on the price.
- (iii) 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.

b) If the bidder, whose bid has been found to be the lowest evaluated bid withdraws or whose bid has been accepted, fails to sign the procurement contract as may be required, or fails to provide the security as may be required for the performance of the contract or otherwise withdraws from the procurement process, the Procuring Entity shall re-tender the case. While retendering TE may not be issued to the vendor who had backed out and EMD, if any, of such a firm should be forfeited. Further General Managers/ Heads of Establishment may issue a show cause notice to the defaulting firm, and after considering the reply received thereto, can impose penalty as per existing guidelines on penalties issued by TCLHQ Letter No. TCL/Finance/Policy/2022-23, dated: 27.09.2022.(refer Annexure-14)

c) If retender is unavoidable in an OTE/ SDOTE for procurement of MTO items, then (to reduce time) after recording reasons, retender can be issued to the firms that qualified in the capacity verification in the initial OTE/ SDOTE, provided the time span between the initial OTE/ SDOTE and the retender is not more than 6 months. Subsequent retenders, if any, shall be OTE/ SDOTE as applicable.

d) When retendering is decided due to unreasonable rates, negotiation may be held with the firm for supply of the bare minimum urgent/ inescapable requirement, if retendering 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. The balance quantity should, however, be procured expeditiously through retender following the normal tendering process.

2.24 Cartel Formation/ Pool Rates

a) Sometimes a group of bidders act in collusion to manipulate the tender process. Cartels normally attempt at manipulating the price and (or) the quantities. Pool/ Cartel formation is against the basic principle of competitive bidding as it defeats the very purpose of open and competitive tendering system. Such practices should be severely discouraged with strong measures. In cases where the firms have formed cartel, the offers may be rejected, and the colluding firms shall be issued show-cause notice and their reply examined. Thereafter, based on the merits of the case, action may be taken as per existing guidelines on penalties issued by TCLHQ Letter No. TCL/Finance/Policy/2022-23, dated: 27.09.2022. Suitable provision in this regard should be made in the tender documents. Besides, suitable administrative actions can be resorted to, such as rejecting the offers, reporting the matter to trade associations, the Competition Commission or NSIC, etc., and requesting them, inter-alia, to take suitable strong actions against such firms. New firms may also be encouraged to get themselves registered for the subject goods to break the monopolistic attitude of the firms forming a cartel. Changes in the mode of procurement (GTE instead of OTE) and packaging/slicing of the tendered quantity and items may also be tried. A warning clause may also be included in the bid documents to discourage the bidders from indulging in such practices. Detailed guidelines issued by the Competition Commission of India may be kept in mind while deliberating on the issue of Cartel formation/Bid Rigging/ Competition in bidding etc.

b) Where cartel/ collusion is suspected but not confirmed, then to break the possible anticompetitive efforts, tender shall specify that bids offering less than 50% of the tendered quantity shall be considered unresponsive. In addition the tendered quantity may be distributed in the ratio 60:40 or 50:30:20. Where feasible, the possibility of procuring the item on advertised

tender instead of LTE should be explored. Further, the source development efforts for the item should be stepped up.

c) Where cartel/ collusion is suspected but not confirmed, then to break the possible anticompetitive efforts, the provision to decide L1 “run L1” as given in GeM may also be implemented. Further, the source development efforts for the item should be stepped up.

2.25 Placement of Order on more than One Firm due to Strategic Reasons

In case of critical/ vital/ safety/ security nature of the item, large quantity under procurement, urgent delivery requirements and inadequate vendor capacity it may be advantageous to decide in advance to have more than one source of supply. In such cases a parallel contract clause should be added to the bid documents, clearly stating that Procuring Entity reserves the right to split the contract quantity between suppliers. The manner of deciding the relative share of lowest bidder (L1) contractor and the rest of the contractors/tenderers should be clearly defined, along with the minimum number of suppliers sought for the contract. In case of splitting in two and three, the ratio of 70:30; 50:30:20, respectively, may be used. A different ratio may also be justified.

Before splitting the quantity, it should be ensured that the L1 price is reasonable. If it is not reasonable, negotiation with the L1 party may be carried out, if justifiable, with the approval of the CA. The following guidelines are to be considered while opting for parallel contracts:

- i) L1 should be awarded at least the percentage mentioned above or his spare supply capacity, whichever is lower; and
- ii) For the rest of the contract quantity, the lowest rate accepted will be counter offered to the L2 party. On acceptance of the counter offer, the order will be placed on L2 for the respective percentage or the spare supply capacity of the L2 bidder, whichever is lower, and so on, to other tenderers. In case of non-acceptance of the counter offer by the L2 party, a similar offer shall be made to L3 and L4, and so on.
- iii) If the bidder does not accept the counter offered L1 rate, then such undistributed quantity shall revert back to L1 bidder.

2.26 Samples

In case as a part of specifications, certain indeterminable parameters such as shade, tone, make-up, feel, finish and workmanship etc. are there, the submission of tender sample at the time of technical evaluation may not be insisted upon. In such cases, the procurement entity may consider procurement of such items on the basis of detailed specifications. If required, provision for submission of an advance sample by successful bidder(s), may be stipulated for such indeterminable parameters before giving clearance for bulk production of the supply.

2.27 Entire and Severable Contracts

a) A contract in the sale of goods to be delivered by instalments may be either (i) an entire contract or (ii) a severable contract.

Illustrations

(i) Entire contract: Delivery to commence after 45 days and completion within 3 months @ 20,000 units per month i.e. 31.03.2018 or earlier.

(ii) Severable contract: Delivery date-7410 units by 15.02.2018; 8510 units by 31.03.2018.

b) In the case of a severable contract, each instalment constitutes a separate contract and extension in delivery period would be necessary for each instalment separately. If stores are accepted after expiry of the delivery date of a particular instalment without extension in delivery period being given with reservation of right to liquidated damages the purchaser will not be legally entitled to claim the liquidated damages. Therefore, in contracts with delivery in instalments (i.e. the severable contracts) purchase officers should watch the delivery position of each instalment against the specified delivery date, and whenever necessary, grant extension in delivery period if there is delay in supplies against the individual instalments or cancel that instalment.

2.28 Integrity Pact

Integrity Pact should be signed between the purchaser and the bidder as per provision and format placed in Annexure-7(A) and Annexure-7(B).

Integrity Pact is a tool to help Governments, businesses and civil society to fight corruption in public contracting. It binds both buyers and sellers to ethical conduct and transparency in all activities from pre-selection of bidders, bidding and contracting, implementation, completion and operation related to the contract. This removes insecurity of Bidders, that while they themselves may abjure Bribery, but their competitors may resort to it and win contract by unfair means.

“The pact essentially envisages an agreement between the prospective vendors/bidders and the buyer, committing the persons/officials of both sides, not to resort to any corrupt practices in any aspect/stage of the contract. Only those vendors/bidders, who commit themselves to such a Pact with the buyer, would be considered competent to participate in the bidding process. In other words, entering into this Pact would be a preliminary qualification. The essential ingredients of the Pact include:

- 1) Promise on the part of the Procuring Entity to treat all bidders with equity and reason and not to seek or accept any benefit, which is not legally available;
- 2) Promise on the part of bidders not to offer any benefit to the employees of the Procuring Entity not available legally and also not to commit any offence under Prevention of Corruption Act, 1988 or Indian Penal Code 1860;
- 3) Promise on the part of Bidders not to enter into any undisclosed agreement or understanding with other bidders with respect to prices, specifications, certifications, subsidiary contracts, etc;
- 4) Undertaking (as part of Fall Clause) by the Bidders that they have not and will not sell the same material/ equipment at prices lower than the bid price;
- 5) Foreign bidders to disclose the name and address of agents and representatives in India and Indian Bidders to disclose their foreign principals or associates;
- 6) Bidders to disclose the payments to be made by them to agents / brokers or any other intermediary;

- 7) Bidders to disclose any past transgressions committed over the specified period with any other company in India or Abroad that may impinge on the anti corruption principle;
- 8) Integrity Pact lays down the punitive actions for any violation;
- 9) **Integrity Pact (IP) would be implemented through a panel of Independent External Monitors (IEMs):** shall be appointed by the organization in consultation with Central Vigilance Commission. Names and contact details of the Independent External Monitor(s) should be listed in Notice Inviting Tender (NIT). The IEM would review independently and objectively, whether and to what extent parties have complied with their obligations under the Pact. Names and contact details of the Independent External Monitor(s) should be listed in Notice Inviting Tender (NIT).
- 10) **In tenders meeting the criteria of threshold value/ nature of procurement:** Integrity Pact clause and format should be included in the Bid Documents. Each page of such Integrity pact proforma would be duly signed by Purchaser's competent signatory. All pages of the Integrity Pact are to be returned by the bidder (along with the technical bid) duly signed by the same signatory who signed the bid, i.e. who is duly authorized to sign the bid and to make binding commitments on behalf of his company. Any bid not accompanied by Integrity Pact duly signed by the bidder shall be considered to be a nonresponsive bid and shall be rejected straightway.

2.29 Import Regulation

- a) Import is regulated by the Directorate General of Foreign Trade 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.
- b) 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.

2.30 Ground Rent

If the material supplied by the vendors is rejected at the factory premises, the vendor is required to lift the rejected material within 30 days of issue of rejection I-Note. The factories/units have right to recover a charge for the storage space at @1% of the cost of material un-cleared, per week or part thereof, with maximum ceiling of 10% of value of the items. After lapse of 10 weeks, if it is found that firm has not taken any action for lifting of items, the goods may be confiscated and disposed off as per disposal procedure in vogue after sending a notice and giving 30 working days time to the firm. A specific provision should be made in the tender documents to the effect that ground rent be calculated from the date of expiry of the period of removal of item. No ground rent should be charged from Central/State Govt/Central PSUs. When the firm fails to pay the applicable ground rent within the prescribed period, factory is entitled to recover the ground rent due and all incidental expenses from EMD/PSD. The financial power for exemption of Ground Rent as provided in DFP TCL to be followed.

2.31 General Instructions to Bidders

- a) Subject to other specific provisions in this Manual, the broad instructions for the prospective bidders to be incorporated in Tender Documents as in following paragraphs.
- b) A firm registered with TCL 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 by a duly constituted capacity verification team.
- c) A prospective bidder who requires clarification regarding the contents of the bidding documents shall notify the purchaser in writing, and the purchaser shall respond in writing to the clarifications well ahead of the tender opening date. Copies of the query and clarification by the purchaser shall be sent to all prospective bidders who have received the bidding documents. Last date for asking queries/clarification by the bidder is to be mentioned in the tender documents.

- d) Bids should be forwarded by bidders under their original memo /letter pad, inter alia, furnishing the TIN No., GSTIN, Bank Address with NEFT/RTGS account No., IFS Code and the complete postal and e-mail address and contact number of the firm.
- e) 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 in such cases but not less than 5 working days after the amendment.
- f) A bid shall remain valid for ninety days in case of single bid tender and one hundred eighty days in case of two-bid system, from the date of the opening of the tender, unless otherwise specified. A bid valid for shorter period can be rejected by the purchaser as being nonresponsive, after giving the bidder an opportunity to comply to the tender specified validity period. 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.
- g) 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) shall not be considered and returned unopened to the bidder.
- h) 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 email 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.

i) 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.

j) Enlistment of Indian Agents: Factories under TCL, if they so require, may enlist Indian agents, who desire to quote directly on behalf of their foreign principals as per amended Rule 152 of GFR 2017 (MoF letter No. F.26/2/2016-PPD dated 25.07.2017).

k) One agent cannot represent more than one OEMs/ Principals or quote on their behalf in a particular tender enquiry.

2.32 Instruction to Purchase Officers

a) Subject to other specific provisions of this Manual, the broad instructions for the purchase officers are contained in the following paragraphs.

b) Vendors shall be 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/ Collaborator approver/ recommended vendors for new items
- (vi) Banned / Suspended vendors

c) 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 supporting documents, etc. specified in the

tender have been furnished; whether the bid documents have been properly signed; and, whether the bids are generally in order.

d) 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.

e) Prior to detailed evaluation, the purchaser should determine the substantial responsiveness of each bid with respect to the tender. A substantially responsive bid is the one that conforms to all terms & conditions of the bid documents without material deviations. Deviations from/ objections/ reservations to critical provisions like earnest money, performance security, liquidated damages, warranty/ guarantee, applicable law, taxes & duties, non-submission of documents such as valid agency agreement, etc should be deemed to be material deviations.

f) The evaluation and comparison of responsive bids (where only Indian bidders are participating) shall be done on the prices of the goods offered and other charges such as Packing & Forwarding, Freight and Insurance, AMC, etc., as indicated in the price schedule of the Bid documents but excluding levies, taxes and duties such as GST etc on final product, which are to paid extra as per actual, wherever applicable against documentary evidence.

g) Contract shall be awarded to the successful bidder whose bid has been determined to be (i) substantially responsive (ii) the lowest evaluated bid (iii) technically & financially acceptable, and (iv) successful in type approval/ validation tests (where applicable) done by the purchaser. The purchaser reserves the right to counteroffer price (s) against price (s) quoted by any bidder.

h) No tender condition shall be waived or relaxed after issue of TE as this may result in denial of opportunity to firms that could have met the revised condition had this been reflected in the TE ab-initio. This is particularly relevant in 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 that could have submitted their bids as per the revised parameters but did not do so because of the essential parameters mentioned in the TE.

- i) 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 may 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.
- j) In two bid system technical clarifications may be obtained after opening of technical bids. However, no revision of the financial bids should be permitted after opening of technical bids.

2.33 Procurement through iDEX initiative

2.33.1 In addition to regular R&D activities, DDP has set up Innovations for Defence Excellence (iDEX) initiative under the Defence Innovation Organization (DIO) to use a multi-pronged approach and reach out/engage a large pool of innovations/technocrats/professionals/academicians including amongst the smaller enterprises, start-ups and MSMEs, to foster innovations in a coherent, strategized, and integrated manner. Details of the program are available on the website www.iDEX.gov.in.

2.33.2 Projects under this framework shall involve development of Equipment's/System/Store/Components/and other basic materials including Technical Textiles having business potential.

2.33.3 After submission of Problem Statements (PS) by TCLHQ for any store/services to iDEX with quantitative requirements, a Purchase Order may be placed by the concerned factory on iDEX winner on nomination basis (Single Tender Enquiry) as per latest Delegation of Financial Power (at present Sl. No. 1 & 1b (iv)) by the relevant TPC with price justification for the specified quantity.

2.33.4 iDEX is funded & managed by Defence Innovation Organization (DIO). Following may be considered for induction of the iDEX products arising out of the development work towards the associated challenge posed under iDEX:

- a) The products developed for TCL by any Innovator/ Start-up/ Company under iDEX initiatives need to be treated at par with Proprietary sources and taken up for procurement under that category.

b) In case more than one Innovator/ Start-up/ Company has accepted the challenge and accomplished the same successfully, the procurement would be done on limited tender basis restricting the tender to such successful Innovator/ Start-up/ Company.

c) In case any challenge proposed by Services is realized and concerned Services place an RMSO (Repair Maintenance & Supply Order) along with recommended iDEX sources, the same could be handled under Customer Nominated category.

2.34 Minimum Order Quantity

In case some of the bidders offer MOQ higher than the RFQ quantity for any item (particularly in R&D cases and for meager quantity) then the following may be considered;

a) If the MOQ offered results in excess qty. less than or equal to 20% of tender qty. then L-1 should be determined based on the unit price in respect of tenders for single item.

b) If the MOQ offered results in excess qty. more than 20% of tender qty. and the tender is for more than one item then the L-1 should be determined by making comparison of the total price (MOQ x unit price) with the total price of other bidders for RFQ quantity separately for each line item.

c) In case MOQ offered by the vendors for an item is a combination of less than 20% and more than 20%, then the evaluation of the bids should be done based on total price as per (b) above.

For additional quantity due to MOQ, separate approval from Sr. GM/GM is required and case to be processed by the respective CFA based on the finalized MOQ.

Chapter 3

THE TENDER PROCESS

3. The Tender Process

3.1 Tendering

a) Preparation of the Tender Enquiry is the most critical stage in the procurement process. Careful and meticulous preparation of the TE can eliminate subsequent complications and the associated delays, thereby, enhance the efficiency of the procurement process. TE should unambiguously contain all the techno-commercial details of the procurement, and shall include amongst others, clauses clearly bringing out the complete specifications/ scope of requirement, technical & financial evaluation criteria, payment terms, PV formula (if applicable), inspection, delivery schedule & basis, warranty, liquidated damages, earnest money, performance security, arbitration, etc., apart from clear instructions to the bidders on how to submit his bid.

b) Standard tender documents shall be used as per Annexure. If any special condition (s) is required to be added (including indicating the option that will apply in the tender in respect of clauses of the standard tender document containing multiple options) these shall be indicated in the additional instructions/ conditions of the tender, and the contractor's unqualified acceptance obtained thereof before incorporating the same in the supply order. Additional conditions should not replicate any of the clauses of the general conditions, and wherever the additional conditions are indicated, it should be made clear that the additional condition is in lieu of the specific general condition (to be indicated).

3.2 Publicity of Advertised Tenders

a) Printed Advertisement (in the form of a Tender Notice) in leading newspapers relating to OTE through DAVP/ Indian Trade Journal has been discontinued and replaced with mandatory e-publishing of advertisement on CPP portal, e-procurement portal and GeM (for items available). Any unit still feels that the advertisement should be published in newspaper, a request for DAVP should be sent in a signed letter stating that competent authority of Factory has approved publication of newspaper advertisements. In such

cases, only window advertisement will be published. All TEs, RFPs, EoI, Notice for pre-Qualification/Registration or any other notice inviting bids or proposals in any form whether they are advertised, issued to limited number of parties or a to a single party will be uploaded in CPP portal at www.eprocure.gov.in and/or on TCL e-procurement portal and/or on GeM (for items available).

b) GTE, in addition to above, may be sent to the selected Indian Embassies abroad as well as to the Foreign Embassies in India requesting them to give wide publicity of the requirement in those countries. They may also be requested to put the tender notice on their web sites. In Embassies and High Commissions where Defence Attachés are posted, the GTE notice may be sent to the Defence Attachés for giving publicity. The selection of the embassies will depend on the possibility of availability of the required stores in such countries. Copies of the GTE may also be sent to known OEMs.

3.3 Notice Inviting Tender

The tender notice for an advertised tender should be carefully drafted. It should contain all essential features in brief to give a clear idea to the prospective bidders about the requirements. Superfluous or irrelevant details should not be incorporated in the tender notice as it will not only increase the cost of the advertisement but may also restrict competition. Tender Notice should normally contain:

- (i) Description and specification of the goods and quantity
- (ii) Period and terms of delivery
- (iii) Cost of the tender/ bidding document
- (iv) Place(s) and timing of sale of tender documents
- (v) Place and deadline for receipt of tenders
- (vi) Place, time & date for opening of tenders
- (vii) Amount & Form of Bid Security/ Earnest Money Deposit
- (viii) Web-address for downloading tender documents
- (ix) Any other important information

3.4 Sale of Tender Documents

- a) Tender documents should preferably be sold up to one day prior to date of opening of tenders and should be clearly indicated in the documents. The sale of tender documents against advertised tenders should not be restricted. Records shall be maintained about the number of tender documents issued, list of parties to whom issued and details of the amount received through issue of the tender document.
- b) Complete set of the tender documents should be posted on the web site and prospective bidders shall be permitted to use the document downloaded from the web site. In e-procurement and where tender documents are downloadable, cost of tender documents need not be charged. Such documents must be secured to control/ restrict access as well as avoiding possibility of modification.
- c) Price of the manual tender document should be charged at the rate of Rs. 200/- as stationery cost. MSEs (Micro and Small enterprises) having UAM number shall be exempted from payment of tender fee.
- d) Cost of drawings and specifications will be extra, if required.
- e) In advertised tenders, the NIT and/ or tender documents may also be sent to (i) all suppliers registered for the particular range of items and (ii) to the known OEMs, through post or e-mail, through e-portal.

3.5 Despatch of tender documents

Bidding document may be sent to vendors through speed post/ registered post/ courier/ email/ fax. When bidding documents are sent to firms through email/ fax, copies of the same should also be sent by registered post.

3.6 Format of Tender

The bidders are to furnish their quotations as per the prescribed format and instructions incorporated in the tender documents. Fax quotations shall not be accepted.

3.7 Time for submission of bids

- a) Ordinarily, the minimum time allowed for submission of bids in an advertised tender should be two to three weeks from the date of publication of the tender notice or availability of the bidding document available on e-portal for sale, whichever is later. Where it is contemplated to obtain bids from abroad, the minimum period should be four weeks for both domestic and foreign bidders. For reasons to be recorded and without compromising on transparency and fairness, a reduced time frame for submission of bids can be adopted in case of urgency by Vendor Selection (VSL) TPC.
- b) In LTEs sufficient time, normally one to two weeks, should be allowed for submission of bids. For perishable goods or consumables a reduced time frame may be adopted.

3.8 Amendments/ Modifications to Tenders

The bidder, after submitting its tender, is permitted to submit alterations/ modifications to its tender so long such alterations/ modifications are received duly sealed and marked like original tender, up to the original/modified tender closing date & time. Any amendment/ modification received after the prescribed original/modified tender closing date & time, should not to be considered.

3.9 Extension of Tender Opening Date

- a) Sometimes, situations may necessitate modification of the tender documents already issued (in LTEs) or already put on sale (in OTEs). Also, after receiving the documents, a bidder may point out some genuine mistakes necessitating amendment in the tender documents. In such situations, it is necessary to amend/ modify the tender documents suitably prior to the date of submission of bids. Copies of such amendment/ modification should be simultaneously sent to all the selected suppliers by registered/ speed post/ courier/ e-mail in case of LTE. In case of OTE, the copies of such amendment / modification are to be simultaneously despatched, free of cost, by registered/ speed post/ courier/ e-mail, to all the parties who have already purchased the tender documents and copies of such amendments are also to be prominently attached in the unsold sets of the tender documents (which are available for sale), including the tender documents put in the web site.

b) When the amendment/ modification changes the requirement significantly and (or) when there is not much time left for the bidders to respond to such amendments, and prepare revised tender, the time and date of submission of tenders are also to be extended suitably but not less than five working days, 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.

c) There may also be situation where adequate response has not been received in a tender, in such cases also the CFA of respective TPC may after duly recording the reasons, extend the tender opening date.

3.10 Prequalification in advertised tenders

a) Prequalification in advertised tenders is a process to select competent suppliers having technical and financial capability commensurate with the requirements of the particular procurement (Project/ supply of goods/ hiring of services). The prerequisites of the prequalification process are (i) transparency (ii) fairness and (iii) maintenance of competition.

b) The purpose of prequalification procedure is to attract the participation of reputed & capable firms with proven track record and ensure that only capable firms are left in the fray. Therefore, it should be ensured that the prequalification criteria are exhaustive, yet specific, and there is fair & adequate competition. It should be ensured that the prequalification criteria are clearly stipulated in unambiguous terms in the bid documents.

c) Prequalification shall be based entirely upon the capability and resources of prospective bidders to perform the particular contract satisfactorily, taking into account their

- (i) Experience and past performance on similar contracts for last 3 years.
- (ii) Capabilities with respect to personnel, equipment and manufacturing facilities.

(iii) Financial standing through latest IT returns, Annual Report (Balance Sheet and Profit & Loss Account) of last 3 years.

d) The quantity, delivery and value of the requirement shall also be kept in view while fixing the prequalification criteria. No bidder should be denied prequalification for reasons unrelated to its capability and resources to successfully perform the contract.

3.11 Pre-bid Conference

In case of turn-key contract, contract of special nature, complex procurement, etc., a suitable provision may be kept in the tender enquiry document for a pre-bid conference for clarifying issues and clearing doubts, if any, about the specification and other allied technical/ evaluation/ commercial details of the item projected in the tender enquiry document. The date, time and place of pre-bid conference should be indicated in the tender enquiry document for information of the interested bidders. This date should be sufficiently ahead of tender opening date.

3.12 Receipt and Custody of Tenders

a) Receipt and custody of tenders shall be done in a transparent manner. To ensure that the bids are received by the purchaser in time, a tender box (s) 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.

b) 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.

3.13 Reference to Brands in TE

Broad-based specifications, use of industry standards in the specification, etc., will promote healthy competition in procurement. Therefore, a specific brand or catalogue number of a brand, etc. should not be referred to in the tender. However, in some unavoidable situations if it is

essential to buy an item of a specific brand name, then LTE shall be issued to all known authorized dealers for that brand.

3.14 Opening of Tenders under Single Bid System

- a) All tenders received on time in sealed envelope should be opened in the presence of authorized representatives of the bidders at the prescribed time, date and place by the official/ Tender Opening Committee, to be nominated by the CFA in advance. The authorized representatives, who intend to attend the tender opening, would be required to bring with them letters of authority from the bidders 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, initialled 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 initialled by them with date, particularly the prices, delivery period etc., which should also be circled and initialled indicating the date. Blank tenders, if any, should be marked accordingly by the tender opening officials.
- d) The official (s) opening the tenders shall encircle and initial with date & time alterations/ erasing/ cutting, if any found in the opened tenders, to authenticate that these were present in the tenders at the time of opening.
- e) The tender opening official(s) should prepare the list of representatives who attended the tender opening and obtain the signatures of the representatives on the list. The list should contain the name of the representative and the name & address of the firm he is representing. Authority letters furnished by the representatives should be attached with this list. This list should be signed by both the tender opening official(s) with date & time and handed over to the procurement officer and acknowledgement obtained for the same.
- f) The tender opening official (s) shall also prepare an on-the-spot report containing the names of the bidders (serial number wise) salient features of

the tenders, as read out during public opening of tenders and affix their signature on the report with date and time. This, along with the tenders that have been opened, shall be handed over to the procurement officer.

3.15 Opening of Tenders under Two Bid System

The procedure laid down in the preceding paragraph should be followed mutatis mutandis under two bids system also but only the technical bids should be opened in the first instance. Financial bids of only technically acceptable bidders should be opened after evaluation of the technical bids and approval of the TEC report by the CFA. The financial bids of bidders whose bids are not found technically acceptable shall be returned back to the bidders unopened.

3.16 Late Tenders and Unsolicited Offers

a) Tenders or modifications to tender received after the specified time for submission shall be treated as 'Late' tenders and shall be marked as "Late tender". Similar action should be taken in late quotations are received through post, i.e. the officer should mark these tenders as "Late tender" and file them. Late tenders shall not be opened but shall be kept sealed in their original envelopes and returned back to the firm.

b) Unsolicited offers shall be summarily rejected. Such quotations may be entered, in red ink, in the Comparative Statement of Tenders below all the regular tenders. Receipt of late tenders, if any, (which shall not be opened) shall also be entered in the Comparative Statement of Tenders below all the regular tenders in red ink.

3.17 Force Majeure

a) Force majeure means an event beyond the control of the supplier and not involving the supplier's fault or negligence, and which is not foreseeable. Such events may include, but are not restricted to, acts of the purchaser either in its sovereign or contractual capacity, wars or revolutions, hostility, acts of public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restrictions, strikes, lockouts, freight embargoes, acts/ actions of state authorities or any other circumstances beyond the control of the parties. If there is delay in performance or other failures by the supplier to perform its obligation under its contract due to an event of Force Majeure

occurring after conclusion of the contract, then the supplier shall not be held responsible for such delays/ failures.

b) If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such conditions and the cause thereof within 21 days of occurrence of such event (commencement as well as cessation of the force majeure event). Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event. If the performance in whole or in part or any obligation under this contract is prevented or delayed by any reason of force majeure for a period exceeding 60 days, either party may at its option terminate the contract without any financial repercussion on either side.

c) In contracts on foreign vendors, the 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.

d) There may also be a force majeure situation affecting only the purchaser. In such a situation the purchaser is to take up with the supplier on similar lines as above for further necessary action.

Chapter 4

INSPECTION AND DELIVERY

4. Inspection and Delivery

4.1 Inspection

a) Before accepting the contracted goods, it must be ensured that the goods have been manufactured as per the required specifications and are capable of performing the functions as specified in the contract. Accordingly, the tender document and the consequent contract shall unambiguously specify complete details of inspection/ tests to be carried out and the stages/ manner for carrying out the same. The details of the Inspecting Authority shall also be incorporated in the tender documents.

b) The stages and modes of inspection will depend on the nature of the goods, total value of the contract, location of the supplier, location of the user, etc. The commonly followed mode of inspection is given in the following paragraphs. Generally stage inspection should not be insisted upon unless the item is of critical nature.

4.2 Inspection at Supplier's Premises

a) Normally inspection at supplier's premises may either be Stage Inspection, if the inspection is conducted during the manufacturing process or Pre-despatch Inspection, if the inspection is conducted on the finished products prior to despatch from supplier's premises. In import procurements with Inspection at the supplier's premises, the TE shall mention the scope of such inspection, the likely number of such inspections, the composition of the inspection team and duration of inspections.

b) The stores shall be inspected in accordance with the provisions of the contract. Where inspection at the supplier's premises is specified, the seller will give the buyer sufficient advance notice (in writing) of the date on which the goods will be ready for inspection. The seller will also provide the buyer's 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. The buyer shall not be liable for payment for any rejected supplies or any costs of inspection thereof. 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. The decision of the inspector regarding mode, method, rejection or acceptance of the specified items/ entire batch/ lot will be final.

d) The buyer reserves the right to inspect the stores on receipt and discrepancy or defects found shall be reported to the Seller within a period specified in the contract and the seller shall rectify the same within a period specified in the contract on receiving the intimation.

4.3 Acceptance of Stores against Supplier's Inspection Report and Warranty

a) Often in case of stores to be imported from abroad, pre-despatch inspection of goods at supplier's premises involves considerable expenditure to the purchaser. In such a situation, if feasible, the purchaser may substitute the pre-despatch inspection by the purchaser's inspector with the manufacturer's in-house inspection report and warranty. However, before adopting this procedure, the nature and cost of the goods ordered, the reliability of the supplier, etc. shall be kept in view and appropriate decision taken. For checking the reliability and background of the supplier, if necessary, the purchase organization may also request the Indian Embassy located in that country for a report on the technical/ financial competence of the firm. Further, reliable publications/internet sources that provide authentic technical & financial data and details of the manufacturing companies located in those countries, such publications may also be relied upon for this purpose.

b) Acceptance of stores against the supplier's Inspection Report, if necessary, can also be resorted to in domestic procurements if the supplier is reliable.

4.4 Inspection at Consignee's Premises

In this mode the inspection is done on receipt of goods at the purchaser's site before accepting the same. Sometimes Joint Receipt Inspection at the consignee's premise, by the representatives of supplier and the buyer, may be considered necessary, in such cases the requirement shall be clearly specified in the tender/ contract. Depending on the nature of the store and its value, generally a Joint Receipt Inspection (JRI) may be necessary if stores have been provisionally accepted (i) against supplier's Inspection Report & warranty or (ii) Pre-despatch Inspection.

4.5 Inspection after Installation & Commissioning at Site

This method is adopted to check the performance and output of the equipment, machinery, sub-assembly, etc., after the same is installed & commissioned at site or assembled/ integrated with the main assembly.

4.6 Inspection Procedure

The inspection procedure shall be as per the provisions contained in the contract. After satisfactory inspection/ tests, the acceptable goods shall be stamped, labelled, marked or sealed, according to the circumstances in such a way as to make subsequent identification of accepted lots easy for the consignee/ user. Inspection Notes shall be issued in the prescribed format for the goods accepted. For goods, not meeting the contract requirements the rejection Inspection Notes shall be issued immediately.

4.7 Inspection of Goods offered at the fag-end/ on the last date of the Contract Delivery Period at Firm's Premises

Where feasible the supply order while mentioning the delivery period may also indicate the time required for inspection, so as to facilitate the supplier offering stores for inspection well in time. In cases where the supplier offers stores for inspection during the last few days of the contract delivery period or on the last day of the contract delivery period at firm's premises, the stores shall be deemed to have been supplied within the

delivery period as per supply order i.e no DP extension shall be required. In such cases, the inspection should be completed and I-Note may be issued at the earliest and vendor may be allowed to deliver the materials maximum within 30 days beyond the issue of I-Note. Delivery period extension will be required for the supplies beyond 30 days of issue of I-Note and/or full/ partial rejection of stores. As regards application of LD, refer the provision at paragraph 4.20 (b) & 4.22 of this manual. This provision may be included in the RFP/TE.

4.8 Purchaser's Right of Rejection

On many occasions, the stores received at factory's premises are in damaged condition or having deviations from the I-Note. Under such circumstances, Purchaser has the right to reject the goods on receipt at factory premises during final inspection after recording the reasons, although the goods have already been inspected and cleared at pre-despatch stage by the purchaser's inspector. However, such rejection should be strictly within the contractual terms & conditions and no new condition should be adopted while rejecting the goods during final inspection.

4.9 Acceptance of Goods vis-à-vis Warranty Provisions

Goods accepted by the purchaser at initial inspection and in final inspection in terms of the contract shall in no way dilute purchaser's right to reject the same later, if found deficient in terms of the warranty clause of the contract.

4.10 Joint Investigation against Complaints relating to Quality of Goods

In case a written complaint is received from the supplier disputing rejection of goods by the purchaser's inspecting officer, the same should be jointly investigated by an authorized representative of the purchase organization, who is well conversant with the goods and an authorized representative of the supplier. The joint inspection report shall be signed by both the members, and the matter processed accordingly for further necessary action.

4.11 Outside Testing Laboratories

Sometimes it becomes necessary to conduct type test, acceptance test or special test at outside laboratories when facilities for these tests are not available in-house with the supplier or carrying out of confirmatory tests is considered desirable before accepting the goods. In such cases the list of reputed testing labs whose reports are acceptable to the purchaser shall be indicated in the tender/ contract.

4.12 Delivery Period

a) Delivery as per delivery-schedule stipulated in the contract is crucial for timely positioning of stores required for production. Further, maintaining sanctity of the delivery-schedule specified in the contract will also avoid holding unnecessary inventories. To maintain the sanctity of the delivery schedule in the contract, in the first instance firms should be given realistic delivery-schedules duly taking into account their capacity to produce the store, which will eliminate repeated DP extensions that would otherwise become necessary. Therefore, procurement proposals should be initiated well in time and closely monitored after taking into consideration the provisioning period as defined in the paragraph 2.7, and the earliest time-frame when the store will be required for production. Further, in cases where a firm holds more than one supply order for the same item, it shall be ensured that deliveries against orders concluded at lower rates are made/ accounted for first.

b) The period for delivery of the ordered stores and completion of any allied service (s) thereof (like installation and commissioning of the equipment, etc.) should be properly specified in the contract duly indicating definite dates, and the same shall be deemed to be the essence of the contract. Expressions such as 'immediate', 'ex-stock', "as early as possible", 'off the shelf', etc. shall not be used to indicate contractual delivery period. Staggered deliveries (if relevant) should be clearly indicated in the tender/ contract, duly specifying unambiguously the date from which the delivery schedule will be reckoned (normally the date of signing of the contract). Where relevant, the contract should specify the date by which the stores shall be offered for inspection. 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 inspector certifies in writing that the stores have been inspected and approved by him.

c) The contract or any part thereof, if delivered in more than one instalment, shall be deemed to be complete, and the contract price for the delivered goods shall become payable to the seller (if permissible under the contract), only when all terms & conditions relevant to that delivery as per the provisions of the contracts have been completed.

d) Vendor may be allowed to deliver the materials maximum within 30 days beyond the issue of I-Note if material is offered for inspection at the fag end / last date of delivery period (in case of inspection at firm's premises). Delivery period extension will be required for the supplies beyond 30 days of issue of I-Note and/or full / partial rejection of stores. As regards application of LD, refer the provision at paragraph 4.20 (b) & 4.22 of this manual. This provision may be included in the RFP/TE.

4.13 Terms of Delivery

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

All importing Government Departments/ PSUs are now allowed to make their own shipping arrangements without needing to route their requirements through Chartering Wing of Ministry of Shipping

4.14 Relationship between the Terms of Delivery and the Date of Delivery

a) Delivery dates in respect of contracts incorporating standard and commonly used terms of delivery shall be deemed to be as follows (where mode is through airlift "Bill of Lading" would imply "Airway Bill"):

Terms of Delivery	Date of Delivery
Ex-Works	The date the supplier delivers the goods to the purchaser at its (supplier's) factory/ premises.
FOR, Station of Despatch (FOR - Free on Rail)	The date on which the goods are placed by the supplier on rail with clear RR (Rail Receipt).
FOR, Destination	The date on which the ordered goods reach the destination railway station specified in the contract.
CIP, Destination (CIP - Carriage and Insurance paid)	The date on which the delivery is made at the destination mentioned in the contract.
Local Delivery at Site	The date on which the delivery is made at the consignee's site mentioned in the contract.
FAS, port of shipment (FAS - Free Alongside Ship)	The date on which the supplier deliver the goods alongside the vessel at the specified port of shipment. This date is reflected in the Bill of Lading.
FOB, port of shipment (FOB - Free on Board)	The date on which the supplier delivers the goods on vessel's board at the specified port of shipment. This date is reflected in the Bill of Lading.
CIF, port of destination (CIF - Cost, Insurance and Freight)	The date on which the goods arrived at the destination port.

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

c) The contract (in imports) shall also clearly state that expenditure such as the cost of packing, internal transportation, fees of forwarding agents, warehousing charges, port trust, dock/ harbour dues and all other expenses, as may be incurred for the purpose up to the point of delivery of the stores as per the terms of delivery, shall be to the sellers account.

4.15 INCOTERMS

Unless otherwise specifically agreed to by the purchaser and the supplier and incorporated in the contract, the applicable rules & regulations for transportation of goods from foreign countries will be as per the contemporary version of International Commercial Terms (INCOTERMS) evolved by International Chamber of Commerce, Paris. INCOTERMS are the official rules for worldwide interpretation about the duties, obligations, etc. of the buyer and the seller for transportation of the goods from seller's country to buyer's country. INCOTERMS are recognized by the United Nations Commission on International Trade Law (UNCITRAL) as the global standard for such interpretation. Presently INCOTERMS 2020 shall be the criteria for sharing the responsibility by the buyer and the seller.

4.16 Air Consignment

As per the extant directive of the Government, airlifting of any goods from abroad will be done through the National Carrier i.e. Air India wherever available. However, before processing any contract involving import of goods through air, contemporary instructions in this regard may be ascertained and followed. In case the consignments are dispatched by vendors at their cost, the selection of Airline etc. will be at their discretion.

4.17 Insurance

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

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

4.18 Failure to Deliver within the Contract DP

When the supplies do not materialize by the delivery date (even after 30 days of issue of I-Note as stipulated in para 4.12.d), the purchaser has the options given below:

- i) Extending the delivery date with imposition of liquidated damages without concurrence of Finance.
- ii) Re-fixing the delivery date without LD with concurrence of Finance, by clearly recording reasons for arriving at the decision.
- iii) Forfeit the performance security and cancelling the contract and repurchasing the non-supplied quantity with concurrence of Finance.
- iv) Impose other available penalties under the contract as per penal provision in vogue with concurrence of Finance.

4.19 Re-fixation of Delivery Period

- a) Re-fixation of delivery period means arriving at a fresh delivery period by recasting the original contractual delivery period after taking care of the lost period, for which the supplier was not responsible. Re-fixation of delivery period should be done with the concurrence of Finance.
- b) Normally, in the following circumstances, the contractual delivery period needs to be re-fixed to cater for the lost period, without imposing any penalty to the supplier with concurrence of Finance.
 - i) Cases where the manufacture of stores is dependent on the approval of the advance sample and delay occurs in approving the sample though submitted by the supplier in time.

- ii) Where extension in delivery period is granted on account of some omission on the part of the purchaser which affects the due performance of the contract by the supplier.
 - iii) Cases where the buyer controls the entire production.
 - iv) Where the input (part or full) is to be provided by the buyer and there has been a delay in the part of the buyer in doing so.
- c) The delivery cannot be re-fixed to make a contract a 'severable' contract without the specific agreement of the supplier, if the delivery originally stipulated in the contract was in the form of an 'entire' contract.

4.20 Extension of Delivery Period

a) If the supplier is unable to complete the supply within the stipulated delivery period (including 30 days after issue of I-Note, in case of inspection at firm's premises), the supplier is required to request for extension of delivery period. If the contractual delivery schedule is decided to be extended then the same may be done by issuing an amendment to the contract with suitable denial clauses and right to impose liquidated damages for delay. The liquidated damages shall apply from the contracted delivery period. The amendment letter should mention, inter alia that, in addition to imposition of liquidated damages, no extra price or additional cost for any reason whatsoever beyond the contractual cost will be paid to the supplier for the delayed supply; at the same time, if for any reason, whatsoever the cost of the goods to be supplied/ services to be performed by the supplier decreases that benefit shall be passed on to the purchaser. Supplier's unconditional acceptance of the amendment by a specified date is to be watched and if the supplier does not agree to accept the amendment letter, further action is to be taken against the supplier in terms of the contract. CFA for granting delivery period extension, shall be as per DFP of TCL. When there is no downward trend in prices, and DP extension with LD is applicable, then financial consultation shall not be required. However, for DP extension without LD, financial consultation shall be required. If the last day of delivery period falls on a holiday, DP should automatically be extended to include next working day.

b) When there is downward trend in prices, advantage of the same should be taken while considering the request for extension of the delivery period in consultation with finance as given below:-

- i) Where the total cost differential on account of lower trend observed is less than the Liquidated Damages leviable (if the delay is attributable to the supplier), the delivery period may be extended with application of Liquidated Damages.
- ii) If the total cost differential on account of lower trend is more than the Liquidated Damage leviable (if the delay is attributable to the supplier), the lower price should be counter offered to the firm. If the firm accepts the counter offer, the delivery period shall be extended at lower price without Liquidated Damages. If the firm does not accept the lower price, the contract may be cancelled/short closed and appropriate action be taken to re-purchase the stores on priority keeping in view the requirement.
- c) While carrying out assessment of downward trend, if any, the provisions of para 5.23 and 5.24 shall be considered.

d) Franking Clause on Acceptance and Rejection

“The issue of this inspection/rejection report does not acquiesce or condone the late delivery and does not intend or amount to an extension of the delivery period or keeping the contract alive. The goods are being passed/rejected without prejudice to the rights of the Government of India under the terms and conditions of the contract.” This clause may also be incorporated in conditions of the contract.

4.21 Risk and Expense Purchase

a) Risk and expense purchase clause may be included in the TE and the contract, if considered necessary. Risk and Expense purchase clause is provided to safe guard against the eventuality of the supplier failing to honour the contract obligations. While initiating risk purchase at the cost & expense of the supplier, the purchaser must satisfy himself that the supplier has failed to deliver and has been given adequate & proper notice to discharge his obligations. When risk purchase clause is invoked the defaulting supplier is liable to pay the additional amount incurred by the Government, if

any, in procuring the said contracted goods/ services through a fresh contract (i.e. additional cost if any 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.

b) 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. In proprietary/ single known source items where it would not be possible to procure the item from any other alternate source, the contract should necessarily have other forms of safe guards like Performance Bank Guarantee instead of the risk purchase clause. Similarly in case of foreign contracts also, risk and expense clause is generally not feasible. The other remedies available to the purchaser in the absence of the Risk and Expense Clause are:

- (i) Deduct the quantitative cost of discrepancy from any of the outstanding payments of the supplier.
- (ii) Avoid issue of further TEs to the firm till resolution of the discrepancy.
- (iii) Obtain suitable Performance Bank Guarantee
- (iv) In import contracts, finally approach the Government of the supplier's country through the Ministry of Defence, if needed.

4.22 Performance Notice

There can be situations where supply/ services has not been completed within the period stipulated in the contract due to the negligence/ fault of the supplier, and the supplier has not made any request for extension of delivery period, and the contracted goods/ services are still required by the purchaser and the purchaser does not want to cancel the contract at that stage. In such a case, a Performance Notice (also known as Notice-cum-Extension Letter) may be issued to the supplier by suitably extending the delivery date and by imposing liquidated damages with denial clauses etc. Supplier's unconditional acceptance of the Performance Notice by a specified date is to be watched and if the supplier does not agree to accept the same, further action is to be taken against the supplier in terms of the contract.

4.23 Despatch of Goods after Expiry of Delivery Period

- a) As per the contract terms and subject to provision of 4.7 the supplier is not to supply the goods when there is no valid delivery period. In case the supplier makes any supply after expiry of delivery period, the purchaser/ consignee can reject the supplies and inform the supplier accordingly; the purchaser shall also have the right to cancel the contract (w.r.t. unsupplied goods) in terms of the contract. If, however, the purchaser/ consignee requires the goods (which has been supplied after expiry of the delivery period), the purchaser may extend the delivery period with the usual LD & denial clauses and there is no downward trends and accept the goods.
- b) Denial clause refers to the clause in the tender/ contract denying increase in price, taxes, duties, etc., taking place during the extended DP, when DP extension is granted.

4.24 Packaging and Despatch for Imports

The stores are required to be packaged to withstand normal conditions of transportation (shipment and short-term storage during transit and in the country of destination in imports). The following conditions will apply with reference to packaging (i) seller shall be responsible for any loss or damage or expenses incurred by the purchaser because of inappropriate packages (ii) 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 (iii) seller shall also comply with the detailed packaging and despatch instructions, if specified in the contract (iv) responsibility of sending despatch documents will rest with the seller. Detailed shipping instructions for imports issued from time to time by the buyer will apply.

4.25 Warranty Claims for Imports

- a) All stores to be supplied should be free from all defects/ faults in material, workmanship and manufacture. They should be of the highest grade; and consistent with the established/ 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 specified number of days from 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. The Warranty shall be applicable for use and storage of stores in Indian climatic conditions.

b) 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 by new unit. Warranty claims, if any, shall be raised within the time frame prescribed for it in the contract.

4.26 Short Deliveries

There can be occasions when excess/ short supplies are made by the suppliers due to various reasons. 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 per cent) of the original value of the contract.

4.27 Correspondence with the Supplier after Breach of Contract

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

4.28 Cancellation of Contract for Default

a) The purchaser may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, terminate the contract in whole or in part:

- i) If the supplier fails to deliver any or all of the stores within the time period(s) specified in the contract, or any extension thereof granted by the Purchaser; or
- ii) If the supplier fails to perform any other obligation under the contract within the period specified in the contract or any extension thereof granted by the purchaser.

b) In the event the purchaser terminates the contract in whole or in part; the purchaser may take recourse to the following action:

- i) Performance Security may be forfeited;
- ii) The purchaser may procure, upon such terms and in such manner as it deems appropriate, stores similar to those undelivered, and the supplier shall be liable for all available actions against it in terms of the contract.
- iii) Penalty as per existing guidelines on penalties issued by TCL.

c) However, the supplier shall continue to perform the contract to the extent not terminated. Before cancelling the contract and taking further action, if considered necessary legal advice may be obtained.

4.29 Termination of Contract for Insolvency

If the supplier becomes bankrupt or otherwise insolvent, the purchaser may, at any time, terminate the contract, by giving written notice to the supplier, without compensation to the supplier provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.

4.30 Termination of Contract for Convenience

After placement of contract, there may be some unforeseen situation compelling the purchaser to cancel the contract. In such a case, the purchaser

is to send a suitable notice to the supplier for cancellation of the contract, in whole or in part, for its (purchaser's) convenience, inter alia, indicating the date with effect from which the termination is to become effective. Depending on the merits of the case, the purchase organization may have to suitably compensate the supplier on mutually agreed terms for terminating the contract. Suitable provisions to this effect are to be incorporated in the tender document as well as in the resultant contract. However, a rate contract /agreements should not have any provision for compensation after first year execution of contract.

4.31 Signing of Contracts/ Placing of Supply Orders

After the TPC decisions, a sanction letter / supply order, as the case may be should be issued / signed immediately. It must be ensured that the contract/ supply order is as per the terms & conditions approved and the rates finally negotiated and accepted by the TPC are correctly reflected, to this extent the contract/ supply order shall be got vetted by the Finance after issue. Copies of the contract/ supply order should be sent to all concerned, including the Finance section, the audit authority and the paying authority, and their acknowledgement obtained.

4.32 Amendment to Contract

All amendments to contracts, which have financial implications, including short closing and delivery period extensions without imposition of liquidated damages, should be invariably approved by the CFA as per DFP, and also in consultation with the finance, wherever the original contract was concluded with the concurrence of finance. Amendments affecting delivery period should not be made as a matter of routine. All cases for extension of delivery period shall 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. When there is no downward trend in prices, and DP extension with LD is applicable, then CFA shall approve the same without financial consultation. For other DP extension cases, financial consultation is necessary.

Chapter 5

COMMERCIAL ASPECTS

5. Commercial Aspects

5.1 Price and Payment Terms

a) The elements of price included in the quotation of a bidder depend on the nature of the goods to be supplied and the allied services to be performed, location of the supplier, location of the user, terms of delivery, extant rules & regulations about taxes, duties, etc., in the seller's & the buyer's countries/ states.

b) In case of indigenous goods, the bidder shall be asked to indicate the basic price of the finished material and other elements of cost distinctly and separately. In case of imported goods, in addition to similar elements of price as above (other than Excise Duty and taxes), there may be elements of Custom Duty, Import Duty, Landing & Clearing charges, etc. Further, depending on the nature of the goods (whether domestic or imported), there may be cost elements towards installation & commissioning, operator's training etc. It is, therefore, necessary that, to enable the bidders to frame their quotations properly in a meaningful manner, the tender documents clearly specify the desired terms of delivery and, also the duties & responsibilities to be performed by the supplier in addition to supply of goods. Where the price has several components like price of the goods, costs for installation & commission, operators' training etc. the bidders should be asked to furnish the cost break-up indicating the applicable prices for each such component (as specified and desired in the tender enquiry document) along with the overall price.

5.2 Currency

The tender documents shall specify the currency (currencies) in which the tenders are to be priced. As a general rule (i) domestic bidders are to quote and accept their payment in Indian currency (ii) costs of imported goods that are directly imported against the contract may be quoted in foreign currency (currencies) and paid in the currency as the case may be (iii) in imported goods also the portion of the allied work/ services that are to be

undertaken in India (like installation & commissioning) are to be quoted and paid in Indian currency (iv) authorised Indian dealers of foreign vendors shall quote in Indian currency.

5.3 Earnest Money Deposit

a) To safeguard against a bidder's withdrawing or altering its bids during the bid validity period in the case of advertised or limited tender enquiry, Bid Security (also known as Earnest Money Deposit) is to be obtained from the bidders except Micro and Small Enterprises (MSEs) having UAM number as defined in MSE Procurement Policy issued by Department of Micro, Small and Medium Enterprises (MSME) or are registered with the Central Purchase Organisation or the concerned Ministry or Department (including TCL group of Factories or other DPSU's) or Startups as recognised by Department of Industrial Policy and Promotion (DIPP), irrespective of the store for which they are registered. EMD is also not required from Central PSUs. The bidders should be asked to furnish EMD along with their bids. Amount of EMD should ordinarily range between **two percent to five percent** of the estimated value of the goods to be procured. The amount of EMD should be determined accordingly by the Factories (Vendor Selection (VSL) TPC) and indicated in the bidding documents. EMD shall be obtained in favour of the Sr.GM/General Manager/ Head of Department. The EMD may be accepted in the form of Insurance Surety Bonds, Account Payee Demand Draft, Fixed Deposit Receipt, Banker's Cheque or Bank Guarantee (including e-Bank Guarantee) from any of the scheduled commercial banks or payment online in an acceptable form, safeguarding the purchaser's interest in all respects. The EMD is normally valid for a period of forty-five days beyond the final bid validity period.

b) 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. Bid security should be refunded to the successful bidder on receipt of a performance security. However, in case of two packet or two stage bidding, Bid securities of unsuccessful bidders during first stage i.e. technical evaluation etc. should be returned within 30 days of declaration of result of first stage i.e. technical evaluation etc.

c) EMD need not be taken for tenders with an estimated value (including all taxes) of less than Rs. 5 lakhs.

d) EMD need not be taken necessarily in PAC/SKS/STE cases, since there is no other alternative source available and factories have no other option rather than to purchase from that single firm to meet production target. However, for such cases exemption will be granted by higher CFA.

e) As per the GFR 2017 Rule 170 (iii) , if TPC decides, then in place of a EMD, the units may require Bidders to sign a Bid securing declaration accepting that if they withdraw or modify their Bids during the period of validity, or if they are awarded the contract or they fail to sign the contract, or to submit a performance security before the deadline defined in the request for bid document, they will be suspended for the period of time specified in the request for bids document from being eligible to submit Bids for contracts with the entity that invited the Bids.

5.4 Performance Security Deposit

a) To ensure due performance of the contract, Performance Security Deposit shall be obtained from the successful bidder (s) awarded the contract. Performance Security Deposit shall be obtained from every successful bidder irrespective of his registration status etc. Performance Security Deposit is, however, not necessary for contracts valuing up to Rs. 10 lakh. Above Rs. 10 lakh, PSD is mandatory.

b) The Performance Security Deposit should be for an amount equal to 5% of the contract value (inclusive all). However, it may vary as per the TCL guidelines issued from time to time.

c) PSD is initially to be given by the supplier for original supply order quantity without option clause quantity. PSD for the original supply order quantity may be returned after 60 days of fulfilment of all contractual obligations of the original supply order quantity including warranty period (if any). Regarding Option Clause, PSD amount may be worked out based on Option Clause quantity. PSD for Option Clause quantity may be returned after 60 days of fulfilment of all contractual obligations of the Option Clause quantity including warranty period (if any).

d) Performance Security Deposit may be furnished in the form of Insurance Surety Bonds, an Account Payee Demand Draft/Banker Cheque, Fixed Deposit Receipt from a scheduled Commercial Bank, Bank Guarantee (including e-

Bank Guarantee) from a scheduled Commercial Bank or online payment in an acceptable form safeguarding the purchaser's interest in all respects. It should be drawn in favour of Troop Comforts Limited. A model format of Bank Guarantee for obtaining Performance Security Deposit is provided at Annexure. Indemnity Bonds may be accepted as Performance Security Deposit from Central PSUs. At the request of the supplier, (i) EMD or (ii) pending bills of the contractor, if any, against other contracts, can be adjusted against the Performance Security Deposit demanded. Any interest accrued in FDR submitted as PSD by the vendors shall remain in their account.

e) In foreign procurement, Performance Security Deposit shall be obtained from the supplier in the form of Bank Guarantee, in the prescribed format, issued by an Indian Public Sector Bank or a Private Sector bank authorized to conduct government business or any International bank for which counter guarantee is given by Indian Bank acceptable to the purchaser.

f) Performance Security Deposit submitted by suppliers in permitted form shall be kept in the custody of the General Manager of the respective units of TCL or an officer authorised by him in writing. The bank guaranty, etc., after verification/ confirmation of genuineness by the relevant bank should be entered in a suitable register and a copy of the bank guaranty, etc., shall be endorsed to the Finance section of the Factory/Unit for cross check. The validity of the bank guaranty, etc., shall be monitored closely by the designated officer/staff of Procurement section.

g) Performance Security is to be furnished by a specified date (generally 30 days after notification of the award) and it should remain valid for a period of 60 days beyond the date of completion of all contractual obligations of the supplier, including warranty obligations if any. There shall be no warranty period for raw materials and certain service contracts like AMC, Labour contract and any additional items notified by TCL. Therefore, PSD shall be released after 60 days of completion of contractual obligations in such cases. Since firms include in their price the element of finance cost on account of the Performance Security Deposit, it is necessary for suppliers to submit the Performance Security Deposit as per the terms & conditions of the Supply Order. Receipt of the Performance Security Deposit should be intimated to the Finance Section and QC. After the date specified for submission of PSD, QC shall take up inspection of the store only on receipt of the intimation about receipt of the requisite Performance Security Deposit. Care should be taken to ensure that whenever DP extension/ re-fixation, etc. are granted,

the Performance Security Deposit is got suitably re-validated so that it is valid for 60 days beyond the new date of completion of all contractual obligations.

h) The Performance Security Deposit would qualify for being returned only when all the contractual obligations against the original contract quantity are fulfilled. In case of Option Clause, full PSD for Option Clause quantity may be submitted.

i) Submission of the Performance Security Deposit within the specified date shall be insisted upon, unless otherwise, within the specified date allowed for submission of Performance Security Deposit, the firm completes all its contractual obligations qualifying for return of the Performance Security Deposit had it been submitted. In such situations, if requested by the supplier, the Performance Security Deposit may also be adjusted against the current bills.

j) If a firm fails to submit (within the specified date) the requisite Performance Security Deposit as per the contract conditions, then he shall be treated as an unreliable firm and shall be governed as per existing guidelines on penalties issued by MoD.

k) As a rule Performance Security Deposit should not be waived except in the most unavoidable circumstances. At the specific request made by the supplier, Performance Security Deposit may be waived, in unavoidable circumstances, by the respective CFAs within their financial powers as per the DFP after taking into account the reliability and financial standing of the firm on the basis of their registration with any Body specified by MoMSME (like MSEs having UAM number registered with NSIC, DIC, KVIC etc) or with Ordnance Factories of erstwhile OFB or in the case of reliable national/ international OEMs. Performance Security Deposit can be waived in PAC/ SKS procurements if the firms are unwilling to provide Performance Security Deposit, since there is no other alternate source available. However, in such cases of SKS procurement, the factory shall necessarily step up efforts to develop more sources.

l) Performance Security Deposit shall be forfeited and credited to the TCL Account in the event of a breach of contract by the supplier, in terms of the relevant contract.

m) Performance Security Deposit is taken for the due performance of an individual contract and becomes returnable (without interest except FDR) to the contractor immediately on his performing/ completing the contract in all respects and not later than 60 days of completion of all such obligations under the contract, including warranty obligations if any. In severable contracts, since each instalment is a separate contract, the related Performance Security Deposit (if separately provided for each instalment) would qualify for being returned as and when all the contractual obligations against each of the separate contract are fulfilled. In an entire contract with instalment deliveries, since it is a single contract, the Performance Security Deposit would qualify for being returned only when all the contractual obligations against the entire contract are fulfilled.

5.5 Firm (Fixed) Price vis-à-vis Variable Price

a) Contracts, with delivery period less than 12 months, should be concluded on firm and fixed price by inviting tenders accordingly. However, contracts may be entered with variable price, even if the delivery period is less than 12 months, when the price trend of the store is volatile. Where it is decided to conclude the contract with variable price, an appropriate clause incorporating, inter alia, suitable price variation formula should also be provided in the tender enquiry documents. In the price variation clause, the price agreed upon should specify the base level (i.e. 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. A formula for calculation of price variation that has taken place between the base level and the scheduled delivery date should be included in the price variation clause. The variations are to be calculated by using indices published by Governments/ Chamber of Commerce/ reputed markets periodically. Suitable weights are to be assigned to the applicable elements (i.e. fixed overheads & profits, material(s) and labour) in the price variation formula. If the production of the goods needs more than one raw material, then the input cost of material may be further sub-divided for different categories of material, for which cost indices are published. The price variation formula is also to stipulate a minimum percentage of variation of the contract price above which the price variation will be admissible (e.g., where the resultant increase is lower than, say, 2% of the contract price, no price adjustment will be made in favour of the supplier).

- b) The Price Variation clause shall specify cut-off dates for material and labour, as these inputs taper off well before the scheduled delivery dates. The Price Variation clause shall provide for a ceiling on the 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.
- c) 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. No upward price variation will be admissible beyond the original scheduled delivery date for defaults on the part of the supplier. 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 the purchaser.
- d) 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.
- e) Where contracts are for supply of equipment, goods, etc., imported (subject to Customs Duty and foreign exchange fluctuations) and/or locally manufactured (subject to GST and other duties and taxes), the percentage and element of duties & 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 & taxes, foreign exchange rates, and the documents to be produced in support of claims for such variations should also be stipulated in the contract.
- f) The Price Variation clause should also contain the mode and terms of payment of the price variation admissible. Finance member should vet the price variation clauses/ exchange rate variation clauses.

An illustrative price variation clause and examples for using the same have been provided at Annexure-16.

5.6 Exchange Rate Variation

In case of a contract involving substantial import content(s) and having a long delivery period (exceeding one year from the date of contract), an appropriate Foreign Exchange Variation clause may be formulated and incorporated in the Tender. In that clause, the bidders shall be asked to indicate the import content(s) and the currency (currencies) used for calculating the value of import content(s) in their total quoted price, which (i.e. the total quoted price) will be in Indian Rupees. The bidders may be asked to indicate the Base Exchange Rate for each such foreign currency used for converting the FE content into Indian Rupees and the extent of foreign exchange rate variation risk they are willing to bear. To work out the variation due to changes (if any) in the exchange rate(s), the base date for this purpose will be the last date of submission of commercial bid. The variation may be allowed between the above base date and the date of remittance to the foreign principal/ mid-point of manufacture of the foreign component/..... (Purchaser shall decide an appropriate date). The applicable exchange rates as above will be according to the TT selling rates of exchange of SBI, Parliament Street Branch, New Delhi on the dates in question. No variation in price in this regard will be allowed if the variation in the rate of exchange remains within the limit of plus/minus 2.5 percent. Any increase or decrease in the customs duty by reason of the variation in the rate of exchange in terms of the contract will be to the buyer's account. In case delivery period is extended due to default of the vendor, any increase in exchange rate will not be admissible and exchange rate on the last date of original DP shall be considered. In case there is decrease in exchange rate during extended DP, lower exchange rate will be considered. The purchaser may formulate an appropriate ERV clause in consultation with the Finance. The following documents should be furnished by the supplier for claiming ERV:

- (i) A bill of ERV claim enclosing working sheet
- (ii) Banker's Certificate/ debit advice detailing FE paid, date of remittance and exchange rate
- (iii) Copies of import order placed on supplier
- (iv) Invoice of supplier for the relevant import order.

5.7 Modes of Payment

a) Payments to domestic suppliers are usually made by NEFT/cheque/ or State Bank of India transacting government business. Such payment can also be made to the supplier's bank, if the bills are endorsed in favour of the bank with a pre-receipt embossed on the bills with the words, "Received payment" and both the endorsement and pre-receipt are authenticated by the supplier. In addition, an irrevocable power of attorney is to be granted by the supplier in favour of the bank.

b) In international trade, buyer and seller being located in different countries may not know each other well. Further, the two countries would have different legal systems, currencies and trade and exchange regulations. As a result of these uncertainties, the buyer and the seller require assurance regarding the delivery of goods and payments, respectively. The seller would want to be assured that (i) he will be paid as soon as the goods are shipped (ii) he will be paid by the buyer or his bank as per contractual obligations (iii) he will receive the payments in his own country and currency of the contract. The buyer would want to ensure that (i) payment is made for the goods only after they are shipped by the seller (ii) the seller will ship the goods ordered for and deliver them in time. These concerns are addressed by adopting letter of credit or direct debit transfer as the mode of payment in imports.

Payments to foreign suppliers are ordinarily made by Letters of Credit (LC) opened by the State Bank of India or any other scheduled/ authorized Bank. While opening the Letters of Credit the purchaser should follow the provision of Uniform Customs and Practices for Documentary Credit (UCPDC). Apart from Letter of Credit mode, payment can also be made to the seller through Direct Bank Transfer for which buyer has to ensure that payment is released only after the receipt of prescribed documents.

d) In procurement through global tendering, especially in high value contracts, to have uniform payment clauses in case domestic suppliers desire payment through Letter of Credit, then depending on the merits of the case, the same can be agreed to.

e) The specific office of the Unit Accounts Office, which would be responsible for making payment, should be clearly mentioned in the tender and the contract.

5.8 Standard Payment Terms to Domestic Vendors

- a) Payment terms are important since it has a direct influence on the vendors cost of finance that plays a significant role in deciding the cost of the store or service being procured. Normally, 90% of the contract amount shall be paid against provisional receipt of the item at the consignee's premises along with inspection note and other relevant documents. Balance 10% shall be paid after the stores have been properly checked and accounted for. Alternatively, where considered necessary (such as raw materials), 95% of the contract amount can be paid against provisional receipt of the item at the consignee's premises along with inspection note and other documents. Balance 5% can be paid after the stores have been properly checked and accounted for.
- b) Some suppliers prefer 100% payment on delivery and acceptance of material at factory premises, which can be accepted. In such cases, payment is to be made within 30 days of receipt of materials at the factory premises along with requisite/relevant documents from suppliers.
- c) In many cases, suppliers request for allowing part supply and the corresponding part payment. Such requests may be considered based on the merits of the case, duly safeguarding Company's interests.
- d) Generally the preferred terms of delivery are CIP/ destination or delivery at site, so that the supplier remains responsible for safe arrival of the ordered stores at the site. Therefore, unless otherwise decided Ex-works or FOR/ despatching station should be avoided.
- e) In some exceptional procurement of COTS items with extremely high commercial demand (i.e. a situation of seller's market), suppliers may be unwilling to deliver/ supply the item unless Spot Payment is made. In such exceptional cases Spot Payment can be agreed to by the TPC after duly recording the reasons for taking the decision.
- f) Trade Receivable Discounting System (TReDS) is a digital platform to help MSMEs to get their trade receivables financed at a competitive rate through an auction mechanism where multiple financiers can bid on invoices accepted by Buyers. TReDS is governed by the Reserve Bank of India under the Payment and Settlement Systems Act, 2017 and the Factoring Regulations Act,

2011. Under the TReDS initiative, at present, RBI has given licenses to three participants (A.TREDS Ltd, RXIL, M1Xchange). Factories /Units should be registered in TReDS online platform with any one of the Licencee to facilitate payments to MSMEs through TReDS.

5.9 Payment Terms for Foreign Vendors

- a) The normal mode of payment to foreign vendors is through irrevocable Letters of Credit or Direct Bank Transfer (DBT). It should be ensured that the payment is released in accordance with the provisions of the contract and subject to the deductions of such amounts as the supplier may be liable to pay under the agreed terms of the contract.
- b) Where the payment is to be made through Letter of Credit, it shall be opened within forty five days of receipt of notification of readiness of goods for delivery from the foreign vendor. The vendor shall 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 tender. 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 tender should not be varied, particularly in Global Tender Enquiry and Limited Tender Enquiry cases.
- c) It should also be mentioned in the tender 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.
- d) In case of extension of delivery period, both LC and delivery period should be extended and the LC charges borne by the supplier, if the extension is due to reasons attributable to the supplier.
- e) Payment through Direct Bank Transfer (DBT) would be the normal mode for payments below USD 100000, and such payments should be made within 30 days of receipt of clear payment documents (Bill of Lading, AWB, Proof of shipment, etc.) or as specified in the contract. In cases the supplier is not agreeable to DBT and insists on payment through LC, then payment can be

made through Letter of Credit subject to the supplier bearing extra costs, if any, involved.

f) In case installation, commissioning, etc., are relevant in the procurement and the supplier is responsible for the same, then 80 - 90% of FOB/ FAS price may be paid against invoice, inspection certificate (where applicable), shipping documents etc., and balance within 21-30 days of successful installation & commissioning at the consignee's premises and acceptance by the consignee.

5.10 Stage/ Part Payments

Stage/ part payments may become relevant in high value tenders/ contracts when the (i) throughput time for manufacture of the stores being procured or (ii) delivery period is very long. Such instances of procurement involving stage/ part payment would be rare. Stage/ part payments, if unavoidable, shall be made only against satisfactory completion of clearly identifiable physical milestones and the quantum of the stage/ part payment should be commensurate with the quantum of work completed at up to the milestone, else it would become another form of advance which is not permissible. If stage/ part payments are proposed to be made on completion of milestones, it should be clearly mentioned upfront in the TE with the approval of CFA and the concurrence of the Finance, wherever required as per DFP. The percentage payable and the milestones on satisfactory completion of which the stage payments will become admissible shall be unambiguously disclosed in the tender to ensure transparency, fair & equitable treatment vendors. In stage/ part payments adequate safeguard should be taken against the risk of the contractor not completing the balance uncompleted work. This risk can be covered through a suitable Bank Guarantee from banks authorised to carryout government business. Where 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 stage payments.

5.11 Advance Payment to Suppliers

a) Generally no advance should be paid to the firms/ contractors and payments for services rendered or supplies made should be released only after the services have been rendered or supplies made. However, it may become necessary in the case of maintenance contract, development/ fabrication contracts or in case of turnkey projects to give an advance. In such

cases it should be ensured that only a minimum reasonable amount, up to 15%, is given as advance at the time of placement of the order. Such advance payments will be made only against the supplier furnishing of a bank guarantee (for 110 % of the advance given) from a public sector bank or private sector bank duly authorized by RBI to handle Government transactions. If it is decided to provide advance then the same shall be indicated in the tender to ensure fair and equitable treatment of vendors.

b) Where advance payment is made in contracts with price variation, there should be a further stipulation that no price variations shall be admissible on such portion of the price, after the date of payment of the advance.

5.12 Bank Guarantees

a) Bank Guarantee is a one way contract made by the bank on behalf of its client (supplier) and the beneficiary (purchaser) guarantying to secure compliance of the supplier to a contract between the client (supplier) and the beneficiary (purchaser). The salient features of the guarantee are (i) absolute in character and independent of the underlying contract (ii) imply obligation to unconditional and without demur payment against a valid claim (iii) for specified amount and period (iv) issued against matching counter-guarantee from the applicant (supplier).

b) The format of the Bank Guarantee should be provided by the purchaser and should adequately cover the risks. The essential elements of PBG are (i) amount (ii) address of the beneficiary, applicant and the bank (iii) validity date (iv) contract number and date.

Bank Guarantee can only be invoked after fulfilling the following conditions (i) claim/ intimation should reach the issuing Bank on or before the expiry date (ii) claim/ intimation should be in strict conformity with the terms of the Guarantee (iii) Issuing Bank cannot enquire into merits of the claimant or take views on any dispute between the (supplier) applicant and the (purchaser) beneficiary (iv) compliance of terms of the guarantee, payments are to be effected immediately and unconditionally.

d) The various Bank Guarantees obtained from suppliers (Performance Bank Guarantee, Advance Bank Guarantee, Warranty Bond, Earnest Money Deposit, etc.) shall be necessarily got confirmed/ verified for its genuineness, standing of the issuing bank, etc.

e) In domestic procurement Bank Guarantee issued by any of the scheduled Commercial Bank can be accepted. The genuineness of the Bank Guarantee shall be got confirmed from the issuing bank.

f) In foreign procurement, Bank Guarantee shall be obtained from the supplier, in the prescribed format, issued by an Indian Public Sector Bank or a Private Sector bank authorized to conduct government business or any International bank for which counter guarantee is given by Indian Bank acceptable to the purchaser.

5.13 Direct Bank Transfer

a) The DBT mode of payment is a direct transfer of funds to the account of the supplier by the purchaser's bank, on being so authorised by the purchaser. DBT shows high degree of trust between parties. Buyer ensures that the payment is released only after receipt of the requisite documents provided in the contract and confirmation from the Supplier that one set of the documents has been sent to the port consignee immediately after dispatch of the stores.

b) In comparison with payments through Letters of Credit, payment through DBT has the following advantages (i) payment is released only after receipt of goods (ii) payment is made only after full satisfaction to the quality, quantity etc. (iii) it is cost-effective as compared with LCs.

5.14 Letter of Credit

a) Two banks are involved for payment to the supplier by Letter of Credit – purchaser's bank and supplier's bank. The purchaser is to forward the request to its bank in the prescribed format as formulated by State Bank of India, along with all relevant details including authenticated copy of the contract. Based on the same, the purchaser's bank opens letter of credit on behalf of the purchaser for transacting payment to the supplier through the supplier's bank. Care should be taken to ensure that the payment terms and the documents to be produced for receiving payments through letter of credit are identical with those shown in the contract. Generally, irrevocable letter of credit is opened so that the supplier is fully assured of its payment on fulfilling its obligations in terms of the contract.

- b) Following points should be checked by granting extension of LC (i) extension of delivery date in the contract and corresponding amendment in LC for latest date of shipment (ii) Performance Bank Guarantee (PBG) extension (iii) Onus of charges for LC extension. In case, the delivery date of the contract is extended to take care of delay in supply, for which supplier is responsible, the letter of credit is also to be extended, but the expense incurred for such extension (of letter of credit) shall be borne by the supplier.
- c) LC can be extended with the concurrence of the Finance and the approval of the CFA if the value of the procurement requires consultation with Finance as per the DFP.

5.15 Liquidated Damages

- a) Compensation of loss on account of late delivery where the loss is preestimated 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:
 - (i) Whatever the quantum of the loss sustained, the claim cannot exceed the sum stipulated in the contract.
 - (ii) Only reasonable sum can be calculated as damages, which in given situation may be less than the sum stipulated.
 - (iii) What is a reasonable sum would depend on facts.
 - (iv) 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.
 - (v) 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.
- b) There should be a suitable provision in the terms & conditions of the contract for claiming liquidated damages of appropriate amount from the supplier to take care of delays in supplies and (or) performance that are

attributable to the supplier. Such recovery through liquidated damages should be without prejudice to the other remedies available to the purchaser under the terms of the contract. The standard Liquidated Damages percentage is 0.5% per week (or part thereof) of the prices of any stores/ service which the contractor has failed to deliver within the delivery period specified in the contract. There should also be an appropriate maximum limit of such deduction, to be shown as a specific percentage of the contract value of delayed supplies/ services and incorporated in the contract terms. The ceiling of LD is 10%. Liquidated Damages are to be calculated on the basic cost (Excluding taxes & duties)

c) When 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.

5.16 E-Payment

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.

5.17 Estimating the Cost of the Procurement

a) Correct estimation of cost is an important step for (i) determining the level of the CFA (ii) establishing the reasonability of the offers received from suppliers and (iii) determining the availability of funds. Cost estimation should, therefore, be done in a realistic, objective, comprehensive and professional manner after duly considering the prevailing market rates, last purchase price, economic indices for raw material/ labour, other input costs, the intrinsic value, etc. Cost shall be estimated by the procurement section while initiating the procurement proposal. The all inclusive estimated cost (including the tendered quantity and the option quantity specified in the tender) of the procurement shall be the basis for determining the CFA as per the DFP.

b) For equipment/craft which are uniquely custom-built to buyer's specifications, the best way to get a fair assessment of costs is by obtaining budgetary quotes from potential parties. Ideally, there should be three quotes.

However, there is need to have a time schedule for receipt of quotes to ensure some timeframe for this activity. Thus:

i. An attempt should be made to obtain as many budgetary quotes as possible from reputed/potential firms and a time of 21 (twenty-one) days be indicated therefore. In the event of receipt of less than three budgetary quotes, two extensions of up to 10 (ten) days each may be considered; and

ii. In the event of non-availability of three quotes within the above extended period, the estimates should be prepared on the basis of the number of budgetary quote(s) received, which may even be one; and where more than one budgetary quote is received, the estimate should be framed on an average of the quotes which will reduce variations and fluctuations.

c) Various methods available for estimating the cost are (i) on the basis of the Last Purchase Price duly neutralised for inflationary/ deflationary trends, (ii) Professional Officers' Valuation, (iii) obtaining budgetary quotations from prospective suppliers, (iv) market survey, (v) estimation from first principles etc. Estimation can also be done by R&E or Planning Sections of the factory or through a Technical Committee formed for that purpose. These methods are not mutually exclusive. Any of the method or combination of methods or any other appropriate method may be applied for estimation. The method adopted for estimation of cost should be clearly recorded while seeking the approval of the CFA. The estimated cost, if worked out in foreign currency, should be converted to Rupee, and shown both in terms of the foreign currency as well as Rupee (indicating the exchange rate adopted and date & source i.e SBI, Parliament Street Branch, New Delhi/RBI) while seeking CFA's approval. In evaluation of price bids exchange rate adopted shall be as on the date of last date of submission of bids.

5.18 Evaluation of Price Bids

a) Tenders are issued on the basis of the estimated cost (on approval of CFA relevant for the estimated cost). On opening of the price bids, the actual financial implication of the procurement shall be worked out based on price quoted by the lowest responsive bidder, and the CFA accordingly determined for further processing of the proposals.

b) The evaluation criteria for the financial bids (as also the technical bid) should be unambiguously indicated in the tender. The bids received shall be ranked as per provisions contained in para 5.19 of this manual, which shall be unambiguously indicated in the TE.

c) Where relevant, it may be specified in the tender that along with their quote, firms shall also offer their rates for comprehensive AMC for a specified period (say 5 years) after expiry of warranty/ guarantee. In such cases the evaluation criteria contained in the tender should clearly specify whether or not the AMC cost will be considered in the CST to decide the L1 vendor.

5.19 Basis for Cost Comparison

a) The basis for comparison of cost shall be as follows:

i) When the competition is only among the Indian suppliers, the F.O.R Prices at destination, less levies, taxes and duties levied by Central / State / Local Governments such as GST etc. on final product, should be the basis for ranking of quotations.

ii) When the competition is only among foreign suppliers, the landed price (CIF) at the destination (designated port) shall form the basis for ranking the bids.

iii) When the competition is amongst domestic and foreign suppliers, the CIF cost quoted by the foreign suppliers plus custom duty and other duties / levies such as anti-dumping duty which cannot be claimed as input tax credit, shall be the basis for comparison with the basic cost offered by the domestic suppliers, after offloading the GST etc. and other local taxes and levies, if any.

b) Offers of foreign suppliers are compared with the offers of domestic suppliers on the basis of the CIF cost of foreign supplier. However, difficulties in comparing the offers arise when the foreign supplier indicates only the FOB/ FCA cost. There is no standard formula for arriving at the CIF cost in such cases, and it will not be appropriate to add a notional additional cost as a percentage of FOB/ FCA cost to arrive at the CIF cost. To avoid such a situation, it should be clearly mentioned in the tender that quote on CIF basis is essential to enable evaluation of the offers of foreign vendors. Similarly the domestic vendors should also clearly indicate in their offer separately the basic cost, GST etc. and other local taxes & levies (if any) to enable a proper

evaluation of their offer, providing only an all-inclusive rate will make the offer invalid.

5.20 Comparative Statement of Tenders

a) The procurement section shall compile the offers in the form of a Comparative Statement of Tenders. The quotes in foreign currencies should be converted into Indian Rupees and indicated in the CST. The exchange rate may be obtained from SBI exchange rate of Parliament Street Branch, New Delhi/RBI on the last date of submission of bids. 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. Last purchase price, wherever available, should be indicated in the CST for a fair comparison of the offered prices. The purchase officer (Member Secretary of the TPC) should sign the CST after through checking of the related calculations.

b) 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 TPC only which will finally determine the lowest acceptable offer (L1 offer).

5.21 Negotiations

i) Normally, there should be no negotiation. Negotiations should be a rare exception rather than the rule and may be resorted to only in exceptional circumstances. If it is decided to hold negotiations for reduction of prices, they should be held only with the lowest acceptable bidder (L1), who is techno-commercially responsive for the supply of a bulk quantity and on whom the contract would have been placed but for the decision to negotiate. In no case, including where a cartel/pool rates are suspected, should negotiations be extended to those who had either not tendered originally or whose tender was rejected because of unresponsiveness of bid, unsatisfactory credentials, inadequacy of capacity or unworkable rates. The circumstances where negotiations may be considered could be:

- a) Where the procurement is done on nomination basis;
- b) Procurement is from single or limited sources;

- c) Procurements where there is suspicion of cartel formation which should be recorded; and
 - d) Where the requirements are urgent and the delay in re-tendering for the entire requirement due to the unreasonableness of the quoted rates would jeopardise essential operations, maintenance and safety, negotiations with L1 bidder(s) may be done for bare minimum quantum of requirements. The balance bulk requirement should, however, be procured through a re-tender, following the normal tendering process.
- ii) The decision whether to invite fresh tenders or to negotiate and with whom, should be made by the tender accepting authority based on the recommendations of the TC. Convincing reasons must be recorded by the authority recommending negotiations. The CA should exercise due diligence while accepting a tender or ordering negotiations or calling for a re-tender and a definite timeframe should be indicated.
 - iii) Normally all counter offers are considered negotiations by other means and the principles of negotiations should apply to such counter offers. For example, a counter offer to L1, in order to arrive at an acceptable rate, shall amount to a negotiation. However, any counter offer to L2, L3, and so on (at the rates accepted by L1) in case of splitting of quantities shall not be deemed to be a negotiation.
 - iv) After the CA has decided to call a specific bidder for negotiation, the following procedure should be adopted:
 - a) It must be understood that, if the period of validity of the original offer expires before the close of negotiations, the original offer will not be available for acceptance. The period of validity of the original offer must, therefore, be extended, wherever necessary, before negotiations;
 - b) The tenderer to be called in for negotiations should be addressed as per the Annexure-44(A) and Annexure-44(B), so that the rates originally quoted by him shall remain open for acceptance in the event of failure of the contemplated negotiation.

5.22 Bench Marking

a) Before scheduled negotiation (wherever negotiation is considered necessary), the TPC shall estimate the reasonable rate or benchmark rate to judge acceptability of the L1 offer. The approach to be adopted for assessing reasonability in different contingencies is given below.

b) 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. The reasonableness of the prices may be established by taking into account (i) the competition observed from the response of the trade to the enquiry, (ii) last purchase price, (iii) estimated value as given in the indent, (iv) database maintained on costs based on the past contracts entered into, (v) market price, (vi) wherever available the changes in the indices of various raw materials, electricity, whole sale price index, and statutory changes in wages, rates etc. The reasonableness of price may also be examined by resorting to cost analysis when there is a wide variance over the last paid price not explained by corresponding changes in indices. In imports the indices for inflation/ price of industrial products, exchange rate variation, etc., relevant to the country of origin may also be considered to assess the reasonable price.

5.23 Last Purchase Price

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

- i) The last purchase price pertains to the latest contract of similar magnitude as well as scope and is not more than three years old. LPP of more than three years old may not offer a realistic basis for comparison. However, if recent rates are not available for use as LPP, then the LPP more than 3 years old may also be used by factoring in the annual escalation. Appropriate rate of escalation shall be arrived at after studying the movement of relevant indices representing the inputs for manufacturing the item. 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.

- ii) Where the firm holding the LPP contract has defaulted, the fact should be highlighted and the price paid against the latest contract placed prior to the defaulting LPP contract, where supplies have been completed, should be used;
- iii) Where the supply against the LPP contract is yet to commence, that is, delivery is not yet due, it should be taken as LPP with caution, especially if the supplier is new, the price paid against the previous contract may also be kept in view;
- iv) In the case of wholly imported stores, the comparison of the last purchase rate should be made with the net CIF value at the current foreign exchange rate;
- v) It is natural to have marginal differences in prices obtained at different cities/offices for the same item, due to their different circumstances. The prices obtained are greatly influenced by quantity, delivery period, terms of the contract, these may be kept in view; and
- vi) Prices paid in emergencies or prices offered in a distress sale are not accurate guidelines for future use. Such purchase orders and TC proceedings should indicate that “these prices are not valid LPP for comparison in future procurement”.
- vii) Factors like basket price/ bulk discount offered should be taken in to account while using LPP as a benchmark.
- viii) Where the price indicated in the LPP is subject to price variation then the updated price as computed in terms of the price variation clause may be considered
- ix) Factors like items supplied against LPP being of current production or ex-stock supply need to be taken into account. Similarly, market conditions, downward price trends and other factors like re-starting production lines due to obsolescence, etc., may also have to be considered.

- x) In imported stores the comparison of the last purchase price should be made with the net CIF value in foreign currency only.
 - xi) In SDOTE, new suppliers at times quote low price (entry price) to gain entry. On the other hand, while establishing production of new items; suppliers are likely to incur additional expenditure towards developing tools, fixtures & gauges, process, training, etc., which will result in the initial cost being higher than that of an established supplier. In addition, when the item is being made for the first time the estimates itself may vary substantially from the actual. In view of these factors the rates in an SDOTE may not correctly reflect the cost of an item. Therefore, the SDOTE rates, being un-established, need not necessarily be considered for bench marking the rates achieved in LTE, the relevant TPC may take an appropriate decision.
- b) In addition to the parameters enumerated above, in case of imports the following shall also be considered:
- i) The price fixation procedure/ methodology prevailing in the country of the vendor.
 - ii) 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.
 - iii) 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.

5.24 Indices for Assessing Price Movements

- a) Indices of indigenous items can be accessed from the website of Ministry of Industry www.eaindustry.nic.in. Metals and other minerals may be accessed on www.mmr.online.com. Other useful websites are www.tradintelligence.com and www.cmie.com. For Textile market intelligence websites like www.texmin.nic.in and tools like Texpro for comparing historical fibre and yarn prices may be utilized. The RBI monthly bulletin, Economic survey and its appendix contain statistical tables that are useful for assessing the market trends. The World Economic Outlook – a monthly report from IMF and European Commission provide data on economic trends like inflation,

wages, etc., of different countries. LME (London Metal Exchange) gives price trends of nonferrous metals.

b) The business and commercial newspapers are another source of inputs for assessing price movements. The monthly report of CMIE (Centre for Monitoring Indian Economy) and the PROWESS Package of CMIE give updates on performance of listed Indian companies.

c) Some of the above mentioned data sources are priced or require a subscription. The factories can subscribe to these data sources to enable effective examination of the procurement proposal.

d) Analysis of Financial Statements of the supplier can also provide necessary information for assessing the reasonableness of price quoted. The allocation of overheads should be in line with the established principles of costing. Assessment should also 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.

e) Reputed expert agencies can also be approached for market intelligence, forecasting trends and best practices. Similarly, Public Sector Banks, particularly SBI, may be consulted before firming up major payments involving LC, Performance Bank Guarantee, reputation of foreign banks etc.

f) Assessing reasonableness of price is an arduous and critical task, especially where complete price data is not available or in case of overseas purchases. However, it is important to place on record the efforts made for arriving at the acceptable price and taking the procurement decision.

5.25 Deduction of Income Tax etc. at Source from Payments to Suppliers

This will be done as per the existing law in force during the currency of the contract. Other taxes, if any, will be paid/ reimbursed on production of documentary evidence.

5.26 Payment of Air Freight Charges

Goods that are required to be air lifted are to be despatched through Air India only (except on the routes where Air India doesn't operate) on a 'Charge forward basis'. All air freight charges, which are shown on the relevant

consignment note as chargeable to the consignee, are to be paid to Air India / other Airlines as applicable in Rupees.

5.27 Documents 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 indicated in the annexure. The supply order or copy of supply order issued to the supplier should be received back before release of last/ final payment.

5.28 Verification of Bank Guarantees

Bank Guarantees submitted by the bidders/ suppliers as EMD/ Performance Security Deposit, etc need to be immediately verified from the issuing Bank before acceptance. If Bank Guarantees issued by foreign banks are received in import cases, they shall be got confirmed by the SBI immediately.

5.29 Safe Custody/ Monitoring of EMDs and PSDs

Suitable mechanism for safe custody/ monitoring of EMDs, Performance Securities and other Instruments should be evolved and implemented by each factory/ unit. The factories/ units shall also make appropriate institutional arrangements for taking necessary action, timely, for extension/ encashment/ refund of EMDs and Performance Securities. Monitoring should include monthly reviews of all Bank Guarantees and other instruments expiring after 3 months, along with a parallel review of the progress of the corresponding contracts. Extension of Bank Guarantees and other instruments, where warranted, should be sought immediately and implemented within their validity period.

5.30 Duties & Taxes on Domestic Goods

a) The duties & taxes i.e. GST etc. levied on domestic goods by the Government vary from product to product. As a general policy, the statutory variations in such duties & taxes shall be allowed during the period from the last date of submission of bids to the date of acceptance of the tender (i.e. placement of contract) and during the original/ re-fixed /extended delivery

period of the contract so that both the supplier and purchaser are equally compensated for rise or fall in the prices of the goods on account of such statutory variations.

b) In the tender conditions, the bidder(s), shall necessarily indicate the prices along with the break-up details of taxes and duties, even if these are nil. In the absence of any indication to this effect by the bidders, the bids shall be treated as invalid. Sometimes, bidders mention in their bids that the quotation includes current rates of taxes & duties as applicable and statutory variations, if any at the time of supply will be applicable. This condition can be accepted. However, correctness of the taxes & duties quoted by a bidder as applicable during that period is to be verified while considering its tender. Also, only statutory variations, and no other type of variations are allowed.

5.31 Custom Duty on Imported Goods

a) In imported stores, the bidders shall specify separately the total amount of custom duty included in the quoted price duly indicating the break-up details of basic, additional and special custom duty. The bidders shall indicate correctly the rate of custom duty applicable for the goods in question and the corresponding Indian Customs Tariff Number. Where customs duty is payable, the contract should stipulate the quantum of duty payable in unambiguous terms. Customs duty exemption, if any, notified by the Government of India shall be availed.

b) If the contracted stores are entitled to any drawback of customs duty in respect of the store or the raw materials involved in its manufacture, then the price to be charged by the seller should be the net price after the deduction of all the entitled custom duty drawbacks.

5.32 Procurement 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 RFP, quotations, general terms and conditions, LD clause, integrity pact etc. However, provisions of this Manual shall apply in respect of those aspects that are not covered by such contracts/agreements.

Chapter 6

RATE CONTRACTS AND LONG-TERM AGREEMENTS / CONTRACTS

6. Rate Contracts

6.1 Items Suitable for RC

Items satisfying any one of following parameters may be considered for concluding a RC (i) available in the market ex-shelf or otherwise as per requirement of several users of TCL (ii) required by several users on recurring basis and having clear specifications (iii) that are fast moving with short shelf life or storage constraints (iii) expected to have only marginal price fluctuation (if not stable prices) during the currency of the RC or price fluctuation may be captured through standard/Govt price indices available on the web (iv) that take long gestation period to manufacture and for which there is only one source for manufacturing. RC can be concluded for direct/ indirect material including the allied services.

6.2 RC Definition

A Rate Contract (commonly known as RC) is an agreement between the purchaser and the supplier for supply of the specified goods (and allied services if any) at specified price and terms & conditions (as incorporated in the rate contract) during the currency of the contract. No quantity is mentioned nor is any minimum off-take guaranteed in a Rate Contract. The Rate Contract is in the nature of a standing offer from the supplier. The firm and (or) the purchaser is/ are entitled to withdraw/ cancel the Rate Contract by serving an appropriate notice on each other (not less than 30 days). However, once a supply order is placed on the supplier for supply of a definite quantity as per the terms of the rate contract during its validity, the supply order becomes a valid & binding contract and the supplier is bound to supply the ordered quantity.

6.3 TCL Rate Contracts

- a) No rate contract should be concluded by any of the unit without the in-principle approval of TCLHQ.

- b) The nominated Nodal factory of Troop Comforts Limited may, where feasible, conclude RCs through OTE on a 2- bids system for stores of standard type that are identified as common user items and are needed on recurring basis by various sister units of TCL. RCs can be finalized through LTE with PSUs in respect of items which are known to be manufactured only by them. Troop Comforts Limited may procure these items, as Direct Demanding Officer, under the RC concluded any of the TCL unit can be authorised to conclude the RCs.
- c) When RCs are concluded the specifications, prices and other salient details of the rate contracted items shall be posted on the official website of TCL, and appropriately updated, for use by all units under the Troop Comforts Limited.
- d) The rate contract may normally be concluded for one year. However, if necessary, shorter or longer period, not exceeding five years, with PV clause if feasible can also be considered after recording the reasons for the decision. 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.

6.4 Competent Financial Authority

Assessed annual value of off-take plus 10% additional off-take, over the period of the rate contract, shall be considered for determining the level of CFA for conclusion of rate contract/ price agreement. The rate contract during its validity can be operated up to a maximum of 10% in excess of the assessed off-take. Any additional quantity is required to be approved by next higher CFA.

6.5 Estimate/ Indent/ Requisition

A rate contract can be concluded based on the assessed annual requirements of various users under the authority processing an RC proposal. The contract concluding authority (Troop Comforts Limited or the nodal Factory authorized by Troop Comforts Limited) shall obtain assessed annual requirement from user Factories duly approved by its General Manager along with the detailed specifications.

6.6 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. Past performance of the firm shall be taken into account before finalising the RC.

6.7 Price Negotiation

While concluding RC, it may be required to conduct price negotiations by the relevant TPC to obtain best value for money and confirm clearly the RC terms & conditions to avoid ambiguity and dispute at a later stage.

6.8 Conclusion of a RC

RC concluded will be signed for and on behalf of the Troop Comforts Limited by the authority delegated powers to enter into RC or an officer authorized to sign financial documents on his behalf, after CFA's approval.

6.9 Conclusion of Parallel RC

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 or required by more than one factory in such cases parallel RCs with more than one firm at the same rate may be concluded. In order to ensure the vendor base intact, minimum order quantity may be prescribed in TE. RC may be concluded area/zone wise at the same rate, if vendors are available for various area/zone. The preferred choice of zone/area may also be asked from the vendors in TE. It is preferred to have more than one vendor in RCs due to multiple locations of the units. The CFA, based on the merit of each case, may decide the number of firms to be awarded RC for an item so that the DDO will have a wider choice. If the intention is to conclude parallel RC the same shall be indicated in the tender documents. In all such cases, the proposal to distribute the order will be part of the tender, and the bidders other than L1 have to match the L1 price.

6.10 Operating RCs

Orders against a RC concluded by any authority may be placed on the terms & conditions of the RC by all Direct Demanding Officers. To facilitate such operation, a suitable provision should be made in the RCs and the details of the RCs posted on the website.

6.11 Special Conditions Applicable for RC

Some conditions of rate contract differ from the usual conditions applicable for other contracts. Some such important special conditions of rate contract are (i) Earnest Money Deposit (EMD) is not applicable (ii) the Schedule of Requirement may indicate only the anticipated off-take without any commitment (iii) purchaser reserves the right to conclude more than one rate contract for the same item (iv) purchaser as well as the supplier may withdraw the rate contract by serving suitable notice (30 days' notice period) to each other (v) 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) normally the terms of delivery in rate contracts are FOR, since the users are spread all over the country (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) 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 shall incorporate a Fall Clause.

6.12 Fall Clause

a) 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 Govt or Govt. owned 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 & time and further action taken as per standard procedure.

b) 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. It is, however, necessary that the purchaser 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, appropriate action should be taken against them including deregistering them, suspending business dealing with them, terminating the contract, etc.

6.13 Performance Security

Depending on the assessed overall off-take against a rate contract and, also, assessed number of parallel rate contracts to be issued for an item, the authority concluding the RC (s) may consider obtaining performance security of reasonable amount from the RC holders. RC Firms should submit the Performance Security within 30 days of issue of RC Order, failing which order will be cancelled. In case of cancellation of RC, for the reason of any default, RC can be concluded with the next eligible firms (participated in the TE) for balance quantity at the same L1 rate. 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 by Factories against rate contracts.

6.14 Renewal and Extension

It should be ensured that new rate contracts are made operative immediately after the expiry of the existing rate contracts without any gap. In case, however, it is not possible to conclude new rate contracts due to some 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 downward, if so extension may be made provided the RC holder agrees to reduce the price commensurate with the drop in prices.

6.15 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 purchaser may revoke it at any time during its currency. However, reasonable opportunity shall be given to the supplier to represent against any revocation/ cancellation of RC.

6.16 Payment Terms

Standard Payment Terms as illustrated in section 5.8 of this manual shall apply.

6.17 Long-term Umbrella Agreements/Contracts

- a) Generally MTO items are being considered for concluding a Long-term Umbrella Agreements/Contracts. The items considered suitable for Long-term Agreements/Contracts are those (i) which are exclusively manufactured for various production units of Troop Comforts Limited (ii) required by one or more than factories on recurring basis.
- b) The provisions/guidelines contained in para 2.6 (b) items may also be considered while initiating the Long-term Umbrella Agreements /Contracts.
- c) Prior approval of the Director/Operation shall be taken for initiating Long Term procurement proposals.
- d) All the units are authorised to conclude long term contract up to 5 years.
- e) Staggered delivery schedule of the consignee shall be forwarded periodically to the suppliers on whom the long-term umbrella agreement/contracts are concluded, in such a way that no point of time

neither stock-out situation shall arise nor the inventory level shall exceed that authorised.

- f) Based on the capacity of the firms, the annual requirement and criticality of the stores parallel Long term umbrella agreement/contract may be finalised keeping prices and other terms & conditions same so that factories can operate the contracts depending on economy of transportation charges, landing charges and the availability of capacity with the firms. The condition on parallel contracts should be mentioned in the Tender Enquiry.

6.18 Processing Long-term umbrella agreement/contract by Nodal Factory

- (i) Where the consumption will be by more than one Factory/ unit within TCL, Director/Operation, shall decide a nodal factory for each of the items for which long-term umbrella agreement contract is to be concluded on the basis of maximum consumption of the store. The nodal factory shall be responsible for the tendering process.
- (ii) Nodal factory will collect the approximate annual estimated requirement from all the Factories concerned and consolidate the same.
- (iii) Nodal Factory will collect the list of established suppliers for the item from all the Factories, and short list suppliers based on the past performance, capacity and registration status.
- (iv) In case the number of established suppliers is less than three, one of the concerned factories (other than the nodal factory) shall take action for further source development through OTE.
- (v) LTE (as decided by Vendor Selection (VSL) TPC) to be issued to the short listed suppliers with unambiguous terms & conditions.
- (vi) Price shall be obtained with price variation clause, for which an appropriate price variation formula shall be indicated in the tender duly indicating the period for which the long-term contract is being proposed.
- (vii) Prices shall be obtained on FOR destination basis (with clear break-up of basic, taxes & duties, transportation, etc.) at the concerned consignee factories.

6.19 Long-term Product Support

Long-term (up to 5 years) Price Agreement for product support can also be concluded with the OEM by TCL (as per DFP) for the items having firm long-term requirement supported by contractual agreement. CFA shall be decided on the basis of the total value of the contract [value of average annual requirement (Average annual requirement = Total tendered quantity divided by multi year period)]. The procedure/ mechanism for long-term product support shall be similar to that for long-term umbrella agreement/contract. For IT turnkey projects the period of long term contracts/agreements up to 7 years may be considered with the prior approval of TCL.

Chapter-7

CONTRACTS

7. Contracts

7.1 Elementary Law

a) The principles of contract and the meaning of various legal terms used in contracts are contained in the Indian Contract Act (1872) read along with the Sale of Goods Act (1930). The law relating to redressal of disputes is laid down in the Arbitration and Conciliation (Amendment), Act 2015 No. 3 of 2016 published vide the Gazette of India Notification dated 01-01-2016. Some of the salient principles relating to contracts are set out briefly in this chapter.

b) Troop Comforts Limited contracts (supply orders/ purchase orders are also basically contracts) are governed by the same laws which are applicable to contracts between private parties.

7.2 Contract

The proposal or bid or offer made by the supplier 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.

7.3 Proposal or Offer

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

7.4 Acceptance of the Proposal

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

7.5 Agreements are Contracts

An agreement is a contract enforceable by law when the following are satisfied (i) competency of the Parties, (ii) freedom of consent of both Parties, (iii) lawfulness of consideration, and (iv) lawfulness of object. A defect affecting any of these renders a contract un-enforceable.

7.6 Competency of Parties

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

7.7 Parties to the Contract

Categories of persons and bodies who can be parties to the contract may be broadly sub-divided as (i) Individuals (ii) Partnerships (iii) Limited Companies, and (iv) Corporations other than limited companies.

7.8 Contracts with Individuals

a) 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.

b) In case, a tender is submitted in a business name, and if the business is a concern of an individual, the constitution of the business and the capacity of the individual should appear on the face of the contract and the tender signed by the individual himself as proprietor or by his duly authorized attorney.

7.9 Contracts with Partnerships

- a) 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.
- b) 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.

7.10 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.

7.11 Corporation other than Limited Companies

Associations of individuals incorporated under statutes such as Trade Union Act, Co-operative 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.

7.12 Parties to Contracts entered into by Troop Comforts Limited

The parties to the contracts into are Troop Comforts Limited as the purchaser, acting through the authority signing the contract/ agreement/ purchase order etc., and the supplier named in the contract.

7.13 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 when (i) misunderstanding relates to the identity of the other party to the agreement (ii) it relates to the nature or terms of the transactions (iii) it relates to the subject matter of the agreement.

7.14 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.

7.15 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.

7.16 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.

7.17 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.

7.18 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.

7.19 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.

7.20 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 bidder firm should be obtained to keep the offer open for further period or periods.

7.21 Completion of Communication of Acceptance

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 fool proof mode like registered post acknowledgement due, etc.

7.22 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 bidders, 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 fulfilment or is in itself in violation of law such contract is void.

7.23 Withdrawal of an Offer or Proposal

A bidder 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 bidder 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 bidder 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 bidder in consideration of his being supplied the subsidiary contract and withdrawal of offer by the bidder

before the specified period would entitle the purchaser to forfeit the earnest money.

7.24 Withdrawal of Acceptance

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

7.25 Signing of Contracts

The contract, after due approval of the CFA, may be signed by the concerned secretary of the relevant TPC. 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.

7.26 Acceptance of the 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 & 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.

7.27 Stamping of Contracts

Under entry 5 of Schedule I of the Indian Stamp Act, an agreement or memorandum of agreement for or relating to the sale of goods/ merchandise exclusively is exempt from payment of stamp duty.

7.28 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 applicable to the contracts for activities falling in the scope of this Manual. These will apply to all other types of revenue contracts. The general types of contract could be (i) purchase order for items of stores, spares or equipment (ii) rate contract (iii) price agreement (iv) service contract (v) annual maintenance contract/ comprehensive maintenance contract (vi) consultancy contract (vii) development contract.

7.29 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 (i) the terms of contract must be precise and definite, and there must be no room for ambiguity or misconstruction therein (ii) standard forms of contracts should be adopted, wherever possible, and the terms of the contract should be subjected to close prior scrutiny (iii) 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 (iv) 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 (v) 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 (vi) Whenever practicable and advantageous, contracts should be placed only after tenders have been openly invited (vii) 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 (viii) 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 (ix) adequate provision must be made in the contracts for safeguarding government property entrusted to the service provider.

7.30 Changes/ Amendments to a Concluded Contract

a) 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.

b) 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.

7.31 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 GST/ 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/ re-fixed /extended delivery period. Consultation with Finance in such cases would be required if the original contract was concluded with the concurrence of Finance or after increase in value, the contract falls within the delegated powers of the CFA, exercisable with the concurrence of Finance.

7.32 Contract Amendments

All amendments to contracts including short closing, DP extension, price variation clause, change in statutory charges etc. shall be carried out with the approval of respective CFA only and concurrence of Finance.

7.33 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.

7.34 Liability on account of Taxes & Duties on Grant of Extension of Delivery Period

While granting extension of delivery period, any increase in the taxes and levies, may be payable.

7.35 Termination of a Concluded Contract

A contract may be terminated when (i) the supplier fails to honour any part of the contract including failure to deliver the contracted stores/render services in time (ii) 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 (iii) both parties mutually agree to terminate the contract (iv) 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 (v) any special circumstances, which must be recorded to justify the cancellation or termination of a contract.

7.36 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. In case of GeM/e-procurement, the effective date of contract shall be the date of generation of Supply Order from the system.

7.37 Conditions of Contract

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

7.38 General Conditions of Contract

In order to facilitate clear understanding of the conditions of contract, a set of general conditions of contract (GCC), generally applicable to all contracts, is formulated and made available to all firms at the time of registration itself. GCC may be published on the website also. The tender format contains reference to the GCC as well as special conditions of the contract (SCC) that the bidders would be required to abide by. The contract

must also include the GCC as well as SCC specific to a particular case, as mentioned in the tender. The GCC and SCC of contract are included in the format of the tender as well as the supply order/ contract, respectively.

7.39 Special Conditions of Contract

Special conditions of contract (SCC) 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 Annexure 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 tender as well as the contract/ supply order.

7.40 Applicability of GCC to Supply Orders

The GCC and SCC of contract are applicable to supply orders also. Acceptance of supply order by the firm is essential to make the same as legally valid document.

7.41 Applicability of all Terms and Conditions

The formats of the tender and the contract agreement contain all the general and special conditions of contract. All the general terms & conditions and special conditions should invariably be mentioned in the tender 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 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.

7.42 Amplification of the Terms and Conditions

The terms and conditions included in the specimen format of the tender and the contract are self-explanatory. However, some of the salient terms and

conditions are also explained in the succeeding paragraphs for better understanding.

7.43 Effective Date

Normally, the date of signing of the contract will be the effective date of contract, 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 (i) furnishing of the Performance Bond in the form of PBG by the seller (ii) 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 (iii) receipt of Bank Guarantee for advance payment (iv) date of issue of the End User Certificate. The contract will be valid from the effective date till fulfilment of all contractual obligations by the parties to the contract.

7.44 Arbitration

- a) A tender being issued to Indian private firms should have an arbitration clause as per the Arbitration and Conciliation (Amendment), Act 2015 No. 3 of 2016 published vide the Gazette of India Notification dated 0101-2016.
- b) All the arbitration should be completed and settled as per timelines given in the Act.
- c) A tender being issued to Indian Private Firms/Vendors 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 CMD Troop Comforts Limited, GT Road Kanpur, 208013 with the mutual consent of the parties. The Arbitrator so appointed shall be an officer of TCL who had not dealt with matter 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 Sole Arbitrator shall be final and binding on the parties.”

7.45 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 and Government counsel in all cases of arbitration.

7.46 Settlement of Disputes

Considering the legal complications, cost involved in litigation and difficulties in enforcing legal awards, all efforts have to be made to settle disputes with overseas contractors through negotiations, especially in small value contracts. The sole-arbitration clauses as laid down in the general conditions of contract may not be accepted by foreign firms. Where necessary, as an alternative, provision may be made in the contract 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 to be 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.

7.47 Buy-back Offer

When procurements are to replace an existing old item (s) with a new item(s), a suitable clause should be incorporated in the tender so that 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 tender. 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).

7.48 Fall Clause

In cases where contracts have to be concluded with the firms, whose rate contract with any 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.

7.49 Penalties

All contracts whether with domestic or foreign vendors will have provision for Suspension or Banning or debarment. The existing guidelines issued by DoE vide No. F.1/20/2018-PPD dated 02.11.2021 (or revised time to time) should be followed for penalties in business dealing with entities and the suitable procedure (SOP) for levy of financial penalties and/or suspension/banning of business dealings with entities promulgated by TCL should be followed. Action may be taken by the Head of Department by issuing a show cause notice to the firm(s) and after due consideration of all relevant facts and circumstances of the case, an appropriate decision may be taken. The reasons for the decision should be duly recorded in detail. If the Head of Department is of the view that the gravity of misconduct justifies penal action involved more than one Factory/Unit, then the case shall be referred to Director/Operations of TCL for appropriate action.

Chapter-8

PROCUREMENT OF CONSULTANCY

8. Procurement of Consultancy

8.1 Requirement for Engaging Consultants

The requirement for engaging external experts/ consultants may arise due to (i) absence of required in-house expertise (ii) need for high quality services (iii) need for economy/ efficiency. External professionals, consultancy firms or consultants may be engaged as consultant for a specific job that is well defined in terms of (i) scope & content (ii) time frame for completion. The CFA for engaging consultants is provided in the DFP of TCL as amended from time-to-time. The provisions contained in GFR 2017 (or amended time to time) in conjunction with “Manual for Procurement of Consultancy & Other Services” brought out by the Deptt. Of Expenditure, Ministry of Finance (available in the website of Ministry of Finance) updated till June 2022, which contains detailed procedure, are to be followed.

8.1.1 Systems of Selection of service providers

Since the quality and scope of a consultancy assignment are not tangibly identifiable and consistently measurable, the technical and financial capability of consultants becomes an important though indirect determinant for quality and scope of performance. In such a situation value for money is achieved by encouraging wide and open competition among equally competent consultant. Thus, selection of consultants is Therefore, normally done in a two stage process. In the first stage, likely capable sources are shortlisted, if need be through an 'Expression of Interest' (Eoi) through advertisement. On the basis of responses received, consultants meeting the relevant qualification and experience requirements for the given assignment are shortlisted for further consideration. The shortlist should include a sufficient number, not fewer than three (3) and not more than eight (8) eligible firms. In the second stage, the shortlisted consultants are invited to submit their technical and financial (RFP) proposals generally in separate sealed envelopes. Evaluation of the technical proposal is carried out by evaluators without access to the financial part of the proposal. Financial proposals are opened after evaluation of quality.

8.1.2 The relative importance of Quality and Price aspects may vary from assignment

To assignment depending on complexities/ criticality of quality requirements, internal capability of Procuring Entity to engage and supervise the assignment, as well as the value of procurements. Hence different systems of selection of consultants/ service providers are designed to achieve appropriate relative importance (weightage) of Quality and Price aspects.

8.1.3 Following selection methods may be used from case to case basis.

- i) Price based System - Least Cost Selection (LCS)
- ii) Quality and Cost Based Selection (QCBS);
- iii) Direct Selection: Single Source Selection (SSS)

Detailed procedure to be followed as illustrated under MoF Manual for Procurement of Consultancy & other Services presently updated up to June 2022.

8.2 Procedure for Engagement of Research Assistance

For procuring of research assistance from Government institutions and laboratories for R&D work in the Factories, a detailed procedure has been approved by the Department of Defence Production vide MoD I.D No.5(10)/2010/ D(Prod) dated 10th February 2011 (as enclosed in TCL DFP) or revised time to time.

8.2.1 Procurement of R&D items.

All the provisions as stipulated in para 2.10 of chapter-2 shall be squarely applicable in the procurement of R&D items, assemblies, sub-assemblies and process required for R&D project(s). Procurement to be done in-line with the relevant delegations of TCL DFP.

8.3 Conflict of Interest

To eliminate conflict of interests, the consultants and (or) his associates should not be engaged for implementation of downstream services, supplies

or works related to the consultancy. This provision shall be included in the consultancy contract.

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Chapter-9

DISPOSAL OF SCRAP GOODS

9. Scrap for Disposal

There accumulates, in every organisation, a large quantity of material which is neither usable for the purpose for which it was originally procured nor of any other operational value. Such material is generally called "scrap" and should be distinguished from other stores and component parts which can be utilised after repair or renovation. Occasionally, scrap may consist of second-hand or in excellent repair even new material which is surplus to the need of the organisation or its sister organisations and may command a fair price in the market not normally associated with scrap.

9.1 Classification and Categorisation

It is very important to categorise the scrapped items under different trade groups based on the use to which the scrap purchaser can put it for commercial use, for example, melting, rerolling, burning, recycling, and so on. Properly grouped and sorted scrap is likely to attract better value and help in keeping historical data of prices and facilitates fixing of reserve prices.

9.2 Survey of Materials for Classifying as Scrap for Disposal

9.2.1 Competent Authority to declare and dispose off Scrap Material is defined in the DFP, based on the 'Book Value' or 5% (five percent) of the Original/ Market Value of new goods, if Book value is either not available or has become negligible. Before any item of stores can be sold as 'scrap', it should be declared as such by a Committee appointed by the Head of Department.

9.2.2 The Competent Authority may relax this need for survey, as a standing order, in the case of a list of known items of scrap like Newspapers, containers etc. of small value (Rs. 5,000 – Rupees Five Thousand).

9.2.3 **Survey of Scrap:** Generally, items may be identified as scrap in any of the following cases:

- i) Whether the item has completed its expected useful life or not, factors such as norms for maintenance cost; norms for utilisation of

such equipment; usability in the organisation or any other office must also to be considered before deciding on scrapping the equipment; and

ii) The item has a limited shelf life, exists in surplus quantities and there is likely to be no future use of the item during the remaining period of its useful life.

iii) The reasons for declaring the item surplus or obsolete or unserviceable should be recorded by the Committee. A standard format for SC's recommendations for disposal of goods is provided in Annexure-40.

iv) SC may seek the approval of the CA with the concurrence of the Associated/ integrated Finance.

9.3 Modes of Disposal

The mode of disposal may be determined by the CA, keeping in view the necessity to avoid accumulation of such goods, consequent blockage of space and also deterioration in value of goods to be disposed of. The usual modes of disposal of scrap are:

i) Small value scrap such as waste paper or industrial sweepings, and so on, up to a value of Rs. 5,000 (Rupees Five thousand) in each case may be sold directly to the local scrap dealers on a summary quotation basis; and

ii) Scrap upto Rupees two Lakh may be sold on a Limited Tender basis to locally known Scrap Dealers of relevant category.

iii) Sale through the e-auction portal, or a tender for disposal or traditional public auction may be resorted to for scrap value above

Rupees two lakh. e-Auction should be the preferred mode for such disposals, using the e-Auction platforms of NIC, MSTC and GeM.

iv) Certain useable machinery/ spare may still be useable by other Ministries/ Departments/ PSUs; these should be disposed at book value plus 20 (twenty) per cent (7.5 (seven and a half) per cent freight +12.5 (twelve and a half) per cent handling charges) directly to the concerned organisation.

v) **Sales by Submission of Tenders:** Disposal may also be done by submitting bids in response to public invitations for tenders for supplying materials, whether such invitations are issued by Government Departments, PSUs or by private bodies. This method of sale is particularly suitable where it is proposed to dispose of its 'overstocks' and surplus stores' which are in fit to use condition.

vi) In case of repeated failures on GeM/MSTC, Open tender may also be explored for disposal.

9.4 Determining Reserve Price

In any mode of disposal, material should not be sold at rates per lot but bids should be registered by rate per unit (number, length or weight) so that a complete check on the quantity delivered can be exercised, at any time. In case of large value disposals a Reserve Price Committee may be appointed to recommend the reserve price. The use of external costing experts, price databases, price indices and data sharing may be done relating to the reasonableness for procurement prices. Large newspapers and economic dailies have dedicated sections dealing with rates in the scrap market. The reserve price should be recorded on a page numbered register in advance of the date of disposal. This register should be sealed immediately after the reserve prices of all lots are recorded in the register, and kept in safe custody. The sealed register should be opened just before the e-auction creation/tender opening. Some methods for determining reserve prices are:

- i) Book value with depreciation. In case the Book value is not available or has become insignificant, the reserve price may be based on 5% of the Original or Market cost of the new item;
- ii) Last sale price moderated by quantity, quality, location, market condition, price trend of various metals, and so on;
- iii) Prevailing market price ascertained through a market survey; and
- iv) Costing analysis based on costs of various elements of the item (discounted for melting losses) labour charges and transportation cost, etc.
- v) In cases where the reserve price cannot be fixed as per the laid down procedure an Insurance Regulatory and Development Authority (IRDA)-approved valuer may be engaged for valuation of such material and the Reserve Price Committee will take into account the valuation given by the valuer while recommending the reserve price.

9.5 Reserve Price and Other Financial Powers

Policy guidelines as issued vide TCL Letter No. TCLHQ/Fin/Policy/2021-22 Dated: 16.11.2021 regarding Reserve Prices shall be applicable. Further DFP to be referred for all other Financial Powers.

ANNEXURE-1: LIST OF ACRONYMS USED IN THIS MANUAL

1.	ACASH – Association of Corporations and Apex Societies of Handloom
2.	AHSP – Authority Holding Sealed Particulars
3.	AMC – Annual Maintenance Contract
4.	AON – Acceptance of Necessity
5.	ASSOCHAM – Associated Chambers of Commerce and Industry of India
6.	AWB – Airway Bill
7.	BC – Base Currency (i.e. INR)
8.	BE – Bill of Entry
9.	BL – Bill of Lading
10.	CC – Cash and Carry
11.	CD – Customs Duty
12.	CFA – Competent Financial Authority
13.	CIF – Cost, Insurance and Freight
14.	CII – Confederation of Indian Industries
15.	CIP – Carriage and Insurance Paid
16.	COTS – Commercially-Off-The-Shelf
17.	CPSUs – Central Public Sector Undertakings
18.	CQA (T&C) – Controllerate of Quality Assurance (Textile & Clothing)
19.	CST – Central Sales Tax
20.	CST – Comparative Statement of Tenders
21.	CVC – Central Vigilance Commission
22.	DAVP – Directorate of Advertisement and Visual Publicity

23.	DBT – Direct bank Transfer
24.	DCF – Discounted Cash Flow
25.	DDO – Direct Demanding Officer
26.	DFP – Delegation of Financial Powers of Troop Comforts Limited
27.	DP – Delivery Period
28.	DPE – Department of Public Enterprises
29.	DPM - Defence Procurement Manual
30.	DPP - Defence Procurement Procedures
31.	DRDO – Defence Research and Development Organization
32.	ECS – Electronic Clearance Service
33.	EFT – Electronic Fund Transfer
34.	EMD – Earnest Money Deposit
35.	EPF – Employees Provident Fund
36.	ERV – Exchange Rate Variation
37.	ESI – Employees State Insurance
38.	FAS – Free Alongside Ship
39.	FE – Foreign Exchange
40.	FICCI – Federation of Indian Chambers of Commerce and Industry
41.	FOB – Free on Board
42.	FOR – Free on Rail
43.	GCC – General Conditions of the Contract
44.	GeM – Government e-Marketplace
45.	GFR - General Financial Rules
46.	GST – Goods and Services Tax

47.	GTE – Global Tender Enquiry
48.	IFD – Inter Factory Demands
49.	INCOTERMS – International Commercial Terms
50.	ITJ – Indian Trade Journal
51.	JRI - Joint Receipt Inspection
52.	JSS - Joint Services Specifications
53.	KVIC – Khadi Village Industries Commission
54.	LC – Letter of Credit
55.	LD – Liquidated Damages
56.	Lol – Letter of Intent
57.	LPC – Local Purchase Committee
58.	LPP – Last Paid Price
59.	LTE – Limited Tender Enquiry
60.	MHA – Ministry of Home Affairs
61.	MIS – Management Information System
62.	MSEs – Micro and Small Enterprises
63.	MSMEs – Micro, Small and Medium Enterprises
64.	MM – Material Management
65.	MOD – Ministry of Defence
66.	MP – Material Planning
67.	MTO – Made to Order
68.	NEFT – National Electronic Fund Transfer
69.	NIC – National Informatics Center
70.	NIT – Notice Inviting Tender

71.	NPV – Net Present Value
72.	NSIC – National Small-scale Industries Corporation Ltd
73.	OC – Option Clause
74.	OEM – Original Equipment Manufacturer
75.	OTE – Open Tender Enquiry
76.	P&MM – Planning & Material Management
77.	PAC – Proprietary Article Certificate
78.	PBG – Performance Bank Guarantee
79.	PSD – Performance Security Deposit
80.	PSU – Public Sector Undertaking
81.	PV – Price Variation
82.	QA - Quality Assurance
83.	QC - Quality Control
84.	QR – Qualitative Requirements
85.	RC – Rate Contract
86.	RST - Resultant Single Tender
87.	RTGS – Real Time Gross Settlement
88.	SCC – Special Conditions of the Contract
89.	SDOTE – Source Development Open Tender Enquiry
90.	SHIS – Store Holders Inability Sheet
91.	SIH - Stores-in-hand
92.	SKS – Single Known Source
93.	SO – Supply Order
94.	SOP - Standard Operating Procedure

95.	STE – Single Tender Enquiry
96.	SWOD - Supplementary Work Order Draft
97.	TAC - Tender Advisory Committee
98.	TCL – Troop Comforts Limited
99.	TCLPM – Troop Comforts Limited Procurement Manual
100.	TE – Tender Enquiry
101.	TEC - Technical Evaluation Committee
102.	TPC - Tender Purchase Committee
103.	TT – Telegraphic Transfer
104.	TReDS – Trades Receivables Discounting System
105.	VSL TPC – Vendor Selection TPC
106.	WIP - Work-in-progress
107.	UAM – Udyog Aadhaar Memorandum

ANNEXURE-2: DEFINITIONS

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

1. **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 equipment's rests with respective Service Headquarters. TCL is the AHSP for certain types of clothing and equipment items issued to the defence and/or non-defence indentors. 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.
2. **Competent Financial Authority:** The Competent Financial Authority (CFA) is an authority duly empowered by the Board of Directors of Troop Comforts Limited to sanction and approve expenditure 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.
3. **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.
4. **Direct Demanding Officers:** The authorities in the Factories & other units under TCL, 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 TCL.
5. **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.

6. Inspecting Authority: Sr. General Managers and General Managers or their authorized representative of Factories will act as Inspecting Authority for items needed by them.
7. 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.
8. 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.
9. Paying Authority: In respect of procurements made under this Manual, Finance & Accounts under the Factory and TCLHQ shall be the Paying Authority.
10. 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 1.4 of this Manual.
11. 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.
12. Purchaser: The Sr. GM/GM 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.
13. 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 based on actual requirement.

14. Stores: The terms 'Stores' would include all items mentioned in paragraph 1.5 of this Manual.
15. 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.
16. Authority for Procurement: Deemed Contracts with services and other DPSUs/ Contracts received through competitive bidding/ Contract agreements with other customers/ IFD / SWOD / Annual Supply Plan given by TCLHQ/ purchase requisition given by user section will be taken as authority for procurement.
- (a) SWOD: Supplementary Work Order Draft is placed by other Defence Department on TCL.
 - (b) IFD: Inter Factory Demand is placed by one Factory on another factory with in TCL group.
 - (c) Annual Supply Plan: Annual Supply Plan is issued by TCLHQ to various units for making supplies to indentors/ DPSUs. This is issued based on the annual plan of supply of various items to various indentors.
 - (d) 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.
17. E-Bid : Bid received through TCL e-Procurement System.
18. Registered Vendor: A vendor registered as per the Standard Operating Procedure for Vendor Registration issued by TCL as updated from time to time.
19. Certain terms like Low Value/Low Tech items, High Value & High technology items have been used in the manual. Considering the diverse range of inputs procured by the Factories, generic definition of these terms

is not feasible. The relevant TEC/TPC, after due deliberations and recording reasons, shall carry categorize appropriately at the relevant procurement stage.

20. Class-I Local Supplier: “Class-I local supplier” means a supplier or service provider, whose goods, services or works offered for procurement, meet the minimum local content as prescribed for ‘Class-I local supplier’ under the Public Procurement (Preference to Make in India), Order 2017.
21. Class-II Local Supplier: “Class-II local supplier” means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for ‘Class-II local supplier’ but less than that prescribed for ‘Class-I local supplier’ under the Public Procurement (Preference to Make in India), Order 2017.
22. Non Local Supplier: “Non-Local supplier” means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than that prescribed for ‘ClassII local supplier’ under the Public Procurement (Preference to Make in India), Order 2017.
23. Local Content: “Local Content” means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.
24. 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.

ANNEXURE-3: GUIDELINES FOR SELECTION OF TECHNOLOGY PARTNER FOR TOT

1. TCL is engaged in production of items for Indian Defence Forces and Security Forces. To keep pace with technological developments and enter into new business areas including export to align with core strength, TCL needs to acquire new and advanced technologies through Transfer of Technology (ToT), co-production or collaboration agreements with best in class technology partners.

2. Selection of technology partner may be necessitated by the need for the following:

- a) Joint Research & Development activity
- b) Manufacturing ToT
- c) Co-production activity
- d) Short-term partnerships for specific projects/tenders
- e) Separate Joint Venture company to be set-up jointly
- f) To become Indian Offset Partner of foreign OEMs for areas relating to TCL
- g) Up-gradation of existing products

3. Selection of technology partner has to be done after careful analysis and consideration of several factors. Therefore, there is a need to formalise the process for selection of technology partners. The broad procedure, as outlined in succeeding paras, shall be the guidelines for selection of technology partner.

3.1 The need for technology partner, in terms of technological requirement, can be divided in 2 categories:

- Where a defence equipment is required against an available PSQR/GSQR of Indian Armed Forces: In such cases, it is essential that the technical/operational requirement of the equipment as mentioned in the QRs is fully met with scope of future upgrades. If a respondent is not able to offer the equipment as per the stated QR, it becomes ineligible to be a technology partner.
- Where TCL is looking for a technology partner for a particular product segment or technology pro-actively, which could have the potential to be

supplied to Indian Armed Forces, non-defence market and for exploring export market: In such cases, the requirement of performance parameters of the product or technology will include 2 parts – one part which would be essentially required for the respondent to be eligible to be a probable technology partner and the second part comprising of evaluation criteria based on which an eligible technology partner(s) shall be shortlisted.

- The technological partner shall preferably be an OEM.

4. The selection of technology partner will be through Indian or Global Expression of Interest (Eoi) depending upon the technology availability.

4.1 Director/Operation of TCL will approve to issue Eoi on case to case basis in consultation with Finance division.

4.2 There may be cases where due to strategic reasons reputed technology partners/OEM needs to be selected as technology partner, however, they are not willing to participate in GTE/OTE. In such cases based on due justification the technological partner may be selected with the approval of TCL board. The OEM should be of national/international repute and technology so offered may necessitate global certification for export.

5. Issue of Eoi

5.1 Eoi will be issued by concerned factory/TCLHQ on case to case basis post AoN from TCLHQ.

5.2 Director Operation of TCL will constitute an Eoi Committee for preparation of Eoi document to be issued for selection of technology partner. This Eoi document post approval of Director Operation shall be forwarded to the respected factory.

5.3 The Eoi Committee will specify all the essential technical and financial parameters in the Eoi document. These parameters will determine the eligibility of the respondents. Only those respondents, who satisfy these parameters, will be considered for further evaluation for ranking amongst themselves as stated in the succeeding paras.

5.8 The factory may also consider holding Pre-Bid meeting for any clarification required by the vendors.

6.0 Financial Powers: Existing powers of store procurement as per DFP TCL shall be applicable.

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ANNEXURE-4: SOP FOR SELECTION OF BUSINESS PARTNER

1. Selection of Business Partner may be necessitated by the need for any of the following:
 - a) Joint Research & Development activity
 - b) Up- gradation of existing products
 - c) Manufacturing ToT
 - d) Co-production activity
 - e) Maintenance ToT
 - f) Marketing Strategies
 - g) Export Opportunities
 - h) Short term partnership for specific projects/tender
 - i) To become Indian Offset partners of foreign OEMs for areas relating to TCL
 - j) Separate joint venture Company to be set-up jointly
2. The selection of Business Partner will be through Domestic or Global Expression of Interest (Eol).
 - 2.1. Director/Operation will decide to issue Domestic or Global Eol on case to case basis in consultation with Director/Finance.
 - 2.2. The selection of Business Partner may be with or without financial commitment.
3. With working together as Business Partners, both parties may quote for the selected product/technology to any domestic or foreign customer. Once the product is accepted by the End Customer and the contract is awarded, the initiating Party may also place purchase orders on the other Party as per the pre- defined work share of the other Party, if required as per details given in para7.
4. Normally, the purchase order for the work share of the other Party will be awarded to third party with the mutual consent. In case of future orders from the customer, the revised cost would be decided by both partners after taking into consideration all the aspects of costing.

5. Issue of Eol

5.1. Eol will be issued either by TCL HQ or Factories as per para 2.1 above. The Operations Wing will initiate the proposal for obtaining approval for issue of Eol. In the proposal, among the other things, the Operations Wing will also specify, the purpose for selection of business partner as mentioned at para 1 above.

5.2. Director/Operations will constitute an Eol committee for preparation of Eol documents to be issued for selection of Business Partner. The committee will have one member from Finance.

5.3. The Eol committee will specify all the broad technical and financial parameters, experience required & some other credentials like Accreditation & Certification etc in the Eol documents for respondents. These parameters will determine the eligibility of the respondents. Only those respondents, who satisfy these parameters, will be considered for further evaluation for technical/business ranking.

5.4. For comparative evaluation, the Eol documents will invariably have the performance parameters, which shall be evaluated among eligible responses in the best business interest of TCL.

5.5. Comparative evaluation of eligible responses will be done only in those cases where more than one response is found eligible based on the specified parameters/criteria. If there is only single eligible response, that should also be considered & processed.

5.6. The Eol committee may also consider holding Pre-opening meeting for any clarification required by the likely Business Partners.

5.7. The Eol committee will submit the Eol documents to Operations Wing for approval of issue of Eol. The Director/Operations will also decide agency i.e., TCL Hqr or Factory for issue, receipt/opening of Eol.

5.8. The amendment to the Eol documents after issue of Eol can be done only with the recommendation of Eol committee and approval of the Director/Operations. Reason regarding any change in the final submission date of responses against the Eol shall be taken at the level of Director/Operations.

6. Evaluation of Eol

6.1. The evaluation of offers received in the Eol will be - done by a committee constituted by Director/Operation. The Eol committee and Evaluation Committee can have common members.

6.2. The Evaluation Committee will prepare evaluation report and rank the eligible respondents as Rank-1, Rank-2 etc. based upon available criteria as mentioned in para 4.4 above to suit best business interest of TCL.

6.3. The evaluation report will be examined by the Operations wing and approved by the Director/Operation in consultation with Director/ Finance.

6.4. Any minor deviations observed during evaluation in the available response(s) may be accepted in overall interest of company with the approval of TCL Board.

7. Signing of MoU

7.1. After the approval as above, the case will be processed for signing of MoU with the selected Business Partner. The MoUs shall be signed either by Director/Operations or Sr.GM/GM of the TCL factories.

7.2. Objective of MoU, NOC, IPR, Arbitration clauses, working on future upgrades, validity of MoU etc must be mentioned in the MoU.

8. After signing of MoU with selected Business Partners, based on various RFPs issued by the End Customers or based on any other business opportunities, detailed T&C including broad methodology for quoting best/strategic price to End Customer, broad work share between MoU partners, supply/development schedule of items to be manufactured by both MoU partners (if any) etc., will be formulated by Eol Committee. Thereafter, if required, based on the requirement of End Product & recommendation of Eol committee, Purchase Order may be placed on the Business Partners for ToTs/ Products/Items/Services/ Equipment etc as per latest Delegation of Financial Power 1& b(iv) on nomination basis by relevant TPC.

9. Sometimes, there may be a business opportunity available in some latest, unique or exclusive technologies or business area, where issuing an Eol

may not result into participation of many partners or sometime, not much time may be available to go through Eol route to grab the available technology/business opportunity. In such cases, MoU may be signed with the Business Partners directly without issuing Eol, with or without financial commitment, with the approval of TCL Board.

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ANNEXURE-5: FORMAT FOR PROPRIETARY ARTICLE CERTIFICATE

File Number and Date Reference			
1	Description of article		
2	Forecast of quantity/annual requirement		
3	Approximate estimated value for above quantity		
4	Maker's name and address		
5	Name(s) of authorised dealers/ stockists		
6	I approve the above purchase on PAC basis and certify that: -- Note- Tick to retain only one out of (b), (c-1) or (c-2) whichever is applicable and cross out others. Please do confirm (a) by ticking it – without which PAC certificate will be invalid.		
6(a)	This is the only firm who is manufacturing/stocking this item. AND	☐	☐
6(b)	A similar article is not manufactured/sold by any other firm, which could be used in lieu OR	☐	☐
6(c)	No other make/brand will be suitable for following tangible reasons (like OEM/ warranty spares): OR _____	☐	☐
6(c)	No other make/brand will be suitable for following intangible reasons (if PAC was also given in the last procurement cycle, please also bring out efforts made since then to locate more sources): OR _____ _____	☐	☐
7	Reference of concurrence of finance wing to the proposal:		
History of PAC purchases of this item for past three years may be given below			

Name of the Supplier			
Order/ Tender Reference & Date	Quantity Ordered	Basic Rate on Order (Rs.)	Adverse Performance Reported if Any

Signature of Approving Authority-----

Date ----- Designation of Officer -----

ANNEXURE-6: FORMAT FOR SINGLE KNOWN SOURCE CERTIFICATE

SINGLE KNOWN SOURCE CERTIFICATE			
1.	Nomenclature of Item:		
2.	Specifications of Item:		
3.	Total Quantity required:		
4.	2/3 rd of the Quantity required:		
5.	End Use:		
6.	Name and Address of the Firm:		
7.	It is certified that the indented item has been developed and supplied by M/s against Open Tender Enquiry** number dated and said firm is the only known and established source on date.		
8.	The action taken for development of more sources and its/ their present status is		
	as follows (indicate here the SDOTE details and its/ their present status):		
			
9.	Estimated value of the case:		
10.	*Approval of the Director/Operations	has	been
	obtained vide.....		
Controlling Officer	Group Officer	Controlling Officer	Group Officer
MM	MM	User	User
Finance Member			
Sr. General Manager/ General Manager			
* for cases exceeding the financial powers delegated to General Managers/ Head of Department			
**if the Source was not developed through OTE, then brief detail on how it was developed to be indicated			

ANNEXURE-7(A): PRE-CONTRACT INTEGRITY PACT
(FOR CASES VALUING ABOVE RS. 100 CR)

General

1. Whereas the GM/Sr.GM, hereinafter referred to as the Buyer and the first party, proposes to procure (Name of the Store/ Equipment), hereinafter referred to as Defence Stores, and M/s _____, represented by, Mr. / Mrs. _____, Chief Executive Officer (which term, unless expressly indicated by the contract, shall be deemed to include its successors and its assignees), hereinafter referred to as the Bidder/Seller and the second party, is willing to offer/has offered the stores.
2. Whereas the Bidder is a private company/public company/partnership/registered export agency, constituted in accordance with the relevant law in the matter and the Buyer is a unit under TCL, Ministry of Defence and Government of India Enterprises.

Objectives

3. Now, therefore, the Buyer and the Bidder agree to enter into this pre-contract agreement, hereinafter referred to as Integrity Pact, to avoid all forms of corruption by following a system that is fair, transparent and free from any influence / unprejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:-

3.1 Enabling the Buyer to obtain the desired defence stores at a competitive price in conformity with the defined specifications by avoiding the high cost and the distortionary impact of corruption on public procurement.

3.2 Enabling bidders to abstain from bribing or any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also refrain from bribing and other corrupt practices and the Buyer will commit to prevent corruption, in any form, by their officials by following transparent procedures.

Commitments of the Buyer

4. The Buyer Commits itself to the following:-

4.1 The Buyer undertakes that no official of the Buyer, connected directly or indirectly with the contract, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the Bidder, either for themselves or for any person, organization or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to the Contract.

4.2 The Buyer will, during the pre-contract stage, treat all Bidders alike, and will provide to all Bidders the same information and will not provide any such information to any particular Bidder which could afford an advantage to that particular Bidder in comparison to other Bidders.

4.3 All the officials of the Buyer will report to the appropriate Government office any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.

5. In case of any such preceding misconduct on the part of such official(s) is reported by the Bidder to the Buyer with full and verifiable facts and the same is prima facie found to be correct by the Buyer, necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the Buyer and such a person shall be debarred from further dealings related to the contract process. In such a case while an enquiry is being conducted by the Buyer the proceedings under the contract would not be stalled.

Commitments of Bidders

6. The Bidder commits himself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of his bid or during any pre-contract or post- contract stage in order to secure the contract or in furtherance to secure it and in particular commits himself to the following:-

6.1 The Bidder will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or

other advantage, commission, fees, brokerage or inducement to any official of the Buyer, connected directly or indirectly with the bidding process, or to any person, organization or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the Contract.

6.2 The Bidder further undertakes that he has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Buyer or otherwise in procuring the Contract or forbearing to do or having done any act in relation to the obtaining or execution of the Contract or any other Contract with the Government for showing or forbearing to show favour or disfavour to any person in relation to the Contractor any other Contract with the Government.

6.3 The Bidder will not collude with other parties interested in the contract to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract.

6.4 The Bidder will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.

6.5 The Bidder further confirms and declares to the Buyer that the Bidder is the original manufacturer/integrator/ authorized government sponsored export entity of the defence stores and has not engaged any individual or firm or company whether Indian or foreign to intercede, facilitate or in any way to recommend to the Buyer or any of its functionaries, whether officially or unofficially to the award of the contract to the Bidder, nor has any amount been paid, promised or intended to be paid to any such individual, firm or company in respect of any such intercession, facilitation or recommendation.

6.6 The Bidder, either while presenting the bid or during pre-contract negotiations or before signing the contract, shall disclose any payments he has made, is committed to or intends to make to officials of the Buyer or their family members, agents, brokers or any other intermediaries in connection with the contract and the details of services agreed upon for such payments.

6.7 The Bidder shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information provided by the Buyer

as part of the business relationship, regarding plans, technical proposals and business details, including information contained in any electronic data carrier. The Bidder also undertakes to exercise due and adequate care lest any such information is divulged.

6.8 The Bidder commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.

6.9 The Bidder shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.

7. Previous Transgression

7.1 The Bidder declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any Public Sector Enterprise in India or any Government Department in India, that could justify bidder's exclusion from the tender process.

7.2 If the Bidder makes incorrect statement on this subject, Bidder can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

8. Earnest Money/Security Deposit

Every bidder, while submitting commercial bid, shall deposit an amount *as Earnest Money/Security Deposit, with the buyer through any of the following instruments:-

(i) Bank Draft or a Pay Order in favour of **“Troop Comforts Limited”, unit name -----**”.

(ii) A confirmed guarantee by an Indian Nationalized Bank, promising payment of the guaranteed sum to the Buyer, on demand within three working days without any demur whatsoever and without seeking any reasons whatsoever. The demand for payment by the Buyer shall be treated as conclusive proof for payment. A model Bank guarantee format is enclosed.

Note: - In case of foreign supplies, the vendor may, if required, furnish the Bank Guarantee from a first class International Bank provided the same is confirmed/ verified by the State Bank of India.

(iii) Any other mode or through any other instrument (to be specified in the RFP/TE).

* At present, the amount of **pre-contract EMD/SD is Rs. 1 Cr in cases where the cost as estimated by the Buyer is “above Rs. 100 Cr & up to Rs. 300 Cr”, and Rs. 3 Cr if the cost as estimated by the Buyer is above Rs. 300 Cr.** **Note:** - The option of all acceptable instruments needs to be retained. However, the Buyer should consider the validity of the instrument and the need for revalidation while obtaining the same.

8.1 Earnest Money Deposit will act as security for Pre-contract Integrity Pact till signing of contract. Post signing of contract, PCIP will be covered by Performance Bank Guarantee/Performance Security Deposit till completion of the contract. The Earnest Money/Security Deposit shall be valid up to a period of **five years** beyond the bid validity specified in the TE (or subsequent request made by the buyer for validity extension) or the complete conclusion of contractual obligations to complete satisfaction of both the bidder and the buyer, whichever is later. DPSUs are, however, not required to submit PCIP and IPBG when nominated as ab-initio Single Vendors. They shall however enter in to a PCIP, on the same lines, with its their sub-vendors individually in case the estimated value of each sub-contract(s) exceeds ` 50 Lakhs. DPSUs will submit PCIP, EMD & all BGs as applicable, while participating in multi vendor cases with private vendors. In case there are more than one bidder, the Earnest Money/Security Deposit shall be refunded by the buyer to those bidder(s) whose bid does not qualify (do not qualify) after the stages of TEC/TPC, as constituted by the Buyer, immediately after a recommendation is made by the TEC/TPC on bid(s) after an evaluation.

8.2 In the case of successful bidder, a clause would also be incorporated in the Article pertaining to Performance Bond in the Purchase Contract that the provisions of Sanctions for Violation shall be applicable for forfeiture of Performance Bond in case of a decision by the Buyer to forfeit the same without assigning any reason for imposing sanction for violation of this pact.

8.3 The provisions regarding Sanctions for Violation in Integrity Pact include forfeiture of Performance Bond in case of a decision by the Buyer to forfeit the same without assigning any reason for imposing sanction for violation of Integrity Pact.

8.4 No interest shall be payable by the Buyer to the Bidder(s) on Earnest Money/Security Deposit for the period of its currency.

9. Company Code of Conduct

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

10. Sanctions for Violation

10.1 Any breach of the aforesaid provisions by the Bidder or any one employed by him or acting on his behalf (whether with or without the knowledge of the Bidder) or the commission of any offence by the Bidder or any one employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act 1988 or any other act enacted for the prevention of corruption shall entitle the Buyer to take all or any one of the following actions, wherever required:-

(i) To immediately call off the pre-contract negotiations without assigning any reason or giving any compensation to the Bidder. However, the proceedings with the other Bidder(s) would continue.

(ii) The Earnest Money/Security Deposit/Performance Bond shall stand forfeited either fully or partially, as decided by the Buyer and the Buyer shall not be required to assign any reason therefore.

(iii) To immediately cancel the contract, if already signed, without giving any compensation to the Bidder.

(iv) To recover all sums already paid by the Buyer, and in case of an Indian Bidder with interest thereon at 2% higher than the prevailing Prime Lending Rate of State Bank of India (or Base Rate of State Bank of India in the absence of Prime Lending Rate), while in case of a Bidder from a country other than India with interest thereon at 2% higher than the LIBOR. If any outstanding payment is due to the Bidder

from the Buyer in connection with any other contract for any other defence stores, such outstanding payment could also be utilized to recover the aforesaid sum and interest.

(v) To encash the advance bank guarantee and performance-cum-warranty bond, if furnished by the Bidder, in order to recover the payments, already made by the Buyer, along with interest.

(vi) To cancel all or any other Contracts with the Bidder.

(vii) To ban the Bidder from entering into any bid from the Government of India for a minimum period of five years and not more than ten years at the discretion of the Buyer.

(viii) To recover all sums paid in violation of this Pact by Bidder(s) to any middleman or agent or broker with a view to securing the contract.

(ix) If the Bidder or any employee of the Bidder or any person acting on behalf of the Bidder, either directly or indirectly, is closely related to any of the officers of the Buyer, or alternatively, if any close relative of an officer of the Buyer has financial interest/stake in the Bidder's firm, the same shall be disclosed by the Bidder at the time of filing of tender. Any failure to disclose the interest involved shall entitle the Buyer to rescind the contract without payment of any compensation to the Bidder. The term "close relative" for this purpose would mean spouse whether residing with the Government servant or not, but not include a spouse separated from the Government servant by a decree or order of a competent court; son or daughter or step son or step daughter and wholly dependent upon Government servant, but does not include a child or step child who is no longer in any way dependent upon the Government servant or of whose custody the Government servant has been deprived of by or under any law; any other person related, whether by blood or marriage, to the Government servant or to the Government servant's wife or husband and wholly dependent upon Government servant.

(x) The Bidder shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with

any employee of the Buyer, and if he does so, the Buyer shall be entitled forthwith to rescind the contract and all other contracts with the Bidder. The Bidder shall be liable to pay compensation for any loss or damage to the Buyer resulting from such rescission and the Buyer shall be entitled to deduct the amount so payable from the money(s) due to the Bidder.

(xi) In cases where irrevocable Letters of Credit have been received in respect of any contract signed by the Buyer with the Bidder, the same shall not be opened.

10.2 The decision of the Buyer to the effect that a breach of the provisions of this Integrity Pact has been committed by the Bidder shall be final and binding on the Bidder, however, the Bidder can approach the monitor(s) appointed for the purposes of this Pact.

11. Fall Clause

11.1 The Bidder undertakes that he has not supplied/is not supplying the similar systems or subsystems at a price lower than that offered in the present bid in respect of any other Ministry/Department of the Government of India and if it is found at any stage that the similar system or sub-system was supplied by the Bidder to any other Ministry/Department of the Government of India at a lower price, then that very price, with due allowance for elapsed time, will be applicable to the present case and the difference in the cost would be refunded by the Bidder to the Buyer, if the contract has already been concluded.

11.2 The Bidder shall strive to accord the most favoured customer treatment to the Buyer in respect of all matters pertaining to the present case.

12. Independent Monitors

12.1 The Buyer has appointed Independent Monitor(s) for this Pact in consultation with the Central Vigilance Commission (**Names and Addresses of the Monitors to be given**) :

12.2 As soon as the Monitor notices, or believes to notice, a violation of this Pact, he will so inform the **GM/Sr.GM**.

13. Examination of Books of Accounts

In case of any allegation of violation of any provisions of this Integrity Pact or payment of commission, the Buyer or its agencies shall be entitled to examine the Books of Accounts of the Bidder and the Bidder shall provide necessary information of the relevant financial documents in English and shall extend all possible help for the purpose of such examination.

14. Law and Place of Jurisdiction

This Pact is subject to Indian Law. The place of performance and jurisdiction is the seat of the Buyer i.e. the nearest location from the seat of the Buyer of a High Court or a Bench of High Court.

15. Other Legal Actions

The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the extant law in force relating to any civil or criminal proceedings.

16. Validity

16.1 The validity of this Integrity Pact shall be from date of its signing and extend up to 5 years or the complete execution of the contract to the satisfaction of both the Buyer and the Bidder/Seller, whichever is late.

16.2 Should one or several provisions of this Pact turn out to be invalid; the remainder of this Pact remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

17. The Parties hereby sign this Integrity Pact at _____ on _____

BUYER

()

Designation:

TCL unit: _____

BIDDER

()

Chief Executive Officer

Name of Firm: _____

Witness

1. _____

2. _____

Witness

1. _____

2. _____

Troop Comforts Limited

ANNEXURE-7(B): PRE-CONTRACT INTEGRITY PACT
(FOR CASES VALUING ABOVE RS. 50 LAKH AND UP TO 100 CR)

General

1. Whereas the GM/Sr.GM, hereinafter referred to as the Buyer and the first party, proposes to procure (Name of the Store/ Equipment), hereinafter referred to as Defence Stores, and M/s. _____ represented by, Mr. / Mrs. _____, Chief Executive Officer (which term, unless expressly indicated by the contract, shall be deemed to include its successors and its assignees), hereinafter referred to as the Bidder/Seller and the second party, is willing to offer/has offered the stores.

2. Whereas the Bidder is a private company/public company/partnership/registered export agency, constituted in accordance with the relevant law in the matter and the Buyer is a unit under TCL, Ministry of Defence, Government of India Enterprises.

Objectives

3. Now, therefore, the Buyer and the Bidder agree to enter into this pre-contract agreement, hereinafter referred to as Integrity Pact, to avoid all forms of corruption by following a system that is fair, transparent and free from any influence / unprejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:-

3.1 Enabling the Buyer to obtain the desired defence stores at a competitive price in conformity with the defined specifications by avoiding the high cost and the distortionary impact of corruption on public procurement, and

3.2 Enabling bidders to abstain from bribing or any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also refrain from bribing and other corrupt practices and the Buyer will commit to prevent corruption, in any form, by their officials by following transparent procedures.

Commitments of the Buyer

4. The Buyer Commits itself to the following:-

4.1 The Buyer undertakes that no official of the Buyer, connected directly or indirectly with the contract, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the Bidder, either for themselves or for any person, organization or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to the Contract.

4.2 The Buyer will, during the pre-contract stage, treat all Bidders alike, and will provide to all Bidders the same information and will not provide any such information to any particular Bidder which could afford an advantage to that particular Bidder in comparison to other Bidders.

4.3 All the officials of the Buyer will report to the appropriate Government office any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.

5. In case of any such preceding misconduct on the part of such official(s) is reported by the Bidder to the Buyer with full and verifiable facts and the same is prima facie found to be correct by the Buyer, necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the Buyer and such a person shall be debarred from further dealings related to the contract process. In such a case while an enquiry is being conducted by the Buyer the proceedings under the contract would not be stalled.

Commitments of Bidders

6. **The Bidder commits himself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of his bid or during any**

pre-contract or post- contract stage in order to secure the contract or in furtherance to secure it and in particular commits himself to the following:-

6.1 The Bidder will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Buyer, connected directly or indirectly with the bidding process, or to any person, organization or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the Contract.

6.2 The Bidder further undertakes that he has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Buyer or otherwise in procuring the Contract or forbearing to do or having done any act in relation to the obtaining or execution of the Contract or any other Contract with the Government for showing or forbearing to show favour or disfavour to any person in relation to the Contractor any other Contract with the Government.

6.3 The Bidder will not collude with other parties interested in the contract to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract.

6.4 The Bidder will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.

6.5 The Bidder further confirms and declares to the Buyer that the Bidder is the original manufacturer/integrator/ authorized government sponsored export entity of the defence stores and has not engaged any individual or firm or company whether Indian or foreign to intercede, facilitate or in any way to recommend to the Buyer or any of its functionaries, whether officially or unofficially to the award of the contract to the Bidder, nor has any amount been paid, promised or intended to be paid to any such individual, firm or company in respect of any such intercession, facilitation or recommendation.

6.6 The Bidder, either while presenting the bid or during pre-contract negotiations or before signing the contract, shall disclose any payments he has made, is committed to or intends to make to officials of the Buyer or their family members, agents, brokers or any other intermediaries in connection with the contract and the details of services agreed upon for such payments.

6.7 The Bidder shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information provided by the Buyer as part of the business relationship, regarding plans, technical proposals and business details, including information contained in any electronic data carrier. The Bidder also undertakes to exercise due and adequate care lest any such information is divulged.

6.8 The Bidder commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.

6.9 The Bidder shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.

7. Previous Transgression

7.1 The Bidder declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any Public Sector Enterprise in India or any Government Department in India, that could justify bidder's exclusion from the tender process.

7.2 If the Bidder makes incorrect statement on this subject, Bidder can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

8. Earnest Money/Security Deposit

8.1 All procurement cases above Rs. 50 Lakhs and up to Rs. 100 Cr, Integrity Pact is required to be executed without any

additional Financial Guarantee. The EMD/SD/PBG required to be submitted by the vendor as prescribed in the respective Procurement Manual shall only act as the financial guarantee for the IP.

8.2 The validity of the IP will be the validity of the EMD/SD/PBG or the complete conclusion of contractual obligations to complete satisfaction of both the bidder and the buyer, whichever is later. In case there are more than one bidder, the Earnest Money/Security Deposit shall be refunded by the buyer to those bidder(s) whose bid does not qualify (do not qualify) after the stages of TEC/ TPC, as constituted by the Buyer, immediately after a recommendation is made by the TEC/TPC on bid(s) after an evaluation.

8.3 In the case of successful bidder a clause would also be incorporated in the Article pertaining to Performance Bond in the Purchase Contract that the provisions of Sanctions for Violation shall be applicable for forfeiture of Performance Bond in case of a decision by the Buyer to forfeit the same without assigning any reason for imposing sanction for violation of this pact.

8.4 The provisions regarding Sanctions for Violation in Integrity Pact include forfeiture of Performance Bond in case of a decision by the Buyer to forfeit the same without assigning any reason for imposing sanction for violation of Integrity Pact.

8.5 No interest shall be payable by the Buyer to the Bidder(s) on Earnest Money/Security Deposit for the period of its currency.

9. **Company Code of Conduct**

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

10. **Sanctions for Violation**

10.1 Any breach of the aforesaid provisions by the Bidder or any one employed by him or acting on his behalf (whether with or

without the knowledge of the Bidder) or the commission of any offence by the Bidder or any one employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act 1988 or any other act enacted for the prevention of corruption shall entitle the Buyer to take all or any one of the following actions, wherever required:-

(i) To immediately call off the pre-contract negotiations without assigning any reason or giving any compensation to the Bidder. However, the proceedings with the other Bidder(s) would continue.

(ii) The Earnest Money/Security Deposit/Performance Bond shall stand forfeited either fully or partially, as decided by the Buyer and the Buyer shall not be required to assign any reason therefore.

(iii) To immediately cancel the contract, if already signed, without giving any compensation to the Bidder.

(iv) To recover all sums already paid by the Buyer, and in case of an Indian Bidder with interest thereon at 2% higher than the prevailing Prime Lending Rate of State Bank of India (or Base Rate of State Bank of India in the absence of Prime Lending Rate) and in case of a Bidder from a country other than India with interest thereon at 2% higher than the LIBOR. If any outstanding payment is due to the Bidder from the Buyer in connection with any other contract for any other defence stores, such outstanding payment could also be utilized to recover the aforesaid sum and interest.

(v) To encash the advance bank guarantee and performance-cum-warranty bond, if furnished by the Bidder, in order to recover the payments, already made by the Buyer, along with interest.

(vi) To cancel all or any other Contracts with the Bidder.

(vii) To ban the Bidder from entering into any bid from the Government of India for a minimum period of five years and not more than ten years at the discretion of the Buyer. (viii) To recover all sums paid in violation of this Pact by Bidder(s) to any middleman or agent or broker with a view to securing the contract.

(ix) If the Bidder or any employee of the Bidder or any person acting on behalf of the Bidder, either directly or indirectly, is closely related to any of the officers of the Buyer, or alternatively, if any close relative of an officer of the Buyer has financial interest/stake in the Bidder's firm, the same shall be disclosed by the Bidder at the time of filing of tender. Any failure to disclose the interest involved shall entitle the Buyer to rescind the contract without payment of any compensation to the Bidder.

The term "close relative" for this purpose would mean spouse whether residing with the Government servant or not, but not include a spouse separated from the Government servant by a decree or order of a competent court; son or daughter or step son or step daughter and wholly dependent upon Government servant, but does not include a child or step child who is no longer in any way dependent upon the Government servant or of whose custody the Government servant has been deprived of by or under any law; any other person related, whether by blood or marriage, to the Government servant or to the Government servant's wife or husband and wholly dependent upon Government servant.

(x) The Bidder shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of the Buyer, and if he does so, the Buyer shall be entitled forthwith to rescind the contract and all other contracts with the Bidder. The Bidder shall be liable to pay compensation for any loss or damage to the Buyer resulting from such rescission and the Buyer shall be entitled to deduct the amount so payable from the money(s) due to the Bidder.

(xi) In cases where irrevocable Letters of Credit have been received in respect of any contract signed by the Buyer with the Bidder, the same shall not be opened.

10.2 The decision of the Buyer to the effect that a breach of the provisions of this Integrity Pact has been committed by the Bidder shall be final and binding on the Bidder, however, the Bidder can approach the monitor(s) appointed for the purposes of this Pact.

11. **Fall Clause**

11.1 The Bidder undertakes that he has not supplied/is not supplying the similar systems or subsystems at a price lower than that offered in the present bid in respect of any other Ministry/Department of the Government of India and if it is found at any stage that the similar system or sub-system was supplied by the Bidder to any other Ministry/Department of the Government of India at a lower price, then that very price, with due allowance for elapsed time, will be applicable to the present case and the difference in the cost would be refunded by the Bidder to the Buyer, if the contract has already been concluded.

11.2 The Bidder shall strive to accord the most favoured customer treatment to the Buyer in respect of all matters pertaining to the present case.

12. **Independent Monitors**

12.1 The Buyer has appointed Independent Monitor(s) for this Pact in consultation with the Central Vigilance Commission (**Names and Addresses of the Monitors to be given**):

12.2 As soon as the Monitor notices, or believes to notice, a violation of this Pact, he will so inform **the GM/Sr.GM**.

12.3 As per para 5.13 of CVC OM No. 05/01/22 issued vide letter No. 015/VGL/091 dated 25.01.2022, in the event of any dispute between the management and the contractor relating to those contracts where Integrity Pact is applicable, in case, both the parties are agreeable, they may try to settle dispute through mediation before the panel of IEMs in a time bound manner. If required, the organizations may adopt any mediation rules for this purpose. In case, the dispute remains unresolved even after mediation by the panel of IEMs, the organization may take further action as per the terms & conditions of the contract.

13. **Examination of Books of Accounts**

In case of any allegation of violation of any provisions of this Integrity Pact or payment of commission, the Buyer or its agencies shall be entitled to examine the Books of Accounts of the Bidder and the Bidder shall provide necessary information of the relevant financial documents in English and shall extend all possible help for the purpose of such examination.

14. **Law and Place of Jurisdiction**

This Pact is subject to Indian Law. The place of performance and jurisdiction is the seat of the Buyer i.e. the nearest location from the seat of the Buyer of a High Court or a Bench of High Court.

15. **Other Legal Actions**

The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the extant law in force relating to any civil or criminal proceedings.

16. **Validity**

16.1 The validity of this Integrity Pact shall be from date of its signing and will remain valid upto the validity of the PBG or the complete conclusion of contractual obligations to complete satisfaction of both the Buyer and the Bidder/Seller, whichever is later.

16.2 Should one or several provisions of this Pact turn out to be invalid; the remainder of this Pact remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

17. The Parties hereby sign this Integrity Pact at _____ on _____.

BUYER

()

Designation:

TCL unit:_____

BIDDER

()

Chief Executive Officer

Name of Firm:_____

Witness

1. _____

2. _____

Witness

1. _____

2. _____

ANNEXURE-8(A): TIME FRAME FOR PURCHASE CASE (SINGLE COMMERCIAL BID)

<u>Sl. No.</u>	<u>Activities</u>	<u>Time Frame</u>
1.	Preparation and Vetting of SHIS	1 Weeks
2.	Vendor Selection TPC for floating of LTE/STE, Preparation of TE and floating of LTE/STE.	3-4 Week
3.	Time allowed for submission of offer in a single bid system (Commercial bid only)	2 Weeks
4.	Opening of commercial offers, preparation of CST, Tech vetting etc. Proposal for scheduling of TPC, Brief for TPC, Notice for TPC, TPC meetings & Signatures and.	2-3 Week
5.	CFA Approval of Purchase Proposal, Preparation of SO and Dispatch of SO	1-2 Week
Total Time Frame		9-12 Weeks

**ANNEXURE-8(B): TIME FRAME FOR PURCHASE CASE (TWO BIDS –
TECH/COMMERCIAL)**

<u>Sl. No.</u>	<u>Activities</u>	<u>Time Frame</u>
1.	Preparation and Vetting of SHIS	1 Weeks
2.	Vendor Selection TPC for floating of OTE/GTE, Preparation of TE and floating of OTE/GTE.	3-4 Week
3.	Time allowed for submission of offers in a Two bid system (Commercial bid and Tech bid)	3 Weeks
4.	Opening of Tech Bids and Technical Evaluation by TEC (to be done at the Factory)	3 Weeks
5.	Capacity Verification & Registration of firm	3-4 Weeks
6.	Scheduling of TEC, TEC minutes and signature	2 Weeks
7.	Opening of Commercial offers, preparation of CST, Tech Vetting etc.	2 Weeks
8.	Opening of commercial offers, preparation of CST, Tech vetting etc. Proposal for scheduling of TPC, Brief for TPC, Notice for TPC, TPC meetings & Signatures and.	2-3 Week
9.	CFA Approval of Purchase Proposal, Preparation of SO and Dispatch of SO	1-2 Week
Total Time Frame		20-25 Weeks

ANNEXURE–9: INCOTERMS 2020

In INCOTERMS 2010, the delivery and transportation of goods are grouped into four categories as under: -

(a) “E” – Terms - Implies Ex-works, where under, the seller only makes the goods available to the buyer at the seller’s own premises. The responsibility of providing the carrier is that of the buyer.

(b) “F”-Terms- FCA, FAS and FOB are various clauses of “F” terms under which the seller is called upon to deliver the goods to a carrier appointed by the buyer. The responsibility of providing the carrier is that of the buyer.

(c) “C”-Terms- CFR, CIF, CPT and CIP are various clauses of “C” terms under which the seller has to contract for carriage, but without assuming the risk of loss of or damage the goods or additional costs due to events occurring after shipment and dispatch.

(d) “D”- Terms- DDP and DAP & DPU are various clauses of “D” terms under which the seller has to bear costs and risks needed to bring the goods to the place of destination.

RULES FOR ANY MODE OR MODES OF TRANSPORT

- **EXW Ex Works**

“Ex Works” means that the seller delivers when it places the goods at the disposal of the buyer at the seller’s premises or at another named place (i.e., works, factory, warehouse, etc.). The seller does not need to load the goods on any collecting vehicle, nor does it need to clear the goods for export, where such clearance is applicable. This term thus represents the minimum obligation for the seller, and the buyer has to bear all costs and risks involved in taking the goods from the seller’s premises.

- **FCA Free Carrier**

“Free Carrier” means that the seller delivers the goods to the carrier or another person nominated by the buyer at the seller’s premises or another named place. The parties are well advised to specify as clearly as possible the point within the named place of delivery, as the risk passes to the buyer at that point.

- CPT Carriage Paid To

“Carriage Paid To” means that the seller delivers the goods to the carrier or another person nominated by the seller at an agreed place (if any such place is agreed between parties) and that the seller must contract for and pay the costs of carriage necessary to bring the goods to the named place of destination.

- CIP Carriage and Insurance Paid To

“Carriage and Insurance Paid to” means that the seller delivers the goods to the carrier or another person nominated by the seller at an agreed place (if any such place is agreed between parties) and that the seller must contract for and pay the costs of carriage necessary to bring the goods to the named place of destination.

The seller also contracts for insurance cover against the buyer’s risk of loss of or damage to the goods during the carriage. The buyer should note that under CIP the seller is required to obtain insurance only on minimum cover. Should the buyer wish to have more insurance protection, it will need either to agree as much expressly with the seller or to make its own extra insurance arrangements.

- DAT Delivered at Terminal

“Delivered at Terminal” means that the seller delivers when the goods, once unloaded from the arriving means of transport, are placed at the disposal of the buyer at a named terminal at the named port or place of destination. “Terminal” includes a place, whether covered or not, such as a quay, warehouse, container yard or road, rail or air cargo terminal. The seller bears all risks involved in bringing the goods to and unloading them at the terminal at the named port or place of destination.

- DAP Delivered at Place

“Delivered at Place” means that the seller delivers when the goods are placed at the disposal of the buyer on the arriving means of transport ready for unloading at the named place of destination. The seller bears all risks involved in bringing the goods to the named place.

- DDP Delivered Duty Paid

“Delivered Duty Paid” means that the seller delivers the goods when the goods are placed at the disposal of the buyer, cleared for import on the arriving means of transport ready for unloading at the named place of destination. The seller bears all the costs and risks involved in bringing the goods to the place of destination and has an obligation to clear the goods not only for export but also for import, to pay any duty for both export and import and to carry out all customs formalities.

RULES FOR SEA AND INLAND WATERWAY TRANSPORT

(i) FAS Free Alongside Ship

“Free Alongside Ship” means that the seller delivers when the goods are placed alongside the vessel (e.g., on a quay or a barge) nominated by the buyer at the named port of shipment. The risk of loss of or damage to the goods passes when the goods are alongside the ship, and the buyer bears all costs from that moment onwards.

- FOB Free On Board

“Free On Board” means that the seller delivers the goods on board the vessel nominated by the buyer at the named port of shipment or procures the goods already so delivered. The risk of loss of or damage to the goods passes when the goods are on board the vessel, and the buyer bears all costs from that moment onwards.

(a) CFR Cost and Freight

“Cost and Freight” means that the seller delivers the goods on board the vessel or procures the goods already so delivered. The risk of loss of or damage to the goods passes when the goods are on board the vessel. The seller must contract for and pay the costs and freight necessary to bring the goods to the named port of destination.

- CIF Cost, Insurance and Freight

“Cost, Insurance and Freight” means that the seller delivers the goods on board the vessel or procures the goods already so delivered. The risk of loss of or damage to the goods passes when the goods are on board the vessel. The seller must contract for and pay the costs and freight necessary to bring the goods to the named port of destination. The seller also contracts for insurance cover against the buyer’s risk of loss of or damage to the goods during the carriage. The buyer should note that under CIF the seller is required to obtain insurance only on minimum cover. Should the buyer wish to have more insurance protection, it will need either to agree as much expressly with the seller or to make its own extra insurance arrangements.”

INCOTERMS 2020											
	Freight Collect Terms					Freight Prepaid Terms					
Groups	Any Mode or Modes of Transport		Sea and Inland Waterway Transport				Any Mode or Modes of Transport				
Incoterms	EXW	FCA	FAS	FOB	CFR	CIF	CPT	CIP	DAP	DPU	DDP
	Ex Works (Place)	Free Carrier (Place)	Free Alongside Ship (Port)	Free on Board (Port)	Cost and Freight (Port)	Cost Insurance & Freight (Port)	Carriage Paid To (Place)	Carriage & Insurance Paid to (Place)	Delivered at Place (Place)	Delivered at Place Unloaded (Place)	Delivered Duty Paid (Place)
Transfer of Risk	At Buyer's Disposal	On Buyer's Transport	Alongside Ship	On Board Vessel	On Board Vessel	On Board Vessel	At Carrier	At Carrier	At Named Place	At Named Place Unloaded	At Named Place
Obligations & Charges											
Export Packaging	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading Charges	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Delivery to Port/Place	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Export Duty, Taxes & Customs Clearance	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Origin Terminal Charges	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading on Carriage	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Carriage Charges	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Insurance	Negotiable	Negotiable	Negotiable	Negotiable	Negotiable	Seller	Negotiable	Seller	Negotiable	Negotiable	Negotiable
Destination Terminal Charges	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller
Delivery to Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller
Unloading at Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Buyer
Import Duty, Taxes & Customs Clearance	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller

**ANNEXURE–10: LETTERS RELATED TO DECENTRALIZATION OF
SHIPPING ARRANGEMENTS IN RESPECT OF OCEAN
TRANSPORTATION OF CARGOES UNDER THE CONTROL OF
GOVERNMENT/PUBLIC SECTOR UNDERTAKINGS**

Government of India
Ministry of Shipping
1, Parliament Street
New Delhi- 110 001

No. SC-18013/1/2013-ASO-I

Dated : 08th September, 2015

OFFICE MEMORANDUM

Subject: Decentralization of shipping arrangements in respect of ocean transportation of Cargoes under the control of Government/Public Sector Undertakings

The undersigned is directed to say that as per the existing policy of the Government of India, all import contracts are to be finalized on FOB (Free on Board)/FAS (Free Alongside Ship) basis in respect of Government owned/controlled cargoes on behalf of Central Government Departments/ State Governments and Public Sector Undertakings under them and in case of any departure thereon, prior permission is required to be obtained from the Chartering Wing of the Ministry of Shipping on a case-to-case basis.

2. Based on the growing demand of various Government Departments/PSUs to allow them to organize their own shipping arrangements so as to take quick decisions in efficiently managing their cargo supply and logistics chain operations, it has now been decided by the Government that:

- All importing Government Departments/PSUs will make their own shipping arrangements without needing to route their requirements through Chartering Wing of Ministry of Shipping subject to following:

(i) the import of bulk cargoes, both dry and liquid, will continue to be made on FOB/FAS basis by importing Government Departments / PSUs and shall remain subject to extant Government policy notified vide this Ministry's OM No. SC-11011/1/1994-ASO-II/Vol.III dated 27th February, 1996 (Annexure-I) and OM No. SC-11021/3/1999-ASO-I/Vol.III dated 15th November, 2001 (Annexure-II) and that in case of any departure therefrom, prior permission and No objection Certificate will have to be obtained from the Ministry of Shipping on a case-to-case basis with the approval of the concerned administrative Ministry/Department.

(ii) the import of general liner cargoes (project cargoes, heavy lift, container, break bulk cargoes etc.) can now be made by Government Departments/PSUs on FOB (Free on Board)/FAS(Free Alongside Ship) or C&F (Cost & Freight)/CIF (Cost, Insurance & Freight) basis which shall otherwise remain subject to extant Government policy notified vide this Ministry OM No. SC-11011/1/1994-ASO-II/Vol.III dated 27th February, 1996 (Annexure-I) and OM No. SC-11021/3/1999-ASO-I Vol.III dated 15th November, 2001 (Annexure-II). In case of C&F/CIF import, there is no need of obtaining NOC from the Ministry of Shipping.

3. Until the various Government Departments/PSUs organize their own chartering arrangements, the services of the Chartering Wing of the Ministry of Shipping will remain available during the transition period only until 31.12.2015.

4. It is requested that the above decision taken by the Government of India may kindly be brought to the notice of all the Public Sector Undertakings/projects/autonomous bodies/purchasing and selling organizations under the administrative control of Ministries and Departments concerned. Government Departments/PSUs may utilize the services of the Chartering Wing of the Ministry of Shipping till 31st December, 2015, if required.

5. A copy of the instructions issued may please be endorsed to this Ministry.

sd/-

(Barun Mitra)

Joint Secretary to the Government of India

To,

(1) All Ministries/Departments of Government of India

(2) The Chief Secretary of all the State Governments including the Union Territories (Annexure-I) Government of India

Ministry of Surface Transport
(Chartering Wing)

No. SC-11011/1/94-ASO.II/ Vol.III

New Delhi, the 27th February, 1996

OFFICE MEMORANDUM

Subject: Ocean Transportation of cargo under the control of Government / Public Sector Undertakings - review of the policy regarding.

The undersigned is directed to say that as per the existing policy of the Government of India, all import contracts are to be finalized on FOB (Free on Board)/FAS (Free Alongside Ship) basis and those for exports on C&F (Cost and Freight)/CIF (Cost, Insurance, freight) basis in respect of Government owned/controlled cargoes on behalf of Central Government Departments/ State Governments Departments and Public Sector Undertakings under them and in case of any departure therefrom, prior permission is required to be obtained from the Chartering Wing of the Ministry of Surface Transport on a case to case basis. The shipping arrangements are centralized in the Ministry of Surface Transport. These instructions about FOB/FAS purchases and C&F/CIF sales and entering into contracts where the element of foreign exchange expenditure is minimum already stand incorporated in the General Financial Rules of the Government.

2. Based on the difficulties/problems, as intimated by certain Government Departments / Public Sector Undertakings in the changed context of economic liberalization, the thrust on performance improvement and competitiveness of Public Sector Undertakings, decanalisation of certain cargoes, Government has undertaken a through review of the above policy at various levels and it has now been decided by the Government that:-

- (i) Government policy for import contracts to be finalized on FOB/FAS basis and for exports on CIF basis in respect of Government owned/controlled cargoes on behalf of Central Government Departments/State Government Departments and Public Sector Undertakings under them and centralized shipping arrangements through the Ministry of Surface Transport (Chartering Wing) in

association with the concerned user Ministry / Department /PSU may continue.

- (ii) Prior permission is required to be obtained from Ministry of Surface Transport on a case to case basis in case of any departure from the above policy. However, Ministry of Surface Transport shall ensure disposal of such requests within four working days on receipt of the complete information/request from the concerned Ministry/PSU.
 - (iii) Ministry of Surface Transport, Chartering Wing to ensure full utilization of suitable Indian vessels in case they are able to meet the indentor's requirements at competitive rates and are able to maintain the time schedule.
 - (iv) In case of import of bulk quantities like fertilisers, coal, food grains etc. where freight element is substantial, a representative from Ministry of Surface Transport may be invited to participate in the discussions for advising on the shipping aspects of import/export contracts.
 - (v) Ministry of Surface Transport should make all out efforts to finalise vessels, Indian or foreign, at the most competitive rates and before fixing the vessels, prior approval of the indenting department/PSU should be obtained.
 - (vi) In order to make imports and exports cost-effective and for judicious use of foreign exchange, Ministries / Departments should ensure imports on FOB/FAS and exports on CIF basis failing which necessary No Objection Certificate (NOC) should be obtained from Ministry of Surface Transport (Chartering Wing) while applying for release of necessary foreign exchange for the purpose of chartering foreign vessels and for making freight payment in foreign currency.
 - (vii) The tendering system to be followed by Ministries / Departments / PSUs will be standardized. The Cabinet secretariat will initiate appropriate action in this regard.
3. It is requested that above decision taken by the Government of India may kindly be brought to the notice of all the Public Sector Undertakings / Projects / Autonomous Bodies / Purchasing & Selling Organisations under the administrative control of Ministries and

Departments concerned and they may be advised to follow the prescribed procedure for arranging shipment of their cargoes through Chartering Wing (popularly known by its Cable Address "TRANSCART" in the shipping circle, the world over) of this Ministry and incorporating the prescribed Shipping Clauses in the purchase orders/contracts. They may also be instructed to send two copies of each of the contracts in respect of both exports as well as imports, along with cargo particulars like weight, volume, loading port, discharging port, loading rate, discharging rate, period of shipment, parcel size and any other specific condition relating to shipment of cargoes etc. to this Ministry as soon as the same are finalized, for taking further necessary action with regard to the shipping arrangements.

4. A copy of the instructions issued may please be endorsed to this Ministry.

sd/-

(T.V.Shanbhag)

Chief Controller of Chartering

To,

- (1) All Ministries/Departments of Government of India
- (2) The Chief Secretary to all the State Governments including the Union Territories

Government of India
Ministry of Shipping
Chartering Wing

No. SC-11021/3/99-ASO-I. VOL.III

New Delhi, Dated the 15th
November, 2001

OFFICE MEMORANDUM

Subject: Ocean Transportation of cargo under the control of Government / Public Sector Undertakings review of – The policy regarding.

The undersigned is directed to say that as per the existing policy of the Government of India, all import contracts are to be finalized on FOB (Free on Board)/FAS (Free Alongside Ship) basis and those for exports on C&F (Cost and Freight)/CIF (Cost Insurance, freight) basis in respect of Government owned/controlled cargoes on behalf of Central Government Departments/ State Governments Departments and Public Sector Undertakings under them.

In case of any departure therefrom, prior permission is required to be obtained from the Chartering Wing of the Ministry of Shipping. These instructions about FOB/FAS purchases and C&F/CIF sales and entering into contracts where the element of foreign exchange expenditure is minimum already stand incorporated in the General Financial Rules of the Government.

2. Based on the difficulties/problems, intimated by certain Government Departments / Public Sector Undertakings for exporting their cargoes in the changed context of economic liberalization, Government has undertaken a thorough review of the above policy at various levels. It has now been decided by the Government that:-

- (i) The present policy for placing import contract on FOB/FAS basis and Centralised shipping arrangements through Ministry of Shipping (Chartering Wing) notified vide this Ministry's O.M. No. SC.11011/1/94-ASO.II/VoL.III dated 27th February, 1996 in respect of government owned / controlled cargoes on behalf of Central

Government Departments/State Government Departments and Public Sector Undertakings under them will continue.

(ii) The policy of centralized shipping arrangements through Chartering wing has been relaxed in case of exports. Government Departments/PSUs are free to finalize export contracts on FOB/FAS basis without seeking prior clearance from Ministry of Shipping (Chartering Wing).

3. It is requested that above decision taken by the Government of India may kindly be brought to the notice of all the Public Sector Undertakings/Projects/Autonomous Bodies / Purchasing & Selling Organizations under the administrative control of Ministries and Departments concerned and they may be advised to follow the prescribed procedure described above. They may also be instructed to send two copies of Import contracts along with cargo particulars like weight, volume, loading port, discharging port, loading rate, discharging rate, period of shipments, parcel size and any other specific condition relating to shipment of cargoes etc. to this Ministry as soon as the same are finalised for taking further necessary action with regard to the shipping arrangements in respect of import cargoes.
4. A copy of the instructions issued may please be endorsed to this Ministry.

sd/-

(T.V.Shanbhag)

Chief Controller of Chartering

To,

- (1) All Ministries/Departments of Government of India
- (2) The Chief Secretary to all the State Governments including the Union Territories

**ANNEXURE-11: LETTERS RELATED TO RELAXATION OF NORMS FOR
STARTUPS AND MICRO & SMALL ENTERPRISES IN PUBLIC
PROCUREMENT ON PRIOR EXPERIENCE – PRIOR TURNOVER
CRITERIA**

Government of India
Ministry of Micro, Small & Medium Enterprises
O/o the Development Commissioner (MSME)
Nirman Bhavan, A-Wing, 7th Floor
Maulana Azad Road
New Delhi- 110 108

Policy Circular No. 1(2)(1)/2016-MA

Dated : 10th March, 2016

To

All Central Ministries/Departments/CPSUs/All concerned

Subject: Relaxation of Norms for Startups and Micro & Small Enterprises in Public Procurement on Prior Experience – Prior Turnover criteria

- 1) The Government of India has notified Public Procurement Policy for Micro and Small Enterprises (MSEs) Order 2012 with effect from 1st April, 2012 and 20% procurement from Micro & Small Enterprises of the total procurement by Central Ministries/ Departments/CPSUs has become mandatory with effect from 1st April, 2015.
- 2) The Government of India has announced 'Startup India' initiative for creating a conducive environment for Startup of India.
- 3) The Startups are normally Micro and Small Enterprises which may not have a track record. These will have technical capability to deliver the goods and services as per prescribed technical & quality specifications, and may not be able to meet the qualification criterion relating to prior experience-prior turnover.

- 4) In exercise of Para 16 of Public Procurement Policy for Micro and Small Enterprises Order 2012, it is clarified that all Central Ministries/Departments/Central Public Sector Undertakings may relax condition of prior turnover and prior experience with respect to Micro and Small Enterprises in all public procurements subject to meeting of quality and technical specifications.
- 5) This issues with the approval of Union Minister of Micro, Small and Medium Enterprise.

sd/-

(Surendra Nath Tripathi)

Additional Secretary & Development Commissioner-MSME
Ministry of Micro, Small & Medium Enterprises

Ministry of Finance
Department of Expenditure
Procurement Policy Decision

516, Lok Nayak Bhawan, New Delhi

Dated the 25th July, 2016

OFFICE MEMORANDUM

Subject :- Relaxation of Norms for Startups Medium Enterprises in Public Procurement regarding Prior Experience – Prior Turnover criteria.

The Government of India has announced 'Startup India' initiative for creating a conducive ecosystem for the growth of Startups in India. The Startups are defined in Annexure A of the "Action Plan for Startups India". The same is available on the website of Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce & Industry.

2. Ministry of Micro, Small & Medium Enterprises (MSMEs) vide Policy Circular No. 1(2)(1)/2016-MA dated 10th March, 2016 has clarified that all Central Ministries/Departments/Central Public Sector Undertakings (CPSUs) may relax condition of prior turnover and prior experience with respect of Micro & Small Enterprises (MSEs) in all public procurements subject to meeting of quality and technical specifications.

3. As per Rule 160(i)(a) of GFR, 2005, there is already a provision that the bidding documents should contain criteria for eligibility and qualification to be met by the bidders such as minimum level of experience, past performance, technical capability, manufacturing facilities and financial position etc. In view of above, it is further clarified that all Central Ministries/Departments may relax condition of prior turnover and prior experience in public procurement to all Startups (whether MSEs or otherwise) subject to meeting of quality and technical specifications in accordance with the relevant provisions of GFR, 2005.

sd/-

(Vinayak T.Likhar)

Under Secretary to Government of India

To

The Secretaries of all Central Government Ministries/Departments.

Copy to:-

Financial Advisors of all Central Government Ministries/Departments.

Troop Comforts Limited

No. F.20/2/2014-PPD(Pt)
Ministry of Finance
Department of Expenditure
Procurement Policy Decision

516, Lok Nayak Bhawan, New Delhi

Dated the 20th September, 2016

OFFICE MEMORANDUM

Subject:- Relaxation of Norms for Startups Medium Enterprises in Public Procurement regarding Prior Experience – Prior Turnover criteria.

The undersigned is directed to refer to this Department O.M of even number dated 25th July, 2016, wherein it was clarified that all Central Ministries/Departments may relax condition of prior turnover and prior experience in public procurement to all Startups[whether Micro & Small Enterprises (MSEs) or otherwise] subject to meeting of quality and technical specifications in accordance with the relevant provisions of GFR, 2005.

2. A doubt has arisen if it makes optional for Central Ministries / Departments to relax condition of prior experience and prior turnover in public procurement to Startups. In this regard, it is again clarified that normally for all public procurement, the Central Ministries / Departments have to ensure that criteria of prior turnover and prior experience for all Startups is relaxed subject to their meeting of quality and technical specifications.
3. However, there may be circumstances (like procurement of items related to public safety, health, critical security operations and equipments etc) where procuring entities may prefer the vendors to have prior experience rather than giving orders to new entities. For such procurements, wherever adequate justification exists, the procuring entities may not relax the criteria of prior experience/turnover for the Startups.
4. This issues with the approval of Finance Secretary.

sd/-

(Vinayak T.Likhar)

Under Secretary (PPD)

To

The Secretaries of all Central Government Ministries/Departments.

Copy to:-

(i) Financial Advisors of all Central Government Ministries/Departments.

Troop Comforts Limited

ANNEXURE–12: SETTLEMENT OF DISPUTES/CLAIMS ARISING OUT OF THE CONTRACTS THROUGH ARBITRATION/COURT PROCEDURE

Normally, there shall not be any scope for dispute between the purchaser and the vendor after entering into a mutually agreed valid contract. However, due to various unforeseen reasons, problems may arise during the progress of the contract leading to disagreement between the purchaser and the vendor. Therefore, the conditions governing the contract shall contain suitable provision for settlement of such disputes/ differences binding on both the parties.

Mode of settlement of such disputes/differences shall be through Arbitration. However, when a dispute/difference arises, both the purchaser and the vendor shall first try to resolve the same amicably by mutual consultation. If the parties fail to resolve the dispute by such mutual consultation then, depending on the position of the case, either the purchaser or the vendor shall give notice to the other party of its intention to commence arbitration as hereinafter provided:

- a) When the contract is with domestic vendor, the applicable arbitration procedure will be as per Indian Arbitration and Conciliation Act, 1996.
- b) When the contract is with foreign vendor, the vendor has the option to choose either Indian Arbitration and Conciliation Act, 1996 or Arbitration in accordance with the provision of UNCITRAL (United Nations Commission on International Trade Law) Arbitration Rules.

Jurisdiction:

This order shall be governed by the Laws of Indian Union in force. Only competent courts shall have the jurisdiction as provided under the Indian Arbitration and Conciliation Act 1996, or any statutory modifications thereof in force on any matter arising out of any Arbitration proceedings under the contract.

ANNEXURE-12(A): FORMAT OF ARBITRATION CLAUSE

In the event of any dispute or difference relating to the interpretation and application of the provisions of the contract, such dispute or difference shall be referred by either party for Arbitration to the sole Arbitrator in the Department of Public Enterprises to be nominated by the Secretary to the Government of India in-Charge of the Department of Public Enterprises.

The Arbitration and Conciliation Act, 1996 shall not be applicable to the disputes, provided, however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to be Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary / Additional Secretary, when so authorised by the Law Secretary, whose decision shall bind the Parties finally and conclusively. The Parties to the dispute will share equally the cost of arbitration as intimated by the Arbitrator. If the Department of Public Enterprises fails to settle the dispute, the same will be referred to the Committee constituted by the Cabinet Secretariat.

**ANNEXURE-12(B): FORMAT OF ARBITRATION CLAUSE – FOREIGN
BIDDERS**

(i) All disputes or differences arising out of or in connection with the present contract including the one connected with the validity of the present contract or any part thereof, should be settled by bilateral discussions.

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

(iii) Within sixty (60) days of the receipt of the said notice, one arbitrator shall be nominated in writing by the SELLER and one arbitrator shall be nominated by the BUYER.

(iv) The third arbitrator, who shall not be a citizen or domicile of the country of either of the parties or of any other country unacceptable to any of the parties, the said arbitration shall be nominated by the parties within ninety (90) days of the receipt of the notice mentioned above, failing which the third arbitrator may be nominated under the provisions of UNCITRAL by the International Chamber of Commerce, Paris at the request of either party. However the said nomination would be after consultation with both the parties and shall preclude any citizen or domicile of any country as mentioned above. The arbitrator nominated under this clause shall not be regarded nor act as an umpire.

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

(vi) The arbitration proceedings shall be conducted in India under the Indian Arbitration and Conciliation Act, 1996 and the award of such Arbitration Tribunal shall be enforceable in Indian Courts or as may be mutually agreed between the parties.

(vii) The decision of the majority of the arbitrators shall be final and binding on the parties to the contract.

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

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

(x) In the event of one of the parties failing to nominate its arbitrator within 60 days as above or if any of the parties does not nominate another arbitrator within 60 days of the place of arbitrator failing vacant, then the other party shall be entitled after due notice of at least 30 days to request the International Chamber of Commerce to nominate another arbitrator as above.

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

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

(Note – The provisions with regard to appointment of an Arbitrator by the International Chamber of Commerce, Paris shall only be resorted to in cases of International Commercial Arbitration. Similarly, the UNCITRAL provisions will only apply with regard to appointment of Arbitrator, fixation of fees of the Arbitrator when it is a foreign arbitration. The procedure to be adopted during arbitration will be as provided in the Indian Arbitration & Conciliation Act, 1996 or amended time to time.)

ANNEXURE-13: DoE GUIDELINES ON DEBARMENT OF FIRMS FROM BIDDING

No.F.1/20/2018-PPD
Government of India
Department of Expenditure
Ministry of Finance
Procurement Policy Division

169-A, North Block, New Delhi,
2nd November, 2021.

OFFICE MEMORANDUM

Subject: Guidelines on Debarment of firms from Bidding

Attention is drawn towards Rule 151 of General Financial Rules (GFRs), 2017 regarding 'Debarment from Bidding' which is reproduced as under:

(i) A bidder shall be debarred if he has been convicted of an offence—

(a) under the Prevention of Corruption Act, 1988; or

(b) the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.

(ii) A bidder debarred under sub-section (i) or any successor of the bidder shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date of debarment. Department of Commerce (DGS&D) will maintain such list which will also be displayed on the website of DGS&D as well as Central Public Procurement Portal.

(iii) A procuring entity may debar a bidder or any of its successors, from participating in any procurement process undertaken by it, for a period not exceeding two years, if it determines that the bidder has breached the code of integrity. The Ministry/ Department will maintain such list which will also be displayed on their website.

(iv) The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment.

2 This department has received a reference from Department of Commerce with a proposal that the task of universal banning of firms as per Rule 151 (ii) of GFRs as above may be undertaken by Department of Expenditure or should be decentralized to individual line Ministries/ Departments as DGS&D had been wind up on 31.10.2017. Central Public Procurement Portal (CPPP) or the Department of Expenditure can then maintain a master data of all such banned firms and it can be made available in public domain.

3 In context of above, all issues regarding debarment have been reviewed in consultations with major procuring Ministries/ Departments and it is decided to issue attached 'Debarment Guidelines' in suppression to all earlier instructions on this subject.

4. This issues with the approval of Finance Secretary.

--Sd--

(Sanjay Aggarwal)

Advisor/ Procurement Policy Division

Email: sanjay.aggarwal68@nic.in

Tel: 23093224

To,

Secretaries, All Central Ministries/ Departments.

Secretary/ Department of Public Enterprises with a request to circulate these instructions to all Central Public Sector Undertakings (CPSUs).

ANNEXURE-14: SOP FOR GUIDELINES ON DEBARMENT OF FIRMS FROM BIDDING

1. The Guidelines are classified under following two types:

- (i) In cases where debarment is proposed to be limited to a single factory, the appropriate Orders can be issued by that factory itself, thereby banning all its business dealing with the debarred firm.
- (ii) Where it is proposed to extend the debarment beyond the jurisdiction of the particular factory i.e. covering to all the TCL factories, the requisite Orders shall be issued by TCL HQ.

Definitions

- 2. **Firm:** The term 'firm' or 'bidder' has the same meaning for the purpose of these Guidelines, which includes an individual or person, a company, a cooperative society, a Hindu undivided family and an association or body of persons, whether incorporated or not, engaged in trade or business.
- 3. **Allied Firm:** All concerns which come within the sphere of effective influence of the debarred firms shall be treated as allied firms. In determining this, the following factors may be taken into consideration:
 - a. Whether the management is common;
 - b. Majority interest in the management is held by the partners or directors of banned/suspended firm;
 - c. Substantial or majority shares are owned by the banned/suspended firm and by virtue of this it has a controlling voice.
 - d. Directly or indirectly controls, or is controlled by or is under common control with another bidder.
 - e. All successor firms will also be considered as allied firms.
- 4. The terms "banning of firm", 'suspension', 'Black-Listing' etc. convey the same meaning as of "Debarment".

Debarment by a Single Factory:

5. Orders for Debarment of a firm(s) shall be passed by a Factory, keeping in view of the following:
- a. A bidder or any of its successors may be debarred from participating in any procurement process for a period not exceeding two years.
 - b. Firms will be debarred if it is determined that the bidder has breached the code of integrity as per Rule 175 of GFRs 2017.
 - c. A bidder can also be debarred for any actions or omissions by the bidder other than violation of code of integrity, which in the opinion of the Ministry/Department, warrants debarment, for the reasons like supply of sub-standard material, non-supply of material, abandonment of works, sub-standard quality of works, failure to abide "Bid Securing Declaration" etc.
 - d. It shall **not** be circulated to other Factories/Units. It will only be applicable to concerned Factories/Units.
 - e. The concerned Factory/Unit before issuing the debarment order against a firm must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm).
 - f. General Manager of Factory/Unit may nominate an officer at the rank of AGM/Jt. GM as competent authority to debar the firms.
 - g. Factory/Unit that issued the order of debarment can also issue an Order for revocation of debarment before the period of debarment is over, if there is adequate justification for the same. Ordinarily, the revocation of the Order before expiry of debarred period should be done with the approval of General Manager concerned of Factory.
 - h. The Factory/Unit will maintain list of debarred firms, which will also be displayed on its website.

- i. Debarment is an executive function and should not be allocated to Vigilance Department.

6. Code of Integrity as contained in Rule 175 of the GFRs is reproduced as under:

No official of a procuring entity or a bidder shall act in contravention of the codes which includes

(i) prohibition of

(a) making offer, solicitation or acceptance of bribe, reward or gift or any material benefit, either directly or indirectly, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process.

(b) any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefit may be obtained or an obligation or an obligation avoided.

(c) any collusion, bid rigging or anticompetitive behaviour that may impair the transparency, fairness and the progress of the procurement process.

(d) improper use of information provided by the procuring entity to the bidder with an intent to gain unfair advantage in the procurement process or for personal gain.

(e) any financial or business transactions between the bidder and any official of the procuring entity related to tender or execution process of contract; which can affect the decision of the procuring entity directly or indirectly.

(f) any coercion or any threat to impair or harm, directly or indirectly, any party or its property to influence the procurement process.

(g) obstruction of any investigation or auditing of a procurement process.

(h) making false declaration or providing false information for participation in tender process or to secure a contract;

(ii) disclosure of conflict of interest.

(iii) Disclosure by the bidder of any previous transgressions made in respect of the provisions of sub-clause (i) with any entity in the any country during the last three years or of being debarred by any other procuring entity.

7. It is possible that the firm may be debarred concurrently by more than one Factory.

8. Similarly, Government e-Marketplace (GeM) can also debar bidders upto two years on its portal.

9. In case of debarments under para 7 as above, revocation the debarment order before expiry of debarred period should be done only with the approval of General Manager of concerned factory.

Debarment across TCL Factories

10. Where a Factory is of the view that business dealings with a particular firm should be banned across all TCL Factories by debarring the firm from taking part in any bidding procedure floated by the TCL Factories, should after obtaining the approval of Director/Operations. A self-contained note setting out all the facts of the case and the justification for the proposed debarment, along with all the relevant papers and documents may be forwarded to Director/Operations. TCL HQ will issue the necessary orders after satisfying itself that proposed debarment across all the TCL Factories is in accordance with Rule 151 of GFRs, 2017. This scrutiny is intended to ensure uniformity of treatment in all cases.

11. The firm will remain in suspension mode (i.e. debarred) during the interim period till the final decision taken by TCL HQ, only in the concerned Factory forwarding such proposal.

12. Factory before forwarding the proposal to TCL HQ must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm). If TCL HQ realizes that sufficient opportunity has not be given to the firm to represent against the debarment, such debarment requests received from Factory shall be rejected.

13. TCL HQ can also give additional opportunity, at their option, to firm to represent against proposed debarment. TCL HQ can also take suo-moto action to debar the firms in certain circumstances.

14. No contract of any kind whatsoever shall be placed on the debarred firm, including its allied firms by any Factory/unit of TCL after the issues of a debarment order by TCL HQ.

15. TCL HQ will maintain list of such debarred firms, which will be displayed on Central Public Procurement Portal.

Revocation of Orders

16. An order for debarment passed shall be deemed to have been automatically revoked on the expiry of that specified period and it will not be necessary to issue a specific formal order of revocation.

17. A debarment order may be revoked before the expiry of the Order, by the competent authority, if it is of the opinion that the disability already suffered is adequate in the circumstances of the case or for any other reason.

Other Provisions (common to both types of debarment)

18. No contract of any kind whatsoever shall be placed to debarred firm including its allied firms after the issue of a debarment order by the Factory. Bids from only such firms shall be considered for placement of contract, which are neither debarred on the date of opening of tender (first bid, normally called as technical bid, in case of two packet/two stage bidding) nor debarred on the date of contract. Even in the cases of risk purchase, no contract should be placed on such debarred firms.

19. If case, any debar firms has submitted the bid, the same will be ignored. In case such firm is lowest (L-1), next lowest firm shall be considered as L-1. Bid security submitted by such debarred firms shall be returned to them.

20. Contracts concluded before the issue of the debarment order shall, not be affected by the debarment Orders.

21. The Debarment shall be automatically extended to all its allied firms. In case of joint venture/consortium is debarred all partners will also stand debarred for the period specified in Debarment Order. The names of partners should be clearly specified in the "Debarment Order".

22. Debarment in any manner does not impact any other contractual or other legal right of the procuring entities.

23. The period of debarment shall start from the date of issue of debarment order.

24. The Order of debarment will indicate the reasons(s) in brief that lead to debarment of the firm.

25. Ordinarily, the period of debarment should not be less than six months.

26. In case of shortage of suppliers in a particular group, such debarments may also hurt the interest of procuring entities. In such cases, endeavour should be to pragmatically analyse the circumstances, try to reform the supplier and may get a written commitment from the supplier that its performance will improve.

Troop Comforts Limited

ANNEXURE-15: PREFERENCE TO MAKE IN INDIA

No. P-45021/2/2017-PP (BE-11)
Government of India
Ministry of Commerce and Industry
Department for Promotion of Industry and Internal Trade
(Public Procurement Section)
Udyog Bhawan, New Delhi Dated: 04th June, 2020

To

All Central Ministries/Departments/CPSUs/All concerned

ORDER

Subject: Public Procurement (Preference to Make in India), Order 2017— Revision; regarding.

Department for Promotion of Industry and Internal Trade, in partial modification [Paras 2, 3, 5, 9(a), 9(b) and 10(b) modified and Para 3A added] of Order No.P-45021/2/2017-B.E.-II dated 15.6.2017 as amended by Order No.P-45021/2/2017-B.E.-II dated 28.05.2018 and Order No.P-450211212017-B.E.-II dated 29.05.2019, hereby issues the revised 'Public Procurement (Preference to Make in India), Order 2017' dated 04.06.2020 effective with immediate effect.

Whereas it is the policy of the Government of India to encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment, and

Whereas procurement by the Government is substantial in amount and can contribute towards this policy objective, and

Whereas local content can be increased through partnerships, cooperation with local companies, establishing production units in India or Joint Ventures (JV) with Indian suppliers, increasing the participation of local employees in services and training them,

Now therefore the following Order is issued:

1. This Order is issued pursuant to Rule 153 (iii) of the General Financial Rules 2017.

2. Definitions: For the purposes of this Order:

'Local content' means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.

'Class-I local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content equal to or more than 50%, as defined under this Order.

'Class-II local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content more than 20% but less than 50%, as defined under this Order.

'Non - Local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than or equal to 20%, as defined under this Order.

'L1' means the lowest tender or lowest bid or the lowest quotation received in a tender, bidding process or other procurement solicitation as adjudged in the evaluation process as per the tender or other procurement solicitation.

'Margin of purchase preference' means the maximum extent to which the price quoted by a "Class-I local supplier" may be above the L1 for the purpose of purchase preference

'Nodal Ministry' means the Ministry or Department identified pursuant to this order in respect of a particular item of goods or services or works.

'Procuring entity' means a Ministry or department or attached or subordinate office of, or autonomous body controlled by, the Government of India and includes Government companies as defined in the Companies Act

'Works' means all works as per Rule 130 of GFR- 2017, and will also include *'turnkey works'*.

3. Eligibility of 'Class-I local supplier'/ 'Class-II local supplier'/ Non-local suppliers' for different types of procurement

- (a) In procurement of all goods, services or works in respect of which the Nodal Ministry / Department has communicated that there is sufficient local capacity and local competition, only 'Class-1 local supplier', as defined under the Order, shall be eligible to bid irrespective of purchase value.
- (b) In procurement of all goods, services or works, not covered by sub-para 3(a) above, and with estimated value of purchases less than Rs. 200 Crore, in accordance with Rule 161(iv) of GFR, 2017, Global tender enquiry shall not be issued except with the approval of competent authority as designated by Department of Expenditure. Only 'Class-I local supplier' and 'Class-II local supplier', as defined under the Order, shall be eligible to bid in procurements undertaken by procuring entities, except when Global tender enquiry has been issued. In global tender enquiries, 'Non-local suppliers' shall also be eligible to bid along with 'Class-I local suppliers' and 'Class-II local suppliers'.
- (c) For the purpose of this Order, works includes Engineering, Procurement and Construction (EPC) contracts and services include System Integrator (SI) contracts.

3A. Purchase Preference

- (a) Subject to the provisions of this Order and to any specific instructions issued by the Nodal Ministry or in pursuance of this Order, purchase preference shall be given to 'Class-I local supplier' in procurements undertaken by procuring entities in the manner specified here under.
- (b) In the procurements of goods or works, which are covered by para 3(b) above and which are divisible in nature, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:
 - i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract for full quantity will be awarded to L1.
 - ii. If L1 bid is not a 'Class-I local supplier', 50% of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the 'Class-I local supplier' will be invited to match the L1 price for the remaining 50% quantity subject to the Class-I local supplier's quoted price falling within the margin of purchase preference, and contract for that quantity shall be awarded to such 'Class-I local supplier' subject to matching the L1 price. In case such lowest eligible 'Class-I local supplier'

fails to match the L1 price or accepts less than the offered quantity, the next higher 'Class-I local supplier' within the margin of purchase preference shall be invited to match the L1 price for remaining quantity and so on, and contract shall be awarded accordingly. In case some quantity is still left uncovered on Class-I local suppliers, then such balance quantity may also be ordered on the L1 bidder.

- (c) In the procurements of goods or works, which are covered by para 3(b) above and which are not divisible in nature, and in procurement of services where the bid is evaluated on price alone, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract will be awarded to L1.

ii. If L1 is not 'Class-I local supplier', the lowest bidder among the 'Class-I local supplier', will be invited to match the L1 price subject to Class-I local supplier's quoted price falling within the margin of purchase preference, and the contract shall be awarded to such 'Class-I local supplier' subject to matching the L1 price.

iii. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price, the 'Class-I local supplier' with the next higher bid within the margin of purchase preference shall be invited to match the L1 price and so on and contract shall be awarded accordingly. In case none of the 'Class-I local supplier' within the margin of purchase preference matches the L1 price, the contract may be awarded to the L1 bidder.

- (d) "Class-II local supplier" will not get purchase preference in any procurement, undertaken by procuring entities.

4. Exemption of small purchases Notwithstanding anything contained in paragraph 3, procurements where the estimated value to be procured is less than Rs. 5 lakhs shall be exempt from this Order. However, it shall be ensured by procuring entities that procurement is not split for the purpose of avoiding the provisions of this Order.

5. Minimum local content: The local content requirement to categorize a supplier as 'Class-I local supplier'/ 'Class-II local supplier'/ 'Non-local supplier' shall be as defined in the Para "2" of the Order. No change is permissible on this account. However, if any nodal Ministry/ Department

finds that for any particular item, pertaining to their nodal ministry/department, the definition of Local Content, as defined in the Order, is not workable/ has limitations, it may notify alternate suitable mechanism for calculation of local content for that particular item.

- 6. Margin of Purchase Preference:** The margin of purchase preference shall be 20%.
- 7. Requirement for specification in advance:** The minimum local content, the margin of purchase preference and the procedure for preference to Make in India shall be specified in the notice inviting tenders or other form of procurement solicitation and shall not be varied during a particular procurement transaction.
- 8. Government E-marketplace:** In respect of procurement through the Government E-marketplace (GeM) shall, as far as possible, specifically mark the items which meet the minimum local content while registering the item for display, and shall, wherever feasible, make provision for automated comparison with purchase preference and without purchase preference and for obtaining consent of the local supplier in those cases where purchase preference is to be exercised.
- 9. Verification of local content:**
 - a. The 'Class-I local supplier'/ 'Class-II local supplier' at the time of tender, bidding or solicitation shall be required to indicate percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I local supplier'/ 'Class-II local supplier', as the case may be. They shall also give details of the location(s) at which the local value addition is made.
 - b. In cases of procurement for a value in excess of Rs. 10 crores, the 'Class-I local supplier'/ 'Class-II local supplier' shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.
 - c. Decisions on complaints relating to implementation of this Order shall be taken by the competent authority which is empowered to look into procurement-related complaints relating to the procuring entity.
 - d. Nodal Ministries may constitute committees with internal and external experts for independent verification of self-declarations and auditor's/ accountant's certificates on random basis and in the case of complaints.
 - e. Nodal Ministries and procuring entities may prescribe fees for such complaints.

- f. False declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rules for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the General Financial Rules along with such other actions as may be permissible under law.
- g. A supplier who has been debarred by any procuring entity for violation of this Order shall not be eligible for preference under this Order for procurement by any other procuring entity for the duration of the debarment. The debarment for such other procuring entities shall take effect prospectively from the date on which it comes to the notice of other procurement entities, in the manner prescribed under paragraph 9h below.
- h. The Department of Expenditure shall issue suitable instructions for the effective and smooth operation of this process, so that:
 - ii. The fact and duration of debarment for violation of this Order by any procuring entity are promptly brought to the notice of the Member-Convenor of the Standing Committee and the Department of Expenditure through the concerned Ministry /Department or in some other manner;
 - iii. on a periodical basis such cases are consolidated and a centralized list or decentralized lists of such suppliers with the period of debarment is maintained and displayed on website(s);
 - iv. in respect of procuring entities other than the one which has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in the such a manner that ongoing procurements are not disrupted.

10. Specifications in Tenders and other procurement solicitations:

- a. Every procuring entity shall ensure that the eligibility conditions in respect of previous experience fixed in any tender or solicitation do not require proof of supply in other countries or proof of exports.
- b. Procuring entities shall endeavour to see that eligibility conditions, including on matters like turnover, production capability and financial strength do not result in unreasonable exclusion of 'Class-I local supplier'/ 'Class-II local supplier' who would otherwise be eligible, beyond what is essential for ensuring quality or creditworthiness of the supplier.
- c. Procuring entities shall, within 2 months of the issue of this Order review all existing eligibility norms and conditions with reference to sub-paragraphs 'a' and 'b' above.

- d. If a Nodal Ministry is satisfied that Indian suppliers of an item are not allowed to participate and/ or compete in procurement by any foreign government, it may, if it deems appropriate, restrict or exclude bidders from that country from eligibility for procurement of that item and/ or other items relating to that Nodal Ministry. A copy of every instruction or decision taken in this regard shall be sent to the Chairman of the Standing Committee.
- e. For the purpose of sub-paragraph 10 d above, a supplier or bidder shall be considered to be from a country if (1) the entity is incorporated in that country, or ii) a majority of its shareholding or effective control of the entity is exercised from that country; or (iii) more than 50% of the value of the item being supplied has been added in that country. Indian suppliers shall mean those entities which meet any of these tests with respect to India."

10 A. Action for non-compliance of the Provisions of the Order: In case restrictive or discriminatory conditions against domestic suppliers are included in bid documents, an inquiry shall be conducted by the Administrative Department undertaking the procurement (including procurement by any entity under its administrative control) to fix responsibility for the same. Thereafter, appropriate action, administrative or otherwise, shall be taken against erring officials of procurement entities under relevant provisions. Intimation on all such actions shall be sent to the Standing Committee.

- 11 **Assessment of supply base by Nodal Ministries:** The Nodal Ministry shall keep in view the domestic manufacturing / supply base and assess the available capacity and the extent of local competition while identifying items and prescribing minimum local content or the manner of its calculation, with a view to avoiding cost increase from the operation of this Order.
- 12. **Increase in minimum local content:** The Nodal Ministry may annually review the local content requirements with a view to increasing them, subject to availability of sufficient local competition with adequate quality.
- 13. **Manufacture under license/ technology collaboration agreements with phased indigenization:** While notifying the minimum local content, Nodal Ministries may make special provisions for exempting suppliers from meeting the stipulated local content if the product is being manufactured in India under a license from a foreign manufacturer who holds intellectual property rights and where there is a technology collaboration agreement / transfer of technology agreement for indigenous

manufacture of a product developed abroad with clear phasing of increase in local content.

14. **Powers to grant exemption and to reduce minimum local content:** The administrative Department undertaking the procurement (including procurement by any entity under its administrative control), with the approval of their Minister-in-charge, may by written order, for reasons to be recorded in writing,
- a. reduce the minimum local content below the prescribed level; or
 - b. reduce the margin of purchase preference below 20%; or
 - c. exempt any particular item or supplying entities from the operation of this Order or any part of the Order.

A copy of every such order shall be provided to the Standing Committee and concerned Nodal Ministry / Department. The Nodal Ministry / Department concerned will continue to have the power to vary its notification on Minimum Local Content.

15. **Directions to Government companies:** In respect of Government companies and other procuring entities not governed by the General Financial Rules, the administrative Ministry or Department shall issue policy directions requiring compliance with this Order.
16. **Standing Committee:** A standing committee is hereby constituted with the following membership:

Secretary, Department for Promotion of Industry and Internal Trade—
Chairman
Secretary, Commerce—Member

Secretary, Ministry of Electronics and Information Technology—
Member
Joint Secretary (Public Procurement), Department of Expenditure—Member
Joint Secretary (DPIIT)—Member-
Convenor

The Secretary of the Department concerned with a particular item shall be a member in respect of issues relating to such item. The Chairman of the Committee may co-opt technical experts as relevant to any issue or class of issues under its consideration.

17. **Functions of the Standing Committee:** The Standing Committee shall meet as often as necessary, but not less than once in six months. The Committee

- a. shall oversee the implementation of this order and issues arising therefrom, and make recommendations to Nodal Ministries and procuring entities.
 - b. shall annually assess and periodically monitor compliance with this Order
 - c. shall identify Nodal Ministries and the allocation of items among them for issue of notifications on minimum local content
 - d. may require furnishing of details or returns regarding compliance with this Order and related matters
 - e. may, during the annual review or otherwise, assess issues, if any, where it is felt that the manner of implementation of the order results in any restrictive practices, cartelization or increase in public expenditure and suggest remedial measures
 - f. may examine cases covered by paragraph 13 above relating to manufacture under license/ technology transfer agreements with a view to satisfying itself that adequate mechanisms exist for enforcement of such agreements and for attaining the underlying objective of progressive indigenization
 - g. may consider any other issue relating to this Order which may arise.
18. **Removal of difficulties:** Ministries /Departments and the Boards of Directors of Government companies may issue such clarifications and instructions as may be necessary for the removal of any difficulties arising in the implementation of this Order.
19. **Ministries having existing policies:** Where any Ministry or Department has its own policy for preference to local content approved by the Cabinet after 1st January 2015, such policies will prevail over the provisions of this Order. All other existing orders on preference to local content shall be reviewed by the Nodal Ministries and revised as needed to conform to this Order, within two months of the issue of this Order.
20. **Transitional provision:** This Order shall not apply to any tender or procurement for which notice inviting tender or other form of procurement solicitation has been issued before the issue of this Order.



(Rajesh Gupta)
Director

Tel: 23063211

rajesh.gupta66@gov.in

ANNEXURE-16: STANDARD TENDER ENQUIRY FOR PROCUREMENT OF GOODS & SERVICES

1. The Tender Enquiry (TE)/RFP is issued without any financial commitment. The Buyer reserves the right to amend or modify any part of the TE at any stage. Such amendments/modifications to the TE, if any, shall be duly notified similarly as the TE. Buyer reserves the right to withdraw the TE at any stage, should it so become necessary.
2. Effective Date of the Contract: Unless the consequent Contract specifically defines a different effective date-of-the-contract, the effective date-of-the-contract shall be the date on which the Parties to the Contract have affixed their respective signatures on the Contract or the date of Supply Order. The Contract shall come into effect on the effective date and remain valid until the completion of the obligations of the Parties under the Contract. The deliveries, supplies and performance of the services under the Contract shall commence from the effective date-of-the-contract. In case of GeM/e-procurement, the effective date of contract shall be the date of generation of Supply Order from the system.
3. The TE is divided into the following six Parts:
 - a) Part I – Contains general information and instructions for the Bidders about the TE such as the date, time, place of submission and opening of tenders, validity period of Tenders, etc.
 - b) Part II – Contains essential details of the stores/items/services required, such as the Schedule of Requirements, Technical Specifications, Delivery Period, Mode of Delivery and Consignee details, which will form part of the consequent Contract with the successful Bidder.
 - c) Part III – Contains standard conditions of TE, which will form part of the consequent Contract with the successful Bidder.

- d) Part IV – Contains special conditions applicable to this TE and which will also form part of the consequent Contract with the successful Bidder.
 - e) Part V – Contains evaluation criteria and format for price bids.
 - f) Part VI – Contains compliances related to GST Rules.
4. Tender fees shall not be applicable for tenders processed through e-procurement. However, in procurements made through the conventional manual system a nominal Tender fee is applicable in advertised (Open/ Global) tenders. Micro and Small Enterprises (MSEs) having UAM number (to be submitted by MSEs) as defined in MSE Procurement Policy issued by Department of MSME are exempted for tender fee. The requisite Tender fees in the prescribed form needs to be submitted either along with the application for Tender documents or along with the Bid. Non submission of requisite Tender fee in the prescribed form may result in rejection of the Bid. There is no provision for providing Tender fees subsequent to the Tender opening. In cases where the drawings, specifications, etc., are priced, the same shall be so stated in the TE, which is applicable for both systems of procurement.
5. The usage of the term 'Bid' in the TE, unless repugnant to the context, refers to the Bids (including the documents, financial instruments, etc., required to be submitted) in the e-procurement as well as the conventional manual system.
6. The usage of the term 'Seller' in the TE, unless repugnant to the context, refers to the successful Bidder (s) in the TE on whom the consequent Supply Order/ Contract has been placed.
7. The usage of the term 'Contract' in the TE, unless repugnant to the context, refers to the consequent Supply Order/ Contract.
8. All dates and times specified in this TE are in date/month/year and 24 Hrs formats, respectively.

PART I – GENERAL INFORMATION AND INSTRUCTION FOR BIDDERS

- 1.1. On behalf of the Chairman and Managing Director (CMD) TCL, (unit name) (the Buyer), through this TE No. dated, issued as [Advertised Tender (Global/ Open) / Limited Tender/ Single Tender (SKS/PAC)], invites Bids, on (Single Bid/ Two Bid) basis, from all eligible Bidders for supply of (Title of the TE).
- 1.2. The pre-qualification/ eligibility criteria, if any has been prescribed by the Buyer, shall be indicated under this paragraph as sub-paragraphs (a), (b), ... (n), if none has been indicated under this paragraph , the TE shall be open to any bidder desirous of participating in the tender.
 - a)
 - b), etc.
- 1.3. Bidders shall be solely responsible for ensuring timely submission of their Bids (and their related final instruments & documents) by the specified date & time, and in the manner prescribed in the TE. If due to any exigency, the due date for Tender opening is declared as a closed holiday, the Tender opening will be held on the next working day at the same time or on any other day/time, as intimated by the Buyer. Should it so become necessary for the Buyer to extend the Tender opening date, such extended date shall be duly intimated/ notified. In e-Procurement, the tenders shall be opened online.
- 1.4. Bids (including the related financial instruments, etc.,) received with a lower validity than that specified in the TE can be treated as invalid and may be rejected. The prescribed validity for financial instruments is given in subsequent Parts of the TE. Bids should necessarily remain:
 - a) valid for days from the specified last date for Bid submission
 - b) valid till (date)

- 1.6. Submission of Earnest Money Deposit (EMD) is an essential requirement to be fulfilled. Bids not accompanied by the EMD specified in the TE shall be treated as invalid Bids. In the instant TE Bidders are required to submit along with their Bids, EMD for an amount equal to Rs. in the prescribed form. The EMD shall be in favour of Troop Comforts Limited.
- 1.7. In e-procurement, the Bidders shall upload along with their Bid, the scanned copies of the instrument of their EMD and forward the original EMD instrument by post in a separately sealed envelope clearly mentioning the 'EMD for TE No and due date of opening of technical bid.....' on the envelope. However, if the physical original instruments is not received by the Buyer prior to the specified Tender opening date & time, the Bid being incomplete on Tender opening, shall be treated as invalid/ late tender and rejected.
- 1.8. Bidders requiring clarifications on the contents of the TE may request the Buyer in writing or through e-Procurement System (so as to reach the Buyer not later than fourteen days prior to the date of Tender opening) bringing out unambiguously the specific clarifications needed. Copies of the clarifications requested by the Bidder and the clarifications provided by the Buyer shall be sent to all prospective Bidders who have been issued TE. In case of GeM Procurement, the timeframe as provided on GeM platform shall be sacrosanct.
- 1.9. Manual Bidders should forward their Bids under their original memo/ letter pad inter-alia furnishing details like GST number, Bank details with NEFT account details, complete postal & e-mail address, telephone & fax numbers, etc., of their office. In e-procurement bids shall be submitted through online portal.
- 1.10. When Bids are called on Single Bid basis the technical and financial/ commercial bids shall be submitted in the same bid. However, when Bids are called for on Two Bids basis, the Bids shall comprise of two parts, namely (i) Technical Bid, and (ii) Financial/ Commercial Bid. In manual bidding, the Technical Bid and the Financial/ Commercial Bid should be sealed by the Bidder in separate covers duly super-scribed to indicate the appropriate Bid. Both these sealed covers are to be put in a bigger cover,

which should also be sealed and super-scribed as prescribed below.

- 1.11. Bids, for supply of the item (s) listed in Part II of the TE, shall be submitted through the eprocurement portal or in sealed cover in case of procurements on conventional manual system. In conventional manual system, the sealed cover of the Bids should neatly and legibly be super-scribed with the details of (a) Title of the TE (b) TE No. and date (c) Tender opening date. Lack of these superscription may result in the Bid being declared invalid.
- 1.12. In conventional manual system, Bidder may modify or withdraw his bid after submission provided a written notice of modification or withdrawal is received by the Buyer prior to the deadline prescribed for Bid submission. The withdrawal notice may be sent by fax provided it is followed by a signed confirmation copy to be sent by post and such signed confirmation reaches the purchaser not later than the Bid submission deadline. In case of e-procurement, a bidder can change, withdraw or cancel earlier submitted offer before the bid submission closing date and time. In case tender specifications or price bid format is revised the submitted bids will become null and void & the vender need to re-submit the bids. TE closing date & time, opening date & time will also change. Information for the same will be sent to vendor.
- 1.13. Bids cannot be modified after the Bid submission deadline. Similarly, after the Bid submission deadline, Bids cannot be withdrawn till expiry of the Bid validity.
- 1.14. In conventional manual system, only Bids that are found in the specified Tender Box shall be opened. Bids, if any, dropped in a wrong Tender Box shall be treated as invalid Bids.
- 1.15. In conventional manual system, Bidders may depute their representatives, duly authorized in writing, to attend the opening of Bids on the due date and time. Rates and other 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 the absence of the representative of any Bidder. In case of e-procurement, the

tenders shall be opened online and bidders, who participated in the TE can view the spot CST also online through online portal.

- 1.16. In Two-bid system, only the Technical Bids will be opened on the specified Tender opening date and time. Financial Bids of only those firms will be opened, whose Technical Bids are found technically compliant/ suitable on Technical Evaluation by the Buyer. Date of opening of the Financial Bids shall be separately intimated after evaluation of the Technical Bids.
- 1.17. During evaluation of Bids, the Buyer may, if so required, ask the Bidder (s) for clarification on the Bid submitted. The clarification furnished by the Bidder should not result in any change in prices or substance of the Bid nor will the same be permitted. No post-bid clarification at the initiative of the Bidder will be entertained.
- 1.18. In procurements where it is necessary to physically verify the facilities & capacities of the Bidder, the Buyer may depute Capacity Verification Teams for carrying out such physical verification of facilities & capacities as per TCL Standard Operating Procedure (SOP) for Capacity Verification and Vendor Registration. However, for the items valuing up to Rs. 2.5 Lakh the said SOP will not be mandatory.
- 1.19. Canvassing in any form by the Bidder, unsolicited letter and post-bid amendment/ modifications/ corrections shall attract summary rejection of the Bid with forfeiture of EMD.
- 1.20. Bidder should comply with all the Parts of this TE and confirm acceptance of all the clauses of the TE, which shall automatically be part of the consequent contract with the successful Bidder (s) (i.e. Seller in the consequent contract). Failure to confirm acceptance to the clauses mentioned under Part II, Part III, Part IV and Part V of the TE may result in rejection of the Bid submitted by the Bidder. Conditional Bids shall be treated as invalid and rejected. In the manual system, the bidder should sign on each page of the tender document.
- 1.21. In case of LTE, Bidders not willing to participate in the TE should ensure that an intimation to that effect reaches the Buyer before the date and time prescribed for opening of Bids, failing

which the defaulting Bidder may be delisted for the range of items for which the TE is issued.

1.22. The Buyer reserves the right to reject/cancel/scrap the Tender Enquiry or change the quantity of tendered item(s) without notifying any reason whatsoever.

1.23. In case of any dispute, the decision of the Buyer shall be final and binding on all participants in the tender.

PART II – ESSENTIAL DETAILS OF STORES REQUIRED BY THE BUYER

Part II of the TE contains essential details of the Stores/ Services required, such as the Schedule of Requirements, Technical Specifications, Delivery Period, Mode of Delivery, Consignee details, etc.

2.1. The Schedule of Requirements, duly indicating the Stores/ Services required, is given below:

Sl. No.	Nomenclature of the Stores/ Service	Specification of the Store/Description of the Service	Quantity Required

2.2. Technical details of the stores/ service required are given below.

- a) Specifications/drawings details or Type of Service required:
- b) Technical details duly covering all technical parameters or detailed Scope of Service required:
- c) Evaluation, Inspection and Factory Acceptance Trial criteria or Minimum Acceptable Service Level (MASL):
- d) Installation/ commissioning requirements:
- e) Pre-site/ Pre-dispatch inspection requirements or basis of assessing MASL:
- f) Warranty and post-warranty requirements:
- g) Training/on-job training requirements:
- h) Technical documentation required:
- i) Details of any other requirements:

2.3. PRE-BID CONFERENCE

If the Buyer finds it necessary to hold a pre-bid Conference (refer Part IV) to familiarise the prospective Suppliers with the requirement of the TE, then the notice of such pre-bid Conference shall be provided as hereunder. If such notice for pre-bid Conference is not specified as hereunder then it should be considered that the Buyer does not intent to hold any pre-bid Conference.

Notice for Pre-bid Conference

- j) Date:.....
- iii) Time:.....
- iv) Venue:.....

2.4. In cases where the Buyer issues material to the Supplier under the consequent Contract, the issued material will be duly secured by obtaining a Bank Guarantee, from a bank authorized to carry out government business, of value equal to the 110% of the value of the issued material and validity till delivery of supplies accepted by the Buyer. The details pertaining to such issued material is given below:

- a) Batch size of issue material, if applicable
- b) Value of issue material for the Batch size
- c) BG value
- d) Other special instructions

2.6. The Bidders shall furnish along with their Technical Bid a clause-by-clause Compliance Statement bringing out the compliance (without disclosing the price) of their offer to the TE specifications and duly indicating unambiguously the deviations, if any. The detailed Compliance Statement shall be provided in the format attached herewith.

2.7. Delivery period for supply of the Stores/ Services shall be from the effective date (refer Part III) of the consequent Contract placed on the successful Bidder. The mode/terms of delivery shall be Reckoning the date of delivery on the basis of the mode/ terms of delivery shall be as given below.

2.8. Staggered deliveries in the TE is given below

Sl. No	Quantity to be Delivered	Date of Delivery/ Delivery Period	Remarks/ Special Instructions for Delivery

2.9. Inspection Authority in the consequent Contract shall be The mode of Inspection applicable in the consequent Contract shall be (Buyers Inspection/ Joint Inspection/ Self-certification). The Inspection applicable in the consequent Contract shall be (Pre-dispatch Inspection/ Joint Receipt Inspection / Buyers Receipt Inspection). The Shall be the Inspection Officer. The firm should furnish the test report of chemical and physical parameters of raw materials used for manufacture of components, fabricated stores, tools and gauges along with chalan. The instruments used for carrying out test as above shall have national traceability and evidence of the same will be furnished in the certificate.

2.10. The mode/ terms of delivery required in the TE is To enable equitable comparison of Bids received against the TE, it is necessary that the Bidders quote as per the mode/ terms of delivery specified in the TE.

2.11. The applicable Rules & Regulations for delivery & transportation of Stores (domestic and from foreign countries) shall be as per the contemporary version of International Commercial Terms (INCOTERMS).

2.12. The FAS, FOB & CIF terms of delivery are applicable only for Stores directly imported from foreign countries against the consequent Contract and not for imports by the Seller under its own arrangement. The CIP terms of delivery are applicable both for domestic as well as imported supplies.

2.13. Special instructions on consignee details & other special conditions pertaining to shipment, transportation, etc., if any applicable under this TE, shall be as indicated hereunder.

a) Consignee details:

.....

b) Packing instructions:

.....

c) Shipment/ Transportation instructions:

.....

d) Other Special instructions, if any:

.....

2.14. Bidders shall offer their quotes only on firm and fixed basis, unless otherwise the Buyer has specifically invited the TE on variable price basis duly prescribing the Price Variation (PV) formula in Part III. In such TEs with the Price Variation formula specified, the Bidders shall quote strictly in accordance with the Price Variation formula prescribed. Quotes not conforming to the prescribed Price Variation formula shall be treated as unresponsive and rejected.

2.15. Time being the essence of the contract, Bidders should note that the consequent Contract can be cancelled unilaterally by the Buyer in case deliveries are not received within the contracted delivery period. In this regard the provisions of the Risk & Expense clause in Part IV may be perused.

2.16. Extension of contracted delivery period due to reasons attributable to the Seller of the consequent Contract shall be at the sole discretion of the Buyer, with applicability of Liquidated Damages (LD) clause as mentioned in Part III.

PART III – STANDARD CONDITIONS OF THE T.E

Part III of the TE contains the Standard Conditions of the TE.

- 3.1. Scope of Supply – Technical Description/Requirement/Quality requirement etc.: The stores supplied shall be of the best quality and Workmanship, shall be in strict conformity with all the drawings and specifications furnished with the Purchase Orders and shall address the Technical description in all respects. Where tenders are called for in accordance with 'particulars', the seller's tender to supply in accordance with such 'particulars' shall be deemed to be an admission on his part that he has fully acquainted himself with the details thereof and no claim on his part which may arise on account of non-examination or insufficient examination of the 'particulars' will in any circumstances be considered. The items not specifically listed but required for completeness of stores / system deemed to be included. All supplies should be accompanied by Sellers works inspections/ test certificates duly certifying, the Stores are in strict conformity with the drawings/specifications. The final acceptance will be subject to inspection and approval at Buyer's premises. Once the material are rejected and communicated to the Seller, no request shall be entertained for re-inspection or acceptance of the stores. However, Buyer reserves the right to re-inspect the stores and consider acceptance at his discretion.
- 3.2. Price: The rates offered shall be 'Firm & Fixed' with full and detailed breakup of various applicable cost elements like Basic Price, packing charges, freight/ transport, forwarding charges, handling charges, landing & clearing charges, installation & commissioning, training, technical assistance, etc.; and duly indicating all the applicable Taxes & Duties along with the relevant taxation rate and value for each of the applicable Tax/ Duty, till the execution of the total quantity on the order. To facilitate assessment of reasonability of price quoted, the Bidder shall indicate split-up details of the cost elements of the Basic price. No increase shall be permissible on any account after finalization of the order / till delivery of total quantity of the order. Price quoted should on F.O.R. Destination basis, for delivery at Buyer premises inclusive of all charges including

transit insurance. Foreign sellers will quote the prices on the FOB/FCA Port of dispatch basis, as applicable INCOTERMS 2020 or as amended from time to time.

Seller should clearly mention whether the prices hold good when the full quantity of enquiry is not ordered but only a part of it. Unless otherwise mentioned, it would be assumed that the rates hold good even when lesser quantities than those enquired of are ordered. Any increase in prices at a later date for ordering lesser quantities will not be agreed to.

3.3. Price Variation Clause :

Invariably, Purchase Orders shall be placed on a firm price basis. In exceptional cases, where the firm insists on escalation or on price ruling at the time of despatch, the purchase order should contain a clause to this effect for admissibility. The Purchase order should clearly specify the formula for determining the quantum of escalation admissible with reference to a fixed base period and prices ruling at that period taken as a base for deciding the escalations. The base period and prices should be mutually agreed based on necessary documentary evidence. The claims shall be supported by necessary documentary evidence, as compared to the base prices for admitting the escalation claims. Price Escalation Clause needs to clearly define applicability of Escalation up to point of ordering or point of delivery. Whether the escalation to be calculated on year to year basis or point to point basis, same to be specified. Methodology of calculation of escalation is to be specified.

PV formula may specify cut-off dates for material and labour, as these inputs taper off well before the scheduled delivery dates. The Price Variation formula may also provide for a ceiling on the price variations as a percentage per annum or an overall ceiling or both.

If advance or stage payments have been allowed, no price variations will be admissible on such portions of the price, after the dates of such payment. No price variation will be admissible beyond the original scheduled delivery date for defaults on the part of the supplier. 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 the purchaser.

When 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.

Where contracts are for supply of 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 & 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 & taxes, foreign exchange rates, and the documents to be produced in support of claims for such variations should also be stipulated in the contract.

Price Variation formula will vary from Contract to Contract. However, a suggested price variation formula could be as follows:

$$P = P_o \{ (A + B(L/L_o) + C (M/M_o)) \}$$

P = Final price payable in the year of delivery

P_o = The base price at _ (year) economic conditions

L_o = Average Labour Index of the base _ (year)

M_o = Average Material Index of the base _ (year)

L = Average Labour Index Months prior to date of delivery (as applicable at Seller's country).

M = Average Material Index Months prior to date of delivery (as applicable at Seller's country).

A, B & C = Percentages corresponding to fixed elements, labour and material respectively. Escalation cap (+/-) applicable (percentage) with the above price variation formula to be indicated.

The indices incorporated in the escalation formula should be Govt. Published/ in public domain and capable of being verified.

Escalation/Revision in price shall not be admitted for the delayed supplies.

- 3.4. **Packing Conditions:** The stores should be properly packed for tropical storage and for transport by rail, road, sea or air so as to ensure and to protect them against loss, damage, corrosion in transit on arrival at their destination. The packing and marking of packages shall be done by and at the expense of the seller. Each package shall contain a Packing Note quoting Purchase Order number and date showing its contents in detail. Each package shall be properly marked with Purchase Order No., Consignee's name & address, gross weight, package-handling instructions etc. The package shall have adequate provision for handling during transit and at destination.

The packing, shipping, storage and processing of the delivery must comply with the prevailing legislation and regulations concerning safety, the environment and working conditions. In case of Imports, items packed with raw/ solid wood packing material should be treated as per ISPM-15 (fumigation) and accompanied by Phytosanitary/ Fumigation certificate. If safety information sheets exist for a delivery or the packaging, the seller must always supply these sheets direct (at the same time). The packing shall allow for easy removal and checking of goods on receipt and comply with carrier's conditions of packing or established trade practices. If any consignment needs special handling instruction, the same shall be clearly marked with standard symbols / instructions. Hazardous material should be notified as such and their packing, transportation and other protection must conform to relevant regulations.

- 3.5. **Inspection and Technical documents requirements:**

(a) The supply made against respective orders will be subject to Buyer inspection at his premises. The Seller shall be responsible for items supplied till the same have been inspected and accepted by Buyer. In case the goods / services are rejected at the time of inspection at Buyer Place or the rejections are noticed at the time of further processing the Seller will be informed of these rejections. On receipt of this information the Seller shall immediately arrange to collect the rejected items at

his cost and risk and arrange for the replacement of goods within the shortest possible time. Under no circumstances the Seller shall compel the Buyer to rework the rejected goods. The rejected material will lie in Buyer factory premises at the risk and cost of the Seller, pending receipt of disposal instruction from them. If so desired by the Seller, the rejected materials, for which no payment made by Buyer may be packed and returned to the Seller for arranging replacement /rectification on 'freight to pay' basis at his cost and risk and the dispatch documents will be forwarded to the Seller directly by Buyer to enable him to arrange insurance and take delivery of the same. Wherever payment is already made by Buyer to the Seller, the rejected material will be returned to the Seller against refund of the amount already paid by Buyer / submission of BG for the value of rejected goods. The packing, freight charges etc., on replacement of returned materials shall be borne by the Seller irrespective of the terms in the purchase order, since such charges were already incurred and borne by Buyer on the original consignment, which got rejected and returned to the Seller. In case the rejected materials are not required to be replaced, freight, insurance charges etc., incurred by Buyer on the original consignment shall be recovered from the Seller's bills.

(b) Ground Rent: If the material supplied by the vendors is rejected at the factory premises, the vendor is required to lift the rejected material within 30 days of issue of rejection I-Note. Factories have right to recover a charge for the storage space at @1% of the cost of material un-cleared, per week or part thereof, with maximum ceiling of 10% of value of the items. After lapse of 10 weeks, if it is found that firm has not taken any action for lifting of items, the goods may be confiscated and disposed off as per disposal procedure in vogue after sending a notice and giving 30 working days time to the firm. Ground rent shall be calculated from the date of expiry of the period of removal of item. No ground rent should be charged from Central/State Govt/Central PSUs. When the firm fails to pay the applicable ground rent within the prescribed period, factory is entitled to recover the ground rent due and all incidental expenses from EMD/PSD.

(c) Buyer or his authorized representative shall be entitled at all reasonable times during execution to inspect, examine and test at the Seller's premises the material and workmanship of all stores to be supplied under the Contract, and if the part of the stores are being manufactured at other premises the Seller shall obtain Buyer's or his authorized representative's concurrence to inspect, examine and test as if the said stores are being manufactured at the Seller's premises. Such inspection, examination and testing, if made shall not release the Seller from any obligation under the Contract. If the defects are not remedied within a reasonable /stipulated time, the purchaser may proceed to rectify the defects at the seller's risk & cost but without prejudice to any other rights which the buyer may have against the Seller in respect of their failure to remedy such defects. All costs related to inspections and re-inspections shall be borne by the Seller. The cost of inspection staff/ third party specified by the Buyer shall be borne by Buyer, unless otherwise specifically agreed. When the Contract provides for tests on the premises of the Seller or any of his Subcontractor/s, Seller shall be responsible to provide assistance such as, labour, materials, electricity, fuels, stores, apparatus, instruments as may be required and as may be reasonably demanded to carry out such tests efficiently. Cost of any type test or such other special tests shall be borne by the Buyer only if specifically agreed. The Seller shall give the authorized representative of the Buyer reasonable prior notice in writing of the date on and the place at which any stores will be ready for inspection/ testing as provided in the Contract.

3.6. Acceptance of Goods: Material on arrival at Buyer's premises will be inspected by QA/Inspection Department as per appropriate Quality Assurance Plan and their decision in the matter will be final. The test certificate and relevant supporting documents should be sent along with the consignment.

3.7. Training & Technical Assistance : The successful tenderer shall arrange for the training of a reasonable number of the Buyer's technical personnel in shops manufacturing the equipment and in plants where equipment similar to those covered in the

tender documents are in operation. The number of such personnel and the period of training will be mutually agreed upon. The travelling and living expenses of the trainees will be borne by the Buyer. Training and technical assistance clause may include:

- i. Manufacturing processes of the stores wherever applicable, as well as quality assurance procedures, programming, operation, mechanical maintenance and electronic/electronic maintenance at seller's work and also during commissioning.
- ii. Duration of training,
- iii. No. of personnel to be trained.
- iv. Place of training.
- v. Charge applicable / or FOC
- vi. Documentation / training material.
- vii. Boarding, lodging & travelling charges etc.
- viii. Free Mandays / Extra Mandays for service engineering.
- ix. Any other aspect related to training & technical assistance.

- 3.8. Standard Payment Terms : The standard payment terms shall be 100% payment against Seller's bill by Account transfer through NEFT/RTGS only for accepted materials within 30 days from the date of receipt of material or submission of bills/documents, whichever is later. Normally no request for Advance Payment is entertained. However, where Advance Payment is considered in select cases, the same may be allowed, subject to furnishing Bank Guarantee (in prescribed format) from a scheduled commercial Bank (other than Cooperative Bank) for an amount equal to 110% of the advance released.

Or

90% of the contract amount shall be paid against provisional receipt of the item at the consignee's premises along with inspection note from NABL accredited /authorised Lab and other relevant documents. Balance 10% shall be paid after the stores have been properly checked and accounted for. Alternatively, where considered necessary, 95% of the contract amount can be paid against provisional receipt of the item at the consignee's premises along with inspection note and other

documents. Balance 5% can be paid after the stores have been properly checked and accounted for.

Or

Stage-wise payments (may be considered only in complex cases, provided the stage-wise payments admissible is indicated above).

Or

Quarterly/ monthly payments for work completed on submission of User Clearance Certificate in respect of AMC/ Service contract.

Or

Payment may also be made through TReDS (Trades Receivable Discounting System) on its implementation

3.9. Warranty:

(a) All the Stores supplied shall be warranted against any defect in material, Workmanship, defective design, materials and non-conformance to intended performance, manufacturing defects, or dimension etc., for a period of _____ calendar months from the date they are actually put to use or _____ calendar months from the date of receipt and acceptance of supply in Buyer's place / buyer's designated place, whichever is earlier and the seller shall remedy such defects at his/her own cost or replace free of charge such stores when called upon to do so.

(b) The seller cannot absolve their responsibility for warranty of material even though it is inspected & approved by Inspection authority.

(c) In case of defective Stores which need to be re-exported for repairs to the manufacturer's works, To & Fro freight, insurance charges & custom duty for replacement have to be borne by the seller.

(d) During warrantee period any equipment or component thereof supplied by the seller, suffers due to defective material and or due to improper design and or due to defective drawing or due to faulty workmanship the seller will assume full responsibility of rectification of such defective equipment or component thereof including direct expenses related to removal and re-positioning of the replacement/repared equipment or component thereof and subsequent test & trial, incurred thereon without any financial implication to Buyer.

(e) In the event Buyer desires to have extension of Warranty period beyond the stipulated period, as above, the seller shall quote for the same (on monthly basis) for the period of such extension.

(f) If the defects intimated during the Warranty period are not remedied within a reasonable / stipulated time, the Buyer may proceed to rectify the defects at the seller's risk and cost, but without prejudice to any other rights which the Buyer may have against the Seller in respect of the failure of the Seller to remedy such defects.

(g) In the event of Seller's failure to attend the Warranty defects within a reasonable period of time, the Performance Bank Guarantee will be encashed by the Buyer. The Buyer's decision shall be final and binding on Seller in this regard.

(h) All packing, forwarding, insurance and delivery charges arising against this would be borne by the Seller. The guarantee period would be extended by equivalent period for which the material is not available for the repaired parts, which were repaired & replaced during the Warranty period. The Warranty is subject to proper preservation, maintenance, storage, handling and usage of equipment by Buyer & Buyer's customer and does not covers repairs carried out without the prior consent of the seller / seller rep.

(i) Warranty calls needs to be attended within _____ hrs. Warranty of the stores will be extended by residual period

3.10. Option Clause:

(a) The Buyer reserves the right to place orders for additional quantity up to a maximum of 25% of the originally contracted quantity at the same rate and terms of contract within the original Delivery Period (DP) as well as Re-fixed/Extended DP subject to :

- (i) there being a requirement for the item,
- (ii) incorporation of Option clause in the contract,
- (iii) there being no downward trend in price (consent of supplier is not necessary) or if there is a downward trend, the supplier agreeing to reduce the price for the enhanced quantity duly matching with the fall in prices, and
- (iv) if no fruitful result will accrue by floating fresh TE or when the store is urgently required for meeting production targets.

(b) The Option clause can be exercised (if necessary more than once) provided the cumulative of the Option clause quantities exercised does not exceed the option clause quantity provided in the contract.

(c) In multi vendor situation, to provide a level playing field to all the vendors, any bid received without compliance to Option clause, may be considered as unresponsive by concerned TPC.

(d) Option clause may be operated normally on completion of 50% quantity of original supply order (or lesser qty as decided by concerned TPC).

3.11. Product Support : The successful Seller should agree to provide product support for the equipment supplied, assemblies/sub-assemblies, fitment items and consumables, Special Maintenance Tools (SMT) / Special Test Equipments (STE) subcontracted from other agencies / manufacturer by the Seller, by making available spare parts, components & tools etc.,

accessories of equipment and services for a minimum period of _____ years from the date of supply.

Seller should supply recommended spares for operator level servicing and should carry out necessary product support activities. Seller should also recommend a list of test equipment / fixtures and special tools required for servicing at _____/its customer bases. Seller will extend need based technical assistance to the BUYER for maintenance of the product/System during the warranty period. Seller shall provide an effective Product Support and maintenance services on demand from the BUYER and at mutually agreed financial consideration, for mutually agreed period from the date of supply of the product/System. Product Support covers the following areas:

- Spares Support
- Field Support
- Maintenance Support

SPARES SUPPORT:

1. SELLER shall advice on the requirement of spares and stock to be maintained as and when required by the BUYER.
2. Supply spares on demand.
3. Should any of the spares or equipment be earmarked for discontinuance of production, give notification to BUYER one year before the production is discontinued, to allow for a life time purchase. SELLER shall assist the BUYER in establishing alternate source of supplies.

FIELD SUPPORT:

On the request of the BUYER, SELLER shall resolve all technical queries and problems on product/System in service and provide the services of its service engineers at base of the BUYER on mutually agreed terms and conditions as and when required to facilitate repair of the product/System or to carry out modifications within the framework of system safety and for other field services.

MAINTENANCE SUPPORT:

SELLER shall carry out scheduled, periodic and unscheduled maintenance and snag rectification and for this purpose maintenance personnel will be deputed at mutually agreed terms and conditions.

In case of prices for long-term supplies of spare parts or price catalogue are not available/applicable, provision for entering into long term business agreements on supply, servicing and repairs like LTSA/LTRA should be provided by Seller in the scope of the contract till establishment of Repair Overhaul Facility at _____ or in India. Seller should indicate lead time for supply of spares and should authorize _____ for direct purchase from OEMs/Primary vendors.

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. 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. Any improvement / modification / up gradation by the Seller or their sub supplies 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. 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.

3.12. Taxes & Duties

a) GST: Rate of GST or any other Tax chargeable should be clearly indicated in the offer/ bid as inclusive in the price quoted or extra. If not indicated, Buyer will assume that the rates quoted are inclusive of taxes.

b) Wherever Excise Duty is applicable and payable, the same shall be reimbursed at actual against production of qualified Excise Duty gate pass in original as a proof for having paid the duty on the particular consignment. The Seller should ensure that the Gate Pass accompanies each consignment that are sent to us. In addition a photocopy of Gate Pass, in advance along with Invoice to be sent to Purchase Department in case of payment through Bank. If the terms of payment is other than the above, the photo copy of the Gate Pass with the bills etc., shall be sent to concerned Accounts Department. The Excise Duty Gate Pass number and date shall be incorporated in the Invoice, Delivery Challan and all other dispatch documents.

c) Seller is entitled for increase in statutory taxes, duties & levies within original DP and extended DP. However, there is decrease in statutory taxes, duties & levies, the same must be passed on to the Buyer.

d) Foreign Bidders : All taxes, duties, levies and charges which are to be paid for the delivery of goods in their respective countries, shall be paid by the foreign bidders.

(e) Customs Duty :

(i) In case of imported stores offered against forward delivery, the Bidders shall quote prices exclusive of customs duty, duly specifying separately the CIF Price and the customs duty payable. The Bidder shall also indicate the rate of customs duty applicable along with Indian Customs Tariff Number. Customs duty actually paid shall be reimbursed on production of necessary documents i.e. (1) copy of Bill of Entry, (2) copy of Bill of Lading, (3) foreign Principals invoice. However, if the Bidder imports the stores in question against his own commercial quota Import license, he will also be required to submit in addition to the triplicate copy of bills of entry, etc., a certificate

from his Internal Auditor on the bill, to the effect that the following items/ quantity in the bill of entry are related to the stores imported against the Buyers Contract Number dated

(ii) Subsequent to the reimbursement of customs duty if the Seller obtains any refund of customs duty, such refund shall immediately be remitted, in full, to the Buyer. In case of failure to do so, the Buyer shall be fully empowered to deduct a sum equivalent to the amount of customs refunded, without any further reference to the Seller, from any of their outstanding bills against the contract or any other pending Government contract and no disputes on this account shall be raised by the Seller.

(iii) Subsequent to the reimbursement of customs duty, the Seller shall submit to the concerned Paying Authority a certificate to the effect that he has not obtained any customs duty refund. In addition, Seller shall also submit to the Paying Authority a certificate, immediately after lapse of the period specified in the Customs Act by which application for refund are to be filed with the Customs Authorities, stating that he has not applied for refund of the customs duty.

3.13. Pre-contract Integrity Pact:

a) For purchases exceeding Rs 50 Lakhs, a Pre-contract Integrity Pact shall be signed between the Buyer and the Bidder. This is a binding agreement between the Buyer and Bidder in which both agree to enter into a pre-contract agreement to avoid all forms of corruption by following a system that is fair, transparent and free from any influence prior to, during and subsequent to the currency of the contract.

b) Bidder shall submit duly signed Pre-contract Integrity Pact in original, strictly as per the format (without any deviation) enclosed with the T.E / RFP. Bidders not complying with this are liable for rejection and their bids will not be considered for evaluation. In case of two bid system, the Bidder is required to

submit the signed pre-contract IP as part of technical bid, failing which offers are liable for rejection.

c) The Pre-contract Integrity Pact shall be valid, from the date of signing of the contract, till completion of contractual obligations.

d) The Pre-contract Integrity Pact requires every Bidder to deposit along with his Bid the following amount as Security Deposit.

i) Rs. 1 Cr (Additional financial guarantee), if the estimated cost procurement is above Rs. 100 Cr and up to Rs. 300 Cr.

ii) Rs. 3 Cr (Additional financial guarantee), if the estimated cost procurement is above Rs. 300 Cr.

iii) All procurement cases above Rs. 50 Lakhs & up to Rs. 100 Cr, Integrity Pact is required to be executed without any additional Financial Guarantee. The EMD/SD/PBG required to be submitted by the vendor as prescribed in TCL PM 2024 shall only act as the financial guarantee for the IP.

iv) For procurement cases above Rs 50 Lakhs & up to Rs. 100 Cr, in case EMD is exempted and/or PSD is waived, separate Bank Guarantee of the PSD value required to be submitted by the vendor.

v) Bidder shall furnish the said EMD/ Security Deposit through any of the following instruments:

1) Bank Draft or Pay Order in favour of the Troop Comforts Limited.

2) A Confirmed Guarantee by an Indian Nationalized Bank, promising payment of the guaranteed sum to the Buyer, on demand, within three working days without any demur whatsoever and without seeking any reasons whatsoever. The demand for payment by the Buyer shall be treated as conclusive proof for payment.

- 3) In case foreign suppliers, the Bidder may, if necessary, furnish the Bank Guarantee from a first class International Bank provided the same is confirmed/ verified by the State Bank of India.
- vi) The EMD/ Security Deposit shall be valid up to complete conclusion of contractual obligations to complete satisfaction of both the Bidder and the Buyer.
- vii) In case there are more than one bidder, the Earnest Money/Security Deposit shall be refunded by the Buyer to those bidder(s) whose bid does not qualify (do not qualify) after the stages of TEC/ TPC, as constituted by the Buyer, immediately after a recommendation is made by the TEC/ TPC on bid(s) after an evaluation.
- viii) No interest shall be payable by the Buyer to the Bidder(s) on Earnest Money/Security Deposit for the period of its currency.
- ix) The Buyer has nominated
1. _____ (Name & address to be given)
2. _____ (Name & address to be given)

as Independent Monitor (IEM) for this Pact.

- 3.14. **Liquidated Damages (LD):** The time for and the date of delivery of the stores stipulated in the Purchase Order shall be deemed to be the essence of the contract, and delivery must be completed not later than the dates specified therein. Should the Seller fail to deliver the material to our premises or any consignment thereof within the period prescribed for such delivery, Buyer shall be entitled to recover from the Seller agreed liquidated damages, and not by way of penalty a sum of 0.5% per week of delay or part thereof, subject to a maximum of 10% as our claim towards liquidated damages on the undelivered part of the order. The LD will be charged on the basic cost excluding taxes and duties. Imposition, recovery or settlement of this LD shall not affect Buyer's right to performance, compensation and termination of the agreement. Liquidated Damages in contracts with Price

Variation formula shall be levied on the price as varied by the operation of the Price Variation clause.

3.15. Earnest Money Deposit:

- a) EMD, as sought in the bid for a value of Rs. _____ to be submitted in the form of Insurance Surety Bonds/ Account Payee Demand Draft/ Fixed Deposit Receipt/ Banker's Cheque or Bank Guarantee (including e-Bank Guarantee) / payment online (to be specified, on implementation). EMD should be valid for ____ days beyond the validity of the bid. Bank details are as follows: _____.
- b) Offers not accompanied with requisite amount of EMD or EMD not submitted in the specified form in original shall be summarily rejected.
- c) EMD will not carry any interest for the period it is retained with Buyer. EMD will be forfeited if a Seller withdraws, amends, impairs and/or derogates within validity period.
- d) EMD is to be submitted by the bidders except Micro and Small Enterprises (MSEs) having UAM number as defined in MSE Procurement Policy 2012 issued by Department of Micro, Small and Medium Enterprises (MSME) or are registered with the Central Purchase Organisation or the concerned Ministry or Department (including OFs) or Start-ups as recognised by Department of Industrial Policy and Promotion (DIPP), irrespective of the store for which they are registered. EMD is also not required from Central PSUs. Bidders/Sellers exempted from submission of EMD must submit certified copy of Govt of India authority for such exemption in lieu of EMD.
- e) EMD of the technically rejected bidder shall be returned immediately after technical evaluation. EMD of balance unsuccessful bidders will be returned to them at the earliest after expiry of the final bid validity and latest on or before the 30th day after award of contract/ finalization of the tender. The EMD of the successful bidder would be returned, without any interest whatsoever, after the receipt of PSD from them as called for in the consequent Contract.

f) In case of two bid system EMD in original form should be enclosed along with the technical bid. Technical bid without EMD in original will be rejected.

g) EMD remittance document, either in Indian currency or any other convertible currency of the specified amount, can be arranged by the Indian subsidiary / branch office in India of a foreign Seller which shall be submitted along with a certificate confirming the relationship of subsidiary / branch office in the Seller's offer.

h) EMD shall be submitted in favour of Troop Comforts Limited
_____.

3.16. Performance Security Deposit (PSD):

(a) The Seller (successful bidder awarded contract) shall deposit 5% of the total value of this order /contract value including taxes & duties as Performance Security Deposit which amounts to Rs. _____ by way of Account Payee Demand Draft/Banker's Cheque/Fixed Deposit Receipt from a scheduled Commercial Bank of India/Bank Guarantee in the prescribed format(enclosed) from a scheduled Commercial Bank of India (for Indigenous Sellers)/ Bank of International repute for which counter guarantee is given by Indian Bank (for Foreign Sellers) within specified date(normally 30 days after notification of the award of contract/ date of acceptance). Indemnity Bonds may be accepted as PSD from Central PSUs.

(b) PSD is not necessary for contracts valuing up to Rs. 10 lakhs.

(c) The PSD/Performance Bank Guarantee should be valid for additional period of 60 days beyond the delivery date of completion of all contractual obligation including Warranty period (if any). In the event of the Contractual delivery period being extended by the Buyer, the Seller shall be responsible to ensure that the validity of the Performance Guarantee is also simultaneously extended/re-validated so that it is valid for additional period of 60 days beyond the

new delivery date of completion of all contractual obligation including warranty period (if any).

- (d) In the event of non-performance of the item and if Seller fail to attend the defects within reasonable period of time, the PSD will be forfeited /the Performance Bank Guarantee will be encashed. In case any claims or any other contract obligations are outstanding, the Seller shall extend the Performance Bank Guarantee as requested by the Buyer till such time as the Seller settles all claims and completes all contract obligations. The Performance Bank Guarantee shall also be liable for encashment/forfeited if conditions regarding adherence to delivery schedule and other provisions of the contract are not fulfilled by the Seller. The Buyer decision shall be final and binding in this regard.
- (e) Performance Security Deposit is initially to be given by the supplier for original supply order quantity without option clause quantity. PSD (without interest except FDR) for the original supply order quantity may be returned after 60 days of fulfillment of all contractual obligations of the original supply order quantity including warranty period (if any).

Regarding Option Clause, PSD amount may be worked out based on Option Clause quantity. PSD for Option Clause quantity may be returned after 60 days of fulfilment of all contractual obligations of the Option Clause quantity including warranty period (if any).

- (f) PSD will be submitted in favour of Troop Comforts Limited (Unit -). The Seller should sent original copy of PSD to the Factory /Unit. After verification/confirmation of genuineness by the relevant Bank, a confirmation of the same can be forwarded by MM to F&A for information.

3.17. Spares Management: Seller should provide Product Support for full lifetime of the product. SELLER:

- a) Shall advice on the requirement of spares and stock to be maintained as and when required by the BUYER.

b) Supply spares on demand. Should any of the spares or equipment be earmarked for discontinuance of production, give notification to BUYER one year before the production is discontinued, to allow for a life time purchase.

c) Shall assist the BUYER in establishing alternate source of supplies

3.18. Obsolescence: The Seller shall continue to support the equipment for a minimum period of ____ years from the date of supply by making available spare parts and assemblies of the equipment supplied. For any reason Seller wishes / decides to close / discontinue the line for manufacture of the products or procurement of certain components, sub-components, Seller undertakes to notify such a decision to Buyer by means of a prior ____ years notice (before closure of the said production line) in writing so as to enable Buyer to place buy order / a life time buy of all spares before closure of said production line. Seller will transfer tools, drawings etc to Buyer after such notice period. Seller to indicate the source from where Buyer can procure these items. The said aspect would also form an integral part of the contract.

3.19. Withholding tax :

(a) BUYER would be deducting at source applicable Taxes (IT TDS/GST TDS etc.) as per Government of India Rules applicable at the time of making payments in respect of services rendered in India. (Generally on the amounts towards services like training, technical assistance offered by the Seller and license fees). As per the Rules, Income tax has to be borne by the recipient of the Income and relevant certificate to this effect will be issued to the Seller on deduction of such amounts, if applicable.

(b) Seller should bear the applicable withholding income tax in India. Tax would be deducted at source by Buyer as per DTAA where the Seller could claim the benefit of double taxation in their country as per the bilateral agreement between the two

countries. Certificate to this effect would be issued by Buyer to enable the Seller to claim the benefit under DTAA.

(c) Seller is required to indicate the PAN/TAN No. issued by Indian Income Tax Authorities and Permanent Establishment Certificate, If Applicable.

3.20. Product Liability : The Product Civil Liability on the product, for any loss arising in course of its utilization, for which Buyer may be held legally responsible, is the responsibility of Seller. Seller will carry out Product Liability Insurance to the extent set for herein in an amount not less than Rs. _____. Buyer will not be responsible for the payment of any premium for this policy.

3.21. Risk Purchase :

(a) If the equipment / article / service or any portion thereof be not delivered / performed by the scheduled delivery date / period, any stoppage or discontinuation of ordered supply / awarded contract without written consent by Buyer or not meeting the required quality standards, the Buyer shall be at liberty, without prejudice to the right of the Buyer to recover Liquidated Damages / penalty as provided for in these conditions or to any other remedy for breach of contract, to terminate the contract either wholly or to the extent of such default. Amounts advanced or part thereof corresponding to the undelivered supply shall be recoverable from the Seller at the prevailing bank rate of interest.

(b) The Buyer shall also be at liberty to purchase, manufacture or supply from stock as it deems fit, other articles of the same or similar description to make good such default and or in the event of the contract being terminated, the balance of the articles remaining to be delivered there under at the risk & cost of Seller. Any excess over the purchase price, cost of manufacture or value of any articles supplied from the stock, as the case may be, over the contract price shall be recoverable from the Seller.

3.22. Termination Clause : Buyer reserves the right to cancel the order with 15 days notice without any financial liability in the event of any of the following:

- a) When the item offered by the Seller repeatedly fails in the inspection and/or the Seller is not in position to either rectify the defects or offer items conforming to the contracted quality standards.
- b) When the Seller fails to honour any part of the contract including failure to deliver the contracted stores/ render services in time.
- c) Adulterated supplies as determined according to Prevention of Food Adulteration Act, 1954 and Rules, 1995 as amended from time to time.
- d) Supplies inferior to the specified quality.
- e) Unbranded/deceptively branded / spurious supplies against branded items in the Purchase Order.
- f) Time expired supplies.
- g) When the Seller 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.
- h) Based on the decision of Arbitration Tribunal.
- i) The seller is declared bankrupt or become insolvent.

3.23. Insolvency: If the Seller enters into liquidation, whether compulsory or voluntary (otherwise than or amalgamation or reconstruction with another party taking over all his rights as well as commitments) or becomes insolvent or Suffers a receiver of the whole or part of this asset to be appointed,

- i) Shall forthwith notify the same to Buyer and the Buyer shall have the right without prejudice to his other rights or remedies to terminate the unexecuted part of this Contract.
- ii) In such an event, the Buyer shall become entitled forthwith to get the refund within 30 days of all the advance

payments received by the Seller and expenditure incurred as a part of its obligations under this contract.

- 3.24. Appropriation: Whenever under this contract any sum of money is due or recoverable from Seller or payable by the Seller, Buyer shall be entitled to recover such sum by appropriating in part or whole by deducting any sum then due or which at any time thereafter may become due to the Seller in this or any other contract entered by Buyer as a whole its Divisions and Branch Offices etc., held by him/her alone or in partnership with others.

Should this sum be not sufficient to cover the full amount recoverable, the Seller shall pay to Buyer on demand the remaining balance due within 30 days of such written notice. The remaining balance due, if any, will be recovered through due process of law in case seller becomes defaulter.

- 3.25. Applicable Laws/Jurisdiction: All questions, disputes or differences arising out of or in connection with the contract, if concluded shall be subject to the exclusive jurisdiction of the Court within the local limits whose jurisdiction the place from which the Acceptance of Tender is issued, is situated. This contract shall be governed by and subject to and interpreted and construed in accordance with the Laws of the Republic of India, as may be in force from time to time.

- 3.26. Arbitration:

(i) Any dispute or difference whatsoever arising between the parties out of relating to the construction, meaning, scope, operation or effect of this contract or the validity or the breach thereof shall be settled by bilateral discussions.

(ii) Any dispute or difference whatsoever arising between the parties out of or relating to the construction, meaning, scope, operation or effect of this contract or the validity or the breach thereof, which cannot be settled amicably within sixty (60) days or such longer period as may be mutually agreed upon, from the date on which either party informs the other in

writing by a notice that such dispute, disagreement or question exists, shall be settled by arbitration.

(iii) The Arbitration Proceedings shall be conducted in India under the Indian Arbitration and Conciliation Act, 1996 (amended time to time) and the award of such Arbitration shall be enforceable in Indian Court only. The law applicable to an arbitration shall be Indian law. In case of Foreign Seller, Indian law of Foreign law to be decided by contracting parties is applicable.

a) For Indigenous Seller: The arbitration tribunal shall be consisting of sole arbitrator. The sole arbitrator shall be nominated by the parties within ninety (90) days of the receipt of the notice mentioned above through mutual discussions and referred to the CMD Troop Comforts Limited GT Road Kanpur 208013 for appointment of the Sole Arbitrator with the mutual consent of the parties. The Arbitrator so appointed shall be an officer of Troop Comforts Limited (with mutual consent) 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 disputes or differences. Failing which the arbitrator shall be nominated under the provision of Indian Arbitration and Conciliation Act, 1996 (amended time to time) at the request of either party or by dispute resolution institutions like Indian Council of Arbitration or ICADR, but said nomination would after consultation with both the parties. The Award of arbitration shall be final and binding on the parties to this contract.

b) For Foreign Seller: The arbitration tribunal shall be consisting of sole arbitrator. The arbitrator, who shall not be a citizen or domicile of the country of either of the parties or of any other country unacceptable to any of the parties shall be nominated by the parties within ninety (90) days of the receipt of the notice mentioned above, failing which the arbitrator may be nominated under the provisions of Indian Arbitration and Conciliation Act, 1996 (amended time to time) or by dispute resolution institutions like Indian Council of Arbitration and ICADR. In

case, nomination of third arbitrator under Indian Arbitration and Conciliation Act, 1996 (amended time to time) or by dispute resolution institutions like ICA and ICADR are not acceptable to the SELLER, then the sole arbitrator may be nominated by the President of International Chamber of Commerce, Paris, but the said nomination would be after consultation with both the parties and shall preclude any citizen with domicile of any country as mentioned above.

The Arbitration Tribunal shall have its seat in _____ in India or any suitable place in India as may be decided by the arbitrator.

Each party shall bear its own cost of preparing and presenting its case. The cost of arbitration including the fees and expenses of the arbitrator shall be shared equally by the SELLER and the BUYER, unless otherwise awarded by the Arbitration Tribunal. In the event of a vacancy caused in the office of the arbitrator, the parties which nominated such arbitrator shall be entitled to nominate another in his place and the arbitration proceedings shall continue from the stage they were left by the retiring arbitrator.

In the event of both parties failing to nominate arbitrator within sixty (60) days of the place of arbitrator falling vacant, then the other party shall be entitled after due notice of at least thirty (30) days to request dispute resolution institutions in India like Indian Council of Arbitration or ICADR to nominate another arbitrator as above.

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

The language(s) of the arbitration shall be English.

“Except as may be required by law, neither a party nor its representatives may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of (all /both) parties.”

In case of technical disputes involving confidential matters, the issue shall be referred to a high level technical authority for each party, appointed for this purpose.

c) For CPSUs/DPSUs: In the event of any dispute or difference relating to the interpretation and application of the provisions of the contract, such dispute or difference shall be referred by either party for Arbitration to the sole Arbitrator in the Department of Public Enterprises to be nominated by the Secretary to the Government of India in-Charge of the Department of Public Enterprises.

The Arbitration and Conciliation Act, 1996 (amended time to time) shall not be applicable to the disputes, provided, however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to be Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary/ Additional Secretary, when so authorized by the Law Secretary, whose decision shall bind the Parties finally and conclusively. The Parties to the dispute will share equally the cost of arbitration as intimated by the Arbitrator. If the Department of Public Enterprises fails to settle the dispute, the same will be referred to the Committee constituted by the Cabinet Secretariat.

- 3.27. Indemnity against Patent rights: The Seller shall at all times protect, indemnify and save/ keep harmless the Buyer, its successors, assigns, any claim made by a third party against all liability, including costs, expenses, claims, suits or proceedings at law, in equity or otherwise, arising out of, or in connection with, any actual or alleged patent infringement (including process

patents, if any), or violation of any license with respect of the stores covered by the order.

- 3.28. Bribes: 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 for borne to do any act in relation to the obtaining or execution of the Contract or any other Contract with the Government for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other Contract with the Government. Any breach of the aforesaid undertaking by the seller or any one employed by him or acting on his behalf (whether with or without the knowledge of the seller) or the commission of any offers by the seller or anyone employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act, 1988 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.

- 3.29. Sub-contracting/Sub-letting with the permission of the Buyer : Seller shall not be entitled without buyer's prior written consent to Sub-contract/Sublet to a third party all or part of the benefits or obligations of the Contract (even by way of change of

ownership or control), except as expressly permitted in this Contract if any, to sub-contract any of its rights and interest under this Contract.

- 3.30. Works & Payments during Arbitration: Work under the Contract shall be continued by the Seller during the arbitration proceeding, unless otherwise directed in writing by the Buyer or unless the matter is such that the work cannot possibly be continued until the decision of the arbitrators is obtained, and save as those which are otherwise expressly provided in the Contract, no payment due or payable by the Buyer shall be withheld on account of such arbitration proceedings, unless it is the subject matter or one of the subject matters thereof.
- 3.31. Fall Clause: The price quoted shall be in no event exceed the lowest price at which the vendor sell the stores or offer to sell stores of identical description to any person(s) / organization including the purchases by any department of the Govt. of India, the State Govt. or any statutory undertaking of the Govt. of India / State Govt., as the case may be during the period till the completion of the performance of the order placed and during currency of the order. If at any time during the said period, the Seller reduces the sales price, sells or offers to sell such stores to any person/ organization including the Buyer or any department of Central Govt. or any Dept. of State Govt., or any statutory undertaking of the Central or State Govt., as the case may be at a price lower than the price chargeable under the contract, he shall forthwith notify such reduction/sale or offer to sale to the Buyer and the price payable under the contract for the stores supplied after the date of coming into force of such reduction or sale or offer to sale shall stand correspondingly reduced with due allowance for quantities and intervening time period.
- 3.32. Export License: Foreign Seller making proposals should ensure availability of export license as per their Govt. regulations for export to India. Seller shall be required to obtain and maintain all Export/Import licenses and permits etc., as the case may be, required for performing supplies against this tender. Obtaining export license shall be entire responsibility of the Seller and he

shall discharge this within a reasonable time. End User Certificate will be issued by the Buyer.

3.33. Intellectual Property Rights:

(a) If any Patent design, trademark, copyright or any other intellectual property rights apply to the delivery or accompanying documentation, Buyer shall be entitled to the legal use thereof free of charge by means of a non-exclusive, worldwide, perpetual license. All intellectual property rights that arise due to the execution of the delivery by the Seller and by its employees or third parties involved by the Seller for performance of the agreement belong to Buyer.

(b) The Seller shall be obligated to do everything necessary to obtain or establish the above mentioned rights. The Seller guarantees that the delivery does not infringe on any of the intellectual property rights of third parties. The Seller shall also be obligated to do everything necessary to obtain or establish the alternate acceptable arrangement pending resolution of any (alleged) claims by third parties. The Seller shall indemnify the Buyer against any (alleged) claims by third parties in this regard and shall reimburse Buyer for any damages suffered as a result thereof.

3.34. Amendment & Waiver :

Any amendment to Purchase Orders / Contracts would be enforceable only if made in writing and duly signed by authorized representatives of the parties hereto. Failure of either Party at any time to enforce any of the provisions of this Contract shall not per se constitute a waiver by that Party of any such provisions nor in any way affect the validity of the Contract or any part hereof.

3.35. Classified/Confidentiality: The conditions are as follows:-

(a) This Contract and its annexure(s) shall be treated as confidential by the Parties and their officers and employees.

- (b) Unless otherwise specified herein, neither Party or any of their affiliated companies shall make any news release, public announcement, advertisement, denial or confirmation, disclose of some or any part of this Contract or transactions contemplated under this Agreement to any third party without the prior consent of the other Party.
- (c) The Party Disclosing information is termed as Disclosing Party and the Party receiving information is termed as Receiving Party, Each Party undertakes:
- i) to keep the other Party's Confidential Information confidential using the same degree of care as the receiving Party uses to protect its own Proprietary Information against public disclosure but in no case any less degree than reasonable care; and
 - ii) not to make any disclosure of the other Party's Confidential Information to any third party and to use the same only for the Purpose; and iii) not to make any copies of the other Party's Confidential Information, or translation or transfer of the same to other documents or media nor to disseminate the same within its own organisation save as is strictly necessary for the Purpose; and
 - iv) not to assign the rights and obligations of the Parties without their prior written consent thereto.
- (d) Provided, however, that the foregoing restrictions and obligations shall not apply to any information which it can be shown:
- i) is already or hereafter becomes published otherwise than through the fault or negligence of the receiving Party; or
 - ii) is lawfully obtained by the recipient from a third party having rights to disclose to the receiving Party, without restrictions as to use or disclosure, or
 - iii) is already known to the receiving Party at the date of receipt of the information pursuant to this Agreement, or iv) is independently developed by the receiving Party.
 - iv) is required to be disclosed under any law, judicial order or Government order or regulation provided receiving Party gives disclosing Party timely notice, where possible, of the contemplated disclosure so as to give the disclosing Party an

opportunity to intervene to preserve the confidentiality of the information. Or such disclosure is limited to those persons to whom the Receiving Party is legally compelled to disclose the information to; and

(e) The technical information provided by SELLER under this Contract shall be treated as confidential by the BUYER and shall be used by BUYER only for purpose intended and shall not be disclosed to any third party.

(f) The provisions of this clause shall survive and remain in force notwithstanding the termination or expiry of this Contract.

(g) The BUYER shall limit access of technical documentation being provided under this Contract only to such of its employees involved in relevant operations concerning the equipment on a need to know basis.

(h) Non-adherence to this Clause by the Seller shall be treated, amongst others, as a material breach of this Contract.

3.37. Agents / Agency Clause : The seller confirms and declares to the buyer that the seller is the original manufacturer or authorized distributor / stockiest of original manufacturer or Govt. Sponsored / Designated Export Agencies (applicable in case of countries where domestic laws do not permit direct export by OEMS) of the stores referred to in this offer / contract / Purchase order and has not engaged any individual or firm, whether Indian or Foreign whatsoever, to intercede, facilitate or in any way to recommend to Buyer or any of its functionaries, whether officially or unofficially, to the award of the contract / purchase order 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 / purchase order, the Seller will be liable to refund that amount to the Buyer. The Seller will also be debarred from participating in any RFP / Tender for new projects / program with

Buyer for a minimum period of five years. The Buyer will also have a right to consider cancellation of the Contract / Purchase order either wholly or in part, without any entitlement or compensation to the Seller who shall in such event be liable to refund all payments made by the Buyer in terms of the Contract / Purchase order along with interest at the rate of 2% per annum above LIBOR (London Inter Bank Offer Rate) (for foreign vendors) and Base Rate of SBI (State Bank of India) plus 2% (for Indian vendors). The Buyer will also have the right to recover any such amount from any contracts / Purchase order concluded earlier with Buyer.

3.38. Force Majeure:

(a) If at any time during the execution of the supply order, the performance in whole or in part by either Buyer or and by the Seller(s) is / are delayed by any reason of force majeure situations such as acts of civil war, civil commotion, sabotage, hostilities, war, fires, explosions, epidemics, natural calamities like floods, earthquakes, volcanoes, storms, acts of God & laws of respective governments or any other causes beyond the control of either parties, hereinafter referred to as "events", provided notice of the occurrence of such event/s is / are communicated by either party, to the other party within 21 days from the date of occurrence thereof, neither party shall by reason such events be entitled to terminate the contract nor shall either party have any claim for damages against the other in respect of such non-performance and or delay in performance of the contract / order. Executions on either side shall be resumed as soon as practicable after such event has come to an end or ceased to exist and the decision of Buyer as to whether activities can resume or not, shall be conclusive and final. Occurrence of the events to be certified by Chamber of Commerce / Indian High Commission or Embassies / Government in that Country.

(b) The performance in whole or in part under the captioned tender / contract is prevented or delayed by reason of any such event for a period exceeding sixty days either party may at its option terminate the contract / further processing of

the tender. The relative obligations of both the parties remain suspended during the actual period of force majeure.

(c) The Buyer may extend the delivery schedule as mutually agreed, on receipt of written communication from the Seller regarding occurrence of 'Force Majeure' conditions, but not exceeding six months from the scheduled delivery date. If the 'Force Majeure' conditions extend beyond this period, the Buyer shall have the right to cancel the order without any financial implication to the Buyer or on terms mutually agreed to.

3.39. Exit Criteria: The contract/order may be terminated under the following circumstances:

(a) In the event of unsatisfactory performance by the Seller during the contract period, or any of the information provided by the Seller is found to be untrue, or Seller is found to have attempted to influence any person involved with the contract through unethical means, the contract shall be terminated with 15 days advance notice without any financial implication to Buyer. Notwithstanding, the foregoing, in cases where it is found that a Seller is engaged in unethical practices, the same shall be barred from participating in the future contracts.

(b) If there is change in Buyer requirement, contract shall be terminated with 15 days advance notice. The liability of Buyer in this case will be agreed mutually. In the event of termination of contract by either party the Seller shall ensure following:-

i) IPR's are transferred to Buyer to enable Buyer to proceed on the work with other Seller. Seller also will render all assistance till the other Seller fully take over the balance work.

ii) Transfer title and deliver all or any part thereof of the supplies, materials, work-in-progress, finished Products, Tooling, drawings and data produced or acquired by Seller specifically for the Product being terminated.

iii) Supply of products and its components / spares at least for a period of ____ years from the date of such termination.

- (c) The Seller is declared bankrupt or becomes insolvent.
- (d) The delivery of material is delayed due to causes of Force Majeure.
- (e) Based on the decision of the Arbitration Tribunal.

3.40. Cartel Formation:

- a) Cartel formation or quoting of pool rates or quoting in collusion is against the basic principle of competitive bidding and shall attract penal and punitive measures; including suspension/banning of such Bidders for a specific period as per Procedure of Penalties in Business Dealings with Entities in vogue, apart from reporting to the Competition Commission of India, other Regulatory Authorities, Chambers / Association of Commerce, etc.
- b) Firms are expected to quote for full quantity or part thereof but not less than 50% of tendered quantity. Offers for quantity less than 50% of tendered quantity will be considered unresponsive and liable to be rejected. The management (CFA), reserves the right to order any quantity on one or more firms.
- c) Whenever all or most of the approved firms quote equal rates in CARTEL, the purchaser reserves the right to place order on any one or more firms with exclusion of the rest. The selection of firms for placement of order would be based on a pre-determined ranking of the firms.
- d) The purchaser reserves the right to place order on two or three firms: in such cases tender quantity will be distributed between Rank 1(R1) and Rank 2(R2) firms in the ratio of 60:40 or among R1, R2 and Rank 3(R3) firms in the ratios 50:30:20 respectively.

- e) The purchaser reserves the right to delete the registered firms who quote in CARTEL from list of approved/registered sources or to debar them for a period of two years from participation in the tenders of the purchaser.
- f) The name of the newly registered firm which enters into CARTEL on getting registered will be summarily deleted from the list of registered suppliers.
- g) New firms will have to submit an undertaking that they will not be part of a cartel with other vendors and will quote competitive rates in the tenders; otherwise would face expulsion from the list of vendor.

3.41 Franking Clause on Acceptance and Rejection

“The issue of this inspection/rejection report does not acquiesce or condone the late delivery and does not intend or amount to an extension of the delivery period or keeping the contract alive. The goods are being passed/ rejected without prejudice to the rights of the Government of India under the terms and conditions of the contract.” This clause may also be incorporated in conditions of the contract.

3.42 Access to Books of Accounts: In case it is found to the satisfaction of the Buyer that the Bidder 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 Bidder, on a specific request of the Buyer, shall provide necessary information / inspection of the relevant financial documents / information.

3.43 Non-disclosure: Except with the written consent of the Buyer/Bidder, the other Party shall not disclose the TE or consequent Contract or any provision, specification, plan, design, pattern, sample or information thereof to any third party.

3.44 Denial Clause

Since delay in delivery is a default by the seller, the buyer should protect himself against extra expenditure during the extended period by stipulating a denial clause (over and above levy of LD) in the letter

informing the supplier of extension of the delivery period. In the denial clause, any increase in statutory duties and/or upward rise in prices due to the PVC clause and/or any adverse fluctuation in foreign exchange are to be borne by the seller during the extended delivery period, while the purchaser reserves his right to get any benefit of a downward revisions in statutory duties, PVC and foreign exchange rate. Thus, PVC, other variations and foreign exchange clauses operate only during the original delivery period.

PART IV – SPECIAL CONDITIONS OF TE

Part IV of the TE contains the Special Conditions of the TE that will form part of the contract with the successful Bidder

4.1 Notices: Any notice required or permitted by the consequent Contract shall be written in English language and may be delivered personally or sent by FAX or registered /speed post/e-mail, addressed to the last known address of the Party to whom it is sent.

4.2 Special conditions for Source Development Open Tenders:

(a) Established sources for an item will not be eligible to participate in the SDOTE for that item. The status whether a firm is established or not shall be reckoned as on the last date of the previous month in which vendor selection TPC is held.

(b) Abnormally Low Bid: An Abnormally Low Bid is one in which the Bid price, in combination with other elements of the Bid, appears so low that it raises material concerns as to the capability of the Bidder to perform the contract at the offered price. Procuring Entity may in such cases seek written clarifications from the Bidder, including detailed price analyses of its Bid price in relation to scope, schedule, allocation of risks and responsibilities, and any other requirements of the bids document. If, after evaluating the price analyses, procuring entity determines that the Bidder has substantially failed to demonstrate its capability to deliver the contract at the offered price, the Procuring Entity may reject the Bid/Proposal. However it would not be advisable to fix a normative percentage below the estimated cost, which would be automatically be considered as an abnormally low bid. Due care

should be taken while formulating the specifications at the time of preparation of bid document so as to have a safeguard against the submission of abnormally low bid from the bidder.

(c) To have more firms developing an item and thereby improve the probability of developing new sources, in SDOTE the L-2 firm may be given 40% of the tendered quantity on accepting the L-1 rates, provided this was indicated in the tender.

(d) Vendors become established source for a particular item after securing order by participation in a SDOTE/OTE for the item and successfully delivering at least 60% of ordered quantity against the supply order, and the same being accepted on conformity to the qualitative requirements. However, supplies against subsequent LTE orders shall be accepted subject to completion of the supplies under the SDOTE. Established vendors for aggregates, assemblies and sub-assemblies shall be considered as established vendors for components and sub-assemblies that go into making of the aggregate, assembly and sub-assembly.

(e) The firm having one SDOTE supply order is also not allowed to participate in other SDOTE for same item, floated by same or any other Factory. An Undertaking in this regard may be obtained from firms.

(f) If a firm on which source development order has been placed, is unable to develop the item within the specified time frame, existing provision of TCL DFP should be followed for DP extension/re-fixation.

(g) In the retender, the firm that was unable to develop the particular item even with the extended timeframe that resulted in the retender shall not be allowed to participate.

(h) System Integrators may also be considered for participation having facility/capabilities of integration with testing facilities. These firms may not have manufacturing facilities but have agreement (self-declared by vendors) for supplying of components/assemblies/sub-assemblies. The warranty of the integrated product shall be given by the integrator

4.3 Applicable Currency: Domestic Bidders shall quote and be paid only in Indian Rupees (INR). Foreign Bidders may quote in US Dollars or

Euros and may be paid in the same currency. If the offer of foreign Bidders includes some portion of the allied work/ services to be undertaken by Indian purchaser (e.g. installation, commissioning, etc.) such portion shall be quoted and paid only in INR. Authorised Indian dealers of foreign OEMs participating in the TE shall quote and be paid only in INR. The foreign exchange rates applied for conversion from one currency to another shall be the exchange rate (BC Selling Rate) notified by the Parliament Street Branch of SBI, New Delhi / RBI on the last date of submission of Bids.

4.4 Stage Payments: Stage payments are admissible, as well as relevant, only in rare cases involving very high value and where the throughput time for manufacture of the stores under procurement is very long. The Buyer, if satisfied that the throughput time and the value of procurement are very high, may then allow stage payment only against satisfactory completion of clearly identifiable physical milestones with the quantum of the stage payment being commensurate with the quantum of work completed up to the milestone, subject to the Seller submitting a Bank Guarantee in the prescribed format(enclosed) from a Commercial Bank of India (for Indigenous Sellers)/ Bank of International repute for which counter guarantee is given by Indian Bank (for Foreign Sellers), with validity up to additional period of 60 days beyond the delivery date of the completion of all contractual obligations, for an amount equivalent to the stage payment to be released. The physical milestones/ stages and the admissible stage payment as percentage of the total contract value are given in the table below. When stage payments are made in contracts with Price Variation formula, no price variations shall be admissible on such portions of the price, after the dates of such stage payments.

Stage Number	Physical Activity to be completed for claiming the stage payment	Stage payment as % of the total contract value

4.5 Mode of Payment:

Indigenous Bidders: It will be mandatory for the Bidders to indicate their bank account numbers and other relevant e-payment details

to enable payments through ECS/ NEFT 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 enclosed as annexure.

Foreign Bidders:

- a) If the value of the contract is up to US \$ 100,000, payments shall 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 consequent 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

- b) The payment shall be through Letter of Credit from State Bank of India/ any other Indian Public Sector Bank, as decided by the Buyer, to the Bank of the Foreign Seller. The Seller shall give a notification within a specified period of days about the readiness of goods. Letter of Credit shall be opened by the Buyer within days on receipt of notification of readiness from the firm. The Letter of Credit shall be valid for ninety days from the date of its opening, on extendable basis by mutual consent of both the Seller and the Buyer. All expenses related to Letters of Credit outside India shall be borne by the foreign vendor. In case of extension of delivery period the LC extension charges shall be borne by the Seller, if the extension is due to reasons attributable to the Seller.

4.7 Paying Authority: The Sr. GM/GM/HOD of the unit or the finance division of that unit on behalf of Sr. GM/GM/HOD.

4.8 Document to be submitted for Effecting Payments: The Seller submit the requisite documents to the Paying Authority to enable effecting the payment.

- (a) Indigenous Sellers: Payment of bills will be made on submission of the following documents by the Seller to the Paying Authority along with the bill:

- i) Digitally signed invoice/ Ink-signed copy of Sellers Bill/ Commercial Invoice/ Contingent Bill
- ii) Inspection Note (and User Acceptance, if applicable)
- iii) Copies of Supply Order/ Contract along with all amendments to the Supply Order/ Contract.
- iv) If DP was extended, copy of the amendment (s) to the Supply Order/ Contract duly indicating whether the extension was granted with or without LD
- v) Claim for statutory and other levies to be supported with requisite documents/ proof of payment, like GST Invoice, Excise Duty Challan (wherever applicable), Customs Duty Clearance Certificate, ,proof of payment for EPF/ ESIC contribution with nominal roll of beneficiaries, etc., as applicable
- vi) Exemption Certificate, if applicable.
- xi) Name and address, Account type, Account number, IFSC code, MICR code (if these details are not incorporated in supply order/contract). One cancelled cheque/ECS mandate form would also be required.
- xii) Any other document / certificate that may be provided for in the consequent Supply Order/ Contract

(Note – From the above indicative list, the documents relevant to the procurement undertaken shall be included in the TE)

(b) Foreign Sellers: Paid Shipping documents shall be provided to the Bank, by the Seller, as proof of dispatch of goods as per consequential Contractual terms to enable the Seller to get payment from the LC. The Bank will forward these documents to the Buyer for getting the Stores released from the Port/ Airport. Documents shall include: i) Clean on Board Airway Bill/ Bill of Lading ii) Original Invoice iii) Packing List iv) Certificate of Quality and current manufacture from OEM v) Performance Bond/ Warranty Certificate vi) Dangerous Cargo certificate, if applicable vii) Insurance policy for 110% of the CIF/ CIP contract viii) Certificate of Conformity & Acceptance Test at PDI, if

applicable ix) Fumigation Certificate, if any x) Any other document/ certificate provided for in the Supply Order/ Contract.

(Note – From the above indicative list, the documents relevant to the procurement undertaken shall be included in the TE).

4.9 Quantity Tolerance: Normally no quantity variation in the supplies under the consequent Contract shall be permitted. However, in justified cases, such excess/ short supplies may be accepted by the Buyer, subject to the value of such excess/ short supplies not exceeding five percent of the original value of the contract, and the payment being admitted only for the actually quantity supplied.

4.10 Capacity Constraints of L1: Firms are expected to quote for full quantity or part thereof but not less than 50% of tendered quantity. The management (CFA), reserves the right to order any quantity on one or more firms. If the L1 Bidder has not quoted for the entire tendered quantity, then the supply order shall be placed for the balance quantity on L2 provided the L2 accepts the L1 rates. If the L2 is not agreeable to the L1 rate or if the L1 and L2 Bidders together cannot meet the tendered requirement, then the order for the balance quantity shall be placed on the next ranking supplier (L3) at the L1 rates provided L3 accepts the L1 rates. If the situation so warrants, this process shall be repeated in the order of the ranking (i.e. L1, L2, L3... so on) till the entire tendered quantity is covered or no Bidder is left.

4.11 Distribution of Quantity for Strategic Reasons:—In case of critical/ vital/ safety/ security nature of the item, large quantity under procurement, urgent delivery requirements and inadequate vendor capacity it may be advantageous to decide in advance to have more than one source of supply. In such cases a parallel contract clause should be added to the bid documents, clearly stating that Procuring Entity reserves the right to split the contract quantity between suppliers. The manner of deciding the relative share of lowest bidder (L1) contractor and the rest of the contractors/tenderers should be clearly defined, along with the minimum number of suppliers sought for the contract. In case of

splitting in two and three, the ratio of 70:30; 50:30:20, respectively, may be used. A different ratio may also be justified.

Before splitting the quantity, it should be ensured that the L1 price is reasonable. If it is not reasonable, negotiation with the L1 party may be carried out, if justifiable, with the approval of the CA. The following guidelines are to be considered while opting for parallel contracts:

- i) L1 should be awarded at least the percentage mentioned above or his spare supply capacity, whichever is lower; and
- ii) For the rest of the contract quantity, the lowest rate accepted will be counter offered to the L2 party. On acceptance of the counter offer, the order will be placed on L2 for the respective percentage or the spare supply capacity of the L2 bidder, whichever is lower, and so on, to other tenderers. In case of non-acceptance of the counter offer by the L2 party, a similar offer shall be made to L3 and L4, and so on.
- iii) If the bidder does not accept the counter offered L1 rate, then such undistributed quantity shall revert back to L1 bidder.

4.12 Acceptable Year of Manufacture: Unless stated other-wise in the TE, the goods supplied shall be of current manufacture. Quality/Life certificate will need to be enclosed by the Seller along with the Bill.

4.13 Transportation: Standard transportation instructions are as follows:

- a) CIF/CIP (Port of Destination): Seller will bear the costs and freight charges necessary to bring the goods to the port of destination. The Seller shall also procure Marine Insurance against the Buyers risk for loss or damage during the carriage. In this regard the Seller shall contract for the insurance and pay the insurance premium. Seller shall obtain the necessary clearances for export of the goods. 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 may be

shipped through Indian vessels. Seller will be required to convey the following information well in advance before the Ship sails the port of loading:

- i) Name of the Ship:
- ii) Port of Loading and name of Country:
- iii) ETA at Port of Discharge:
- iv) Number of Packages and Weight:
- v) Nomenclature and details of major equipment:
- vi) Special instructions, if any, to be provided by the Buyer: OR

b) FOB/ FAS (Port of Shipment): The stores may be shipped through Indian Ships in case of FOB/ FAS contracts. 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 and courier, to Factory concerned. Within 3 (three) weeks of receipt of the advance notice, as above, the Factory Concerned will advise the supplier, through Fax 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 or Trans-shipment of goods would be permitted. In case it becomes inevitable to do so, the Seller shall not arrange part-shipments/ trans-shipment without the express/prior written consent of the Buyer. The Seller may contact Factory concerned.

OR

c) FCA (Airport): The dispatch of goods shall be made by air to the port of the 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 at the Buyers expense. Delays in advising or delays by the Buyers freight forwarders shall not be the responsibility of the Seller. The date of issue of the Air Way Bill shall be the considered as the date of delivery.

4.14 Air lift: 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.

4.15 Quality: The quality of the stores offered shall strictly comply with the technical parameters contained in the Technical Specifications & its related standards and shall be new & of current manufacture. The mode of Inspection may be Buyers Inspection/ Joint Inspection/ Self certification. The inspection of the stores may be Pre-dispatch Inspection (and/ or) Joint Receipt Inspection/Buyers Receipt Inspection to check their compliance with the Technical Specification.

4.16 Pre-Dispatch Inspection (PDI): The Buyer will send his authorized representative(s) to attend the PDI. 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 list of Buyers Representatives along

with their details like, Name, title, date & place of birth, passport number (including date of issue & expiry), address, etc., shall be communicated to the Seller, by the Buyer, reasonably in advance of the PDI date.

Upon successful completion of such PDI, the Seller and Buyer will issue a Certificate of Conformity in the specified format enclosed in annexure.

The Buyer reserves the right not to attend the PDI or to request for postponement of the beginning of the 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 for such period of postponement. 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 shall be signed by the Sellers Quality Assurance Representative alone, which will have the same value as if they were signed by both the Parties. In case Buyer does not elect to attend the PDI, the same shall be intimated to the Seller in writing.

The Seller shall provide all reasonable facilities, access and assistance to the Buyers Representatives for safety and convenience in performance of their duties in the Sellers country.

All costs associated with the stay of the Buyers PDI Representative (s) in the country of PDI, including travel expenses, boarding & lodging, accommodation, daily expenses shall be borne by the Buyer.

4.17 Joint Receipt Inspection (JRI): The Joint Receipt Inspection (JRI) of delivered goods shall be conducted jointly by the Buyers Representative (s) and the Sellers Representative (s), on arrival in India, at the location to be nominated by the Buyer. JRI shall be completed within days of arrival of good at the Consignee Port. The JRI shall consist of:

- a) Quantitative checking to verify that the quantities of the delivered goods correspond to the quantities defined in this contract and the invoices.
- b) Complete functional checking of the stores as per specifications in the contract and as per procedures and tests laid down by Buyer.
- c) Check proof and firing, if required.
- d) Any other checks (to be specified)

The Buyer shall give the Seller a prior notice of at least fifteen (15) days for attending the JRI. The bio-data of the Sellers Representatives shall be communicated at least fifteen (15) days prior to the dispatch of goods to the Buyer for obtaining necessary security clearance, etc.

Upon completion of each JRI, the JRI proceedings and Acceptance Certificate shall be jointly signed by the Buyers Representative (s) and the Sellers Representative (s). In case the Seller does not depute his Representative for JRI on the scheduled date, then the Buyer Representative (s) shall carryout the Inspection alone and the same shall have the effect of the regular JRI and shall be fully binding on the Seller.

Copy of the JRI proceedings and Acceptance Certificate shall be dispatched to the Seller within 30 days of completion of the JRI. In case of deficiencies in quantity and (or) quality or defects, details of these shall be recorded in the JRI proceedings, however, Acceptance Certificate shall not be issued. Further, necessary claims shall be raised by the Buyer as per the Article on Claims in the contract.

4.17 Claims: Claims may be presented either on (a) quantity of the stores, where the quantity does not correspond to the quantity shown in the Packing List/Insufficiency in packing, or (b) quality of the stores, where quality does not correspond to the quality mentioned in the contract. The time frame for raising claims shall be as follows:

- a) 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) 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) Quality Claims on account of Defects or Deficiencies in JRI: 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 enclosed in annexures.

The Seller shall settle the claims within 45 days from the date of receipt of the claim at the Sellers 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.

The Seller shall collect the defective or rejected goods from the location nominated by the Buyer and deliver the repaired or replacement goods at the same location under the Sellers arrangement.

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 Paying Authority.

4.19 Market Exploration: If the Buyer intends to explore the Market prior to finalisation of the requirement, then the Buyer may through a separate Expression of Interest explore the Market for the current availability and trends.

4.20 Buy-Back Offer:

In case the Buyer desires to trade the existing old goods while purchasing new ones, the details of the old goods to be traded and other relevant details in this regard shall be indicated hereunder, whereupon the Bidders may formulate and submit their tenders accordingly. Bidders can also inspect the old goods to be traded through this TE. Buyer, however, reserves the right to trade or not to trade the old goods while purchasing the new ones, therefore, Bidders are required to frame their bids covering both the options, i.e. with buy-back and without buy-back. Handling charges and transportation expenses to take out the old items will be on account of the successful Bidder. Factory may fix reserve price for the items to be offered for the buyback well before the TE opening. In case, the firm quoted the buyback price below than the reserve price then buyback offer of the firm may not be considered. In the rankings the buyback price may not be considered. Details for the buy-back are:

- a) Details of Items for buy-back: (make/model, specifications, 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) Handing over details: (date & time, place, mode of handing-over, etc.)
- d) Timings for Inspection: All weekdays between hours to hours
- e) Last date for inspection: 1 day before the last date of submission of bids

4.21 Exchange Rate Variation (ERV):

ERV is applicable only in contracts involving substantial import content(s) and having a long delivery period (exceeding one year from the date of contract). The bidder should indicate the import content(s) and the currency (currencies) used for calculating the value of import content(s) in their total quoted price, which (i.e. the total quoted price) will be in Indian Rupees. The bidder should also indicate the Base Exchange Rate for each such foreign

currency used for converting the FE content into Indian Rupees and the extent of foreign exchange rate variation risk they are willing to bear. To work out the variation due to changes (if any) in the exchange rate(s), the base date for this purpose will be the last date of submission of commercial bid. The variation may be allowed between the above base date and the date of remittance to the foreign principal/ mid-point of manufacture of the foreign component/..... (Purchaser shall decide an appropriate date). The applicable exchange rates as above will be according to the TT selling rates of exchange of SBI, Parliament Street Branch, New Delhi/RBI on the dates in question. No variation in price in this regard will be allowed if the variation in the rate of exchange remains within the limit of plus/minus 2.5 percent. Any increase or decrease in the customs duty by reason of the variation in the rate of exchange in terms of the contract will be to the buyer's account. In case delivery period is extended due to default of the vendor, any increase in exchange rate will not be admissible and exchange rate on the last date of original DP shall be considered. In case there is decrease in exchange rate during extended DP, lower exchange rate will be considered. The following documents would need to be submitted by Seller in support of the claim on account of ERV:

- (i) A bill of ERV claim enclosing working sheet
- (ii) Banker's Certificate/ debit advice detailing FE paid, date of remittance and exchange rate
- (iii) Copies of import order placed on supplier
- (iv) Invoice of supplier for the relevant import order.

4.22 Public procurement (Preference to Make in India) Order 2017 – revision as issued by Ministry of Commerce and Industry vide letter no. P-45021/2/2017-PP(BE-II) dated 04.06.2020 or later revisions shall be applicable. The policy is enclosed in TCL Procurement Manual 2024 as Annexure- 15 and to be made a part of Tender Enquiry.

4.23 Public Procurement Policy for MSEs Order, 2012:

Any order issued by Central Government in relation to Micro, Small or other sections of Industries relevant to procurement

shall be followed by Factories / Units. One such Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012 is in force w.e.f 01.04.2012 and should be strictly adhered to. The Public Procurement Policy shall apply to Micro and Small Enterprises (MSEs) registered with District Industries Centres or Khadi and Village Industries Commission or Khadi and Village Industries Board or Coir Board or National Small Industries Corporation or Directorate of Handicrafts and Handloom or any other body specified by Ministry of Micro, Small and Medium Enterprises (MSME). Declaration of Udyog Aadhaar Memorandum (UAM) number by the MSME vendors on CPPP/ e-procurement portal should be made. The MSE bidders who fail to submit UAM number will not be able to avail the benefits available to MSEs as contained in Public Procurement Policy for MSEs Order, 2012 for tenders invited electronically through CPPP as follows:-

- (a) Tender set free of cost
- (b) Exemption from the payment of Earnest Money (EMD)
- (c) In tender, participating MSEs quoting price within price band of L1+15% shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than a MSE and such MSE(s) shall be allowed to supply up to 20% of the total tendered value.
- (d) 358 items are also reserved for exclusive procurement from MSEs.

4.24 Safeguard while Taking Support from Private Companies in RFP Cases – Conflict of Interest

Clause:

Any company and or their group/associate company who are participating in the < Details of the RFP Proposal issued by the Service HQrs >* will not be eligible to participate in this Tender Enquiry. An undertaking to the effect that the firm or its group associate is not participating in < Details of the RFP Proposal issued by the Service HQrs > * is to be provided by the firm. At any stage during the period of the contract, if the aforesaid undertaking is found to be false the BUYER (TCL) to take all or any one or more of the following actions, wherever required:-

- (i) To immediately call off the pre-contract negotiations without assigning any reason or giving any compensation to the Bidder. However, the proceedings with the other Bidder(s) would continue
- (ii) The Earnest Money Deposit/Performance Security Deposit / Performance Bond shall stand forfeited either fully or partially, as decided by the Buyer and the Buyer shall not be required to assign any reason therefore.
- (iii) To immediately cancel the contract, if already signed, without giving any compensation to the Bidder.
- (iv) To recover all sums already paid by the Buyer (TCL), and in case of an Indian Bidder with interest thereon at 2% higher than the prevailing Prime Lending Rate of State Bank of India (or Base Rate of State Bank of India in the absence of Prime Lending Rate), while in case of a Bidder from a country other than India with interest thereon at 2% higher than the LIBOR. If any outstanding payment is due to the Bidder from the Buyer (TCL) in connection with any other contract for any other defence stores, such outstanding payment could also be utilized to recover the aforesaid sum of interest.
- (v) To encash the advance bank guarantee and performance-bank-warranty bond, if furnished by the Bidder, in order to recover the payments, already made to by the Buyer (TCL), along with interest.
- (vi) To cancel all or any other Contracts with the Bidder.
- (vii) To ban the Bidder from entering into any bid from the TCL Guidelines issued by DoE vide No. F.1/20/2018-PPD dated 02.11.2021 (or revised time to time) should be followed along with the SOP enclosed in the Annexures.

[*Details of such RFP/TE No & Date; Details of item/service being procured' Details of the procurement agency of Service HQrs]

Special Conditions in GTE Procurements

- a) **Currency of Bidding:** In GTE tenders, the Foreign Bidders are allowed to quote price (and get paid) in RBI's notified basket of

foreign currencies - US Dollar or Euro or Pound Sterling or Yen etc., in addition to the Indian Rupees - except for expenditure incurred in India (including agency commission if any) which should be stated in Indian Rupees. Indian Bidders are to quote in INR only.

- b) **Delivery Terms:** The delivery terms are to be expressed in terms of Incoterms. As per the revised policy of the Government, all Public Procurement import contracts involving (Ocean freight of dry or liquid bulk cargoes) are to be finalized only on FOB (Free on Board)/ FAS (Free Alongside Ship) basis and in case of any departure there-from, prior approval of the concerned administrative Ministry/ Department may be obtained. However imports involving ocean freight of general liner: cargoes, project cargoes, heavy lift, container, break bulk cargoes etc. can now be made on FOB (Free on Board)/ FAS (Free Alongside Ship) or CFR (Cost & Freight)/

CIF (Cost, Insurance & Freight) basis. All importing Government Departments/ PSUs are now allowed to make their own shipping arrangements without needing to route their requirements through Chartering Wing of Ministry of Shipping. As per the extant directive of the Government, airlifting of imported goods from abroad will be done only through the national carrier, that is, Air India, wherever applicable. However, before processing any contract involving import of goods through air, contemporary instructions in this regard may be ascertained and followed; and

- c) **Insurance:** Wherever necessary, the goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the contract. If considered necessary, the insurance may be done for coverage on an "all risks" basis including war risks and strike clauses. The amount to be covered under insurance should be sufficient to take care of the overall expenditure to be incurred by the purchaser for receiving the goods at the destination. Insurance of imported goods/equipment would need to be arranged on a very selective basis and only for cases where the value of individual shipment is expected to be in excess of Rupees five crore. Procuring Entities who are entering into large number

of imports contracts, may enter into annual Insurance arrangements for all imports during the year with Insurance Companies, instead of insurance for each individual imports separately on the basis of "Open Cover (all Risk)". Where delivery of imported goods is required by the purchaser on Cost Insurance and Freight/Carriage and Insurance Paid (CIF/CIP) basis, the supplier shall arrange and pay for marine/air insurance, making the purchaser the beneficiary. Where delivery is on Free On Board/ Free Alongside Ship (FOB/FAS) basis, marine/air insurance shall be the responsibility of the purchaser

PART V – EVALUATION CRITERIA & PRICE BID FORMAT

5.1. Evaluation Criteria: The broad guidelines for evaluation of Bids will be as follows:

- a) Only Bids that fulfil all the eligibility & qualifying requirements of the TE, both technically and commercially, shall be considered for evaluation.
- b) In Two-Bid system, the Technical Bids shall be evaluated with reference to the technical requirements of the stores/ service prescribed in the TE. The Buyer may obtain technical clarifications during the evaluation of the Technical Bids. Further, if considered necessary during the course of Technical evaluation, the Buyer may invite the vendors who meet the essential parameters for technical presentation/ clarification.
- c) The Price Bids of only the technically compliant Bidders shall be opened. If prices are indicated in the technical bid or attached as a part of technical bid even in the form of PDF, the offer will not be considered for evaluation
- d) The Lowest Bid (L1) will be decided, from out of the Technically & Commercially compliant Bids, based on the lowest price quoted. Consideration of Taxes & Duties in evaluation process shall be as follows:

- i) When competition is only among Indian Suppliers, the F.O.R Prices at destination (Consignee's premises) shall be the basis for ranking of the quotations.
 - ii) If the competition is amongst foreign suppliers, the basis for comparison shall only be the landed price at the destination (designated port).
 - iii) When the competition is amongst indigenous and foreign suppliers, the basic cost (CIF) quoted by the foreign suppliers shall be the basis for comparison with the basic cost offered by the indigenous suppliers, after offloading the GST & Excise Duty (if applicable). Therefore, to enable evaluation of the Bid, it is important for foreign Bidders to ensure that they duly quote, both on, CIF as well as FOB basis. Similarly, it is important for the Indian Bidders to duly indicate the GST & Excise Duty (if applicable) in their quote as separate elements.
- e) The quotes of foreign suppliers in foreign currency shall be brought to a common denomination in Indian Rupees by adopting the exchange rate as BC Selling Rate of the Parliament Street Branch of State Bank of India, New Delhi/RBI on the date of the closing of Bids.
- f) If there is any discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price will prevail and the total price will be corrected accordingly. If there is a discrepancy between words and figures, the amount in words will prevail for calculation of price.
- g) The Buyer reserves the right to evaluate the offers received by using Discounted Cash Flow (DCF) method. If this method is applied the discounting rate shall be the lending rate of the Government of India on loans given to the State Government as notified annually by the Budget Division of Ministry of Finance. The DCF may be applied for converting differing Payment Terms of Bidders to a common basis and thereby determine L1 status.

h) The Lowest Acceptable Bid will be considered for placement of contract/ Supply Order, after complete clarifications and price negotiations, if so necessary. The Buyer also reserves the right to award contracts to different Bidders for being lowest in particular items. The Buyer further reserves the right to apportion the quantity, if it is convinced that Lowest Bidder will not be able to supply the full tendered quantity in stipulated time.

i) Any other criteria as applicable to suit a particular case.

5.2. Price Bid Format: The Price Bid Format is enclosed as annexure. Bidders are required to quote as per the format duly providing complete details.

PART VI – COMPLIANCES RELATED TO GST RULES

1. Payment of Supplier will be made only after successful inspection of Goods.

2. Submission of Document / Invoice by Supplier for claiming Payment:

(a) Registered Supplier: If the Supplier is registered as a Regular Registered person claiming GST on the supply of Goods then the Tax Invoice as specified under Rule 46 of GST Rules 2017 is to be submitted by the supplier along with the E-Invoice if applicable. In Case an E-Invoice is Not applicable to the Supplier a declaration in this regard is to be submitted.

(b) Composition Supplier: If the Supplier is registered as a Composition Supplier then GST cannot be claimed by the supplier on the supply of such Goods and the supplier is required to submit the Bill of Supply as specified under Rule 49 of GST Rules 2017 to Factory for payment.

(c) Unregistered Supplier: If the Supplier is not registered under GST then the supplier is required to submit a Simple Invoice containing the

description, Qty, and value of goods supplied along with the declaration that the supplier is unregistered on the date of issue of invoice.

3. Supplier must indicate the HSN / SAC of Goods / Services as supplied.
4. Tax Invoice must be issued in the Name of the Company i.e. Troop Comforts Limited (Not in the Personal Name of any officer) along with the GSTIN. All the Tax invoices issued against the GSTIN are to be uploaded by the supplier in the B2B Section of GSTR-1.
5. The Supplier is liable to deposit the tax by filing GSTR-3B by the 20th of the following month in which the invoice is issued by the supplier irrespective of whether payment from the factory is received by the supplier or not.
6. Supplier will issue a credit note for material rejected by the company if supplied against the Tax Invoice. It is the responsibility of the supplier to file the details of the credit note issued on the GST portal to claim the GST already paid in relation to the Goods rejected.
7. If Material was supplied by the supplier against the delivery challan then supplier is not required to issue a Credit Note for such return of goods.
8. For Claiming the Payment, Supplier is required to submit an undertaking for making the Payment and filing of GST Returns.
9. If a supplier fails to make the payment of the GST as charged in the invoice or fails to file the return for the corresponding period of supplies made to the company, then the Company shall not make payment of GST component and reserve the right to withhold entire payment.
10. It is the responsibility of the supplier to ensure that tax charged from the company is deposited either through Cash or Credit as prescribed under the GST law and will use the genuine input tax credit to discharge the GST liability. In case any action is taken by the department against the company due to an allegation of the discharge of tax liability by the supplier through any bogus input tax credit or ingenuine ITC company will recover the said amount along with the interest, penalty, or fine levied by the GST authorities.

ANNEXURE-17: COMPLIANCE STATEMENT (OTE)

Clause No.	Commercial & General Terms.	Compliance to TE Specification (Yes/No)	If not complied, Specify deviations
	Quoted for at least 50 % of tender quantity		
	Tender Fee sent by post (if not exempted).		
	EMD sent by post (if not exempted) and Copy enclosed with the technical bid or uploaded on GeM.		
	Application form for Vendor Registration sent by post , in case not registered already for tendered item		
	Registration Fee for Vendor Registration through online submission in the name of Troop Comforts Limited (Unit - ...), in case not registered already for tendered item & mention the detail of registration fee.		
	Details of technical capability including list of Plant & Machineries, test equipments, manpower attached		
	Details of Quality Systems, ISO-9000 certifications etc attached (For unregistered firm)		
	Documents in support of financial capability attached.(Balance sheet for last 3 years) (For unregistered		

	firm)	
	Copies of valid registrations with Ordnance Factories/ DGQA/NSIC/DIC/KVIC etc. attached. In case of MSEs, UAM no. and relevant documents	
	GSTIN No. and relevant documents attached.	
	Undertaking that the firm will not be part of CARTEL and confirm that firm will quote competitive rate in future tenders in the format attached.	
	Price quoted firm and fixed	
	Delivery & Prices on F.O.R destination basis.	
	Whether the offered store is as per specifications mentioned in TE.	
	Inspection at Buyer's premises.	
	Delivery as per Delivery Period mentioned In TE.	
	Payment Terms of the TE acceptable.	
	Agreed for Option Clause as mentioned in TE.	
	Agreed for Submission of Security Deposit/ Performance Security Deposit.	

	Liquidated Damages Clause accepted.		
	Arbitration Clause accepted.		
	Jurisdiction Clause accepted.		
	Access to Books of Accounts clause accepted.		
	Cartel Formation Clause accepted.		
	Agents / Agency Commission Clause accepted.		
	Agreed for condition of Non-disclosure of Contract documents		
	Agreed for condition of Evaluation Criteria		
	Validity of offer-as per tender.		
	Guarantee/ Warranty Clause accepted.		
	Pre-Integrity Pact Clause accepted.		
	Risk Purchase Clause accepted		
	Bribes Clause accepted		
	Classified /Confidentiality Clause accepted		
	Intellectual Property Right Clause accepted		
	Force Majeure Clause accepted		

	Immunity to Govt of India Clause accepted	
	Termination Clause accepted	
	Appropriation Clause accepted	
	Obsolescence Clause accepted	
	Product Liability Clause accepted	
	Indemnity against Patent Rights accepted	
	Export License Clause accepted	
	Amendment & Waiver Clause accepted	
	Exit Criteria Clause accepted	
	Insolvency Clause accepted	
	Product Support Clause accepted	
	Packing Conditions Clause accepted	
	Price Variation Clause accepted	
	Conflict of Interest Clause accepted	

ANNEXURE-18: COMPLIANCE STATEMENT (LTE/STE CASES)

Clause No.	Commercial & General Terms.	Compliance to TE Specification (Yes/No)	If not complied, Specify deviations
	Quoted for at least 50 % of tender quantity		
	Price quoted Firm and Fixed		
	Delivery & Prices on F.O.R destination basis.		
	Whether the offered store is as per specifications mentioned in TE.		
	Inspection at Buyer's premises acceptable.		
	Delivery as per Delivery Period mentioned In TE acceptable.		
	Payment Terms of the TE acceptable.		
	Agreed for Option Clause as mentioned in TE.		
	Agreed for Submission of Security Deposit/ Performance Security Deposit.		
	Liquidated Damages Clause accepted.		
	Arbitration Clause accepted.		
	Jurisdiction Clause accepted.		
	Access to Books of Accounts Clause accepted.		
	Cartel Formation Clause		

	accepted.	
	Agents / Agency Commission Clause accepted.	
	Agreed for condition of Non-disclosure of Contract documents	
	Agreed for condition of Evaluation Criteria	
	Validity of offer-as per tender.	
	Guarantee/ Warranty Clause accepted.	
	Pre-Integrity Pact Clause accepted.	
	Risk Purchase Clause accepted	
	Bribes Clause accepted	
	Classified /Confidentiality Clause accepted	
	Intellectual Property Right Clause accepted	
	Force Majeure Clause accepted	
	Immunity to Govt of India Clause accepted	
	Termination Clause accepted	
	Appropriation Clause accepted	
	Obsolescence Clause accepted	
	Product Liability Clause accepted	
	Indemnity against Patent rights accepted	

	Export License Clause accepted	
	Amendment & Waiver Clause accepted	
	Exit Criteria Clause accepted	
	Insolvency Clause accepted	
	Product support Clause accepted	
	Packing conditions Clause accepted	
	Price Variation Clause accepted	
	Conflict of Interest Clause accepted	
	Copies of valid registrations with Ordnance Factories attached . In case of MSEs, UAM no. and relevant documents	
	GSTIN No. and relevant documents attached.	

**ANNEXURE-19: IMPORTANT TERMS & CONDITIONS TO BE DECIDED BY
THE VENDOR SELECTION (VSL) TPC BEFORE FLOATING OF T.E**

S. No.	Term	Options	Remarks
1.	Type of TE	GTE OTE(All bidders including Established sources allowed) Source Development OTE(Established sources not allowed) LTE (Established and registered sources allowed) STE	
2.	No of bids	One/Two	
3.	Tender Fee	Applicable/Not-Applicable If applicable, then amount	
4.	EMD Amount	Applicable/Not-Applicable If applicable, then amount	
5.	Option Clause	Applicable/Not-Applicable If applicable, then proportion (_____ %)	
6.	Pre-Bid Conference	Yes/No If Yes, then date	
7.	Pre-contract Integrity Pact	Applicable/Not-Applicable If applicable, then amount & Name of IEM	
	Name and address of IEM		
8.	Inspection type	PDI followed by JRI (Normally in import cases) PDI at firm's premises and final inspection at Buyer's premise Final Inspection at Buyer's premise	
9.	Inspection Authority		
10.	Inspection Officer		
11.	Price Variation	Applicable / Not Applicable	

	Clause	If applicable, then – Text of PV formula	
12.	Distribution of tender Quantity	No 60:40 50:30:20	The CFA reserves the right to order any quantity on one or more firms.
13.	Delivery a) Mode b) Terms c) Schedule		
14.	Public Procurement (Preference to Make in India), Order 2017	Applicable/Not-Applicable If not applicable, then reason with justification	
15.	Public Procurement for MSEs, Order 2012	Applicable/Not-Applicable If not applicable, then reason with justification	
16.	Conflict of Interest Clause	Applicable/Not-Applicable	

ANNEXURE-20: MODEL ECS MANDATE FORMAT

Customer's option to receive payments through e-Payment (ECS/ EFT/ DIRECT CREDIT/ RTGS/ NEFT/ Other payment mechanism as approved by RBI.)

Credit Clearing Mechanism

1. Customer's Name
2. Particulars of Bank Account –
 - a. Bank name
 - b. Branch name
 - c. Address
 - d. Telephone numbers
 - e. IFS code
 - f. 9 Digit code number of Bank and Branch appearing on MICR cheque issued by Bank
 - g. Account Type (S.B. Account / Current Account or Cash)
 - h. Ledger number
 - i. Ledger Folio number
 - j. Account number as appearing on Cheque Book
3. Please attach a blank cancelled cheque, or, photocopy of a cheque or front page of your savings bank passbook issued by your bank for verification of the above particulars.
4. Date of Effect "I, hereby, declare that the particulars given above are correct and complete. If the transaction is delayed or not effected at all for reasons of incomplete or incorrect information, I would not hold the user institution responsible. I have read the option invitation letter and agree to discharge the responsibility expected of me as a participant under scheme."

(.....)
Signature of Customer

Date :

Certified that the particulars furnished above are correct as per our records.

Bank's Stamp : (.....)

Date:

Signature of the Authorized Official from the Bank

ANNEXURE-21: BANK GUARANTEE FORMAT FOR FURNISHING EMD

Whereas..... (hereinafter called the “tenderer”) has submitted their offer dated for the supply of..... (hereinafter called the “tender” know all men by these presents that we..... of.....having our registered office at..... (hereinafter called the “bank” are bound unto.....in the sum of..... (hereinafter called the “Purchaser”) for which payment will be truly to be made to the said purchaser, the bank binds itself, its successors and assigns by these presents. Sealed with the Common Seal of the said bank this.....day of.....20....

THE CONDITIONS OF THIS OBLIGATION ARE:

- (1) If the tenderer withdraws or amends, impairs or derogates from the tender in any respect within the period of validity of the tender.
- (2) If the tenderer having been notified of the acceptance of his tender by the purchaser during the period of its validity.
 - a) If the tenderer fails to furnish the Performance Security for the due performance of the contract.
 - b) Fails or refuses to execute the contract.

We undertake to pay the purchaser up to the above amount upon receipt of its first written demand, without the purchaser having to substantiate its demand, provided that in its demand the Purchaser will note that the amount claimed by it is due to it owing to the occurrence of one or both the two conditions, specifying the occurred condition or conditions.

This guarantee will remain in force up to and including 45 days after the period of tender validity and any demand in respect thereof should reach the Bank not later than the above date.

.....
(Signature of the Bank)

ANNEXURE-22: PERFORMANCE BANK GUARANTEE FORMAT

From:

Bank _____

To,
The Sr. GM/GM
Unit Name:-,
Troop Comforts Limited

Dear Sir,

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

1. We shall not be discharged or released from this undertaking and guarantee by any arrangements, variations made between you and the Seller, indulgence to the Seller by you, or by any alterations in the obligations of the Seller or by any forbearance whether as to payment, time performance or otherwise.
2. In no case shall the amount of this guarantee be increased.

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

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

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

ANNEXURE-23: CERTIFICATE OF CONFORMITY FORMAT

Date :

No :

Product Name :

Product No :

Lot No :

Quantity :

Contract No :

Packaging List No :

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

ANNEXURE-24: QUANTITY CLAIM FORMAT

Quantity Claim to the Contract No dated
.....

Claim Protocol number

Laid down

For inter/tare storage Commission, consisting of Chairman and
Members having examined
the state of the delivered equipment ascertained as follows:-

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

2. The obtained equipment is delivered under Contract
number..... Item Sr Number
Cost.....

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

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

.....
.....

5. Conclusion of the commission

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

Chairman

Members

Place and date of issue

Troop Comforts Limited

ANNEXURE-25: QUALITY CLAIM FORMAT

Quality Claim to the Contract No
.....dated..... Claim
Protocol number
Laid down on
Concerning (Name of the claimed equipment)
Commission Members
Chairman

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

1. Serial No
.....(equipment) Production by the
..... Made by the manufacturer
.....
(date of manufacture) No of running hours With
guarantee period of (completed)
.....
..... (years, months) From the
beginning of operation, the product has been operating for
..... hours.
2. Indicate operation conditions of the equipment
..... (State type of fuel
and oil used during operation of the equipment)
3. Description of the defect
..... (the date and circumstances under
which the defect was ascertained, short description of the
probable causes and probable consequences of the defect)
4. List of units (or their parts) (defective equipment will remain in
that organization store-room)
5. Conclusion of the Commission
.....
.....
.

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

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

.....
.....
.....
.....

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

.....

8. The costs of the repair of the equipment or its parts

.....
.....
.....

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

.....
.....

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

10. To settle the claim, the Seller has to replace the equipment and dispatch the unit and other parts, reimbursement of costs connected with the repair of the equipment, etc.

Supplementary data:

The equipment was handed over in accordance with the

..... No

on (date)

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

Signature of the commission members

.....

.....

Troop Comforts Limited

ANNEXURE-26: SUPPLY ORDER FORMAT

Name and Address of Buyer

Contact details like Telephone, Fax, e-mail File number: Date:

To

Name of Seller

Address

Placement of Supply Order Number _____ dated _____
Against RFP/TE Number _____ dated _____

Part I

Dear Sir/Madam

1. This is to inform you that a formal Supply Order is being placed on you for supply of items/services at price mentioned in Part-II. The Commercial terms and conditions are contained in Part-III and Part-IV of this Supply Order (S.O in short). The word "Seller" in this S.O is meant for your organisation/company while the word "Buyer" is meant for this organisation acting on behalf of President of India.
2. Following documents shall be the sole responsibility of this transaction:
 - a) Our RFP number _____ dated _____
 - b) Your Bid number _____ dated _____
 - c) Our letters numbers _____ dated _____
 - d) Your letters numbers _____ dated _____
 - e) Five Parts of this Supply Order as under:-
 - i. Part I – Communication of acceptance of Seller's Bid as finalised by Buyer.
 - ii. Part II – Buyer agrees to buy and Seller agrees to sell items/services mentioned in Part II at the prices mentioned therein. This Part also contains essential details of the items/services required, such as the Technical specifications, Delivery Period, Place of Delivery and Consignee details agreed by Seller.
 - iii. Part III – Buyer and Seller agree to abide the Standard Conditions of Supply Order mentioned in Part III.
 - iv. Part IV – Buyer and Seller agree to abide the Special Conditions of Supply Order mentioned in Part IV.

- v. Part V – It contains list of other addresses and other relevant details pertaining to this S.O.

3. Two copies of ink-signed Supply Order are being sent to you. Please acknowledge receipt within seven days of receipt of this Supply order, on your office letterhead duly signed by the authorised signatory. One copy of Supply Order duly signed and stamped on all pages should be returned to this office along with your acknowledgement letter. If such an acceptance or communication conveying any objection to certain part of this Supply Order is not received within seven days, then it would be deemed that this Supply Order is fully accepted by you and all obligations of Seller will be applicable to you under this S.O.

Thanking you,

Yours sincerely

Name and designation of Buyer
For and behalf of Troop Comforts Limited

Part-II – Essential Details of Items/Services Supply Ordered

1. Schedule of Prices - List of items/ services Supply Ordered is as follows :-

Sl. No	Denomination of items / services	Quantity	Unit Price	Total price	Remarks
Grand Total					

2. Technical Details

- a. Functional characteristics of items Supply Ordered.
 - b. Specifications/drawings, as applicable
 - c. Technical details within technical parameters
 - d. Details of training/on-job training
 - e. Details of installation/commissioning
 - f. Details of Factory Acceptance Trials (FAT), Harbour Acceptance Trials(HAT) and Sea Acceptance Trials (SAT)
 - g. Details of technical documentation
 - h. Nature of assistance required after completion of warranty
 - i. Details of pre-site/equipment inspection
 - j. Any other details, as considered necessary.
3. Delivery Period - Delivery period for supply of items would be from the effective date of Supply Order. Please Note that Supply Order can be cancelled unilaterally by the Buyer in case items are not received within the Supply Ordered delivery period. Extension of Supply Ordered delivery period will be at the sole discretion of the Buyer, with applicability of LD clause.
4. INCOTERMS for Delivery and Transportation - ("E" / "F" / "C" / "D" Terms). The definition of Delivery Period for this Supply Order will be -----

5. Consignee details:

Part III – Standard Conditions of Supply Order

Note: To be mentioned as per standard terms & conditions of T.E

Part IV – Special Conditions of Supply Order

Note: To be mentioned as per special conditions of T.E

Part V – Other Details

1. Distribution :

- a) Paying Authority (Address) – Following details are given to enable internal audit to admit payments in connection with this Supply Order –

- i. Head of Account for this Supply Order Code Head
- ii. CFA for this Supply Order _____
- iii. Schedule of Powers applicable for this Supply Order -

- iv. It is confirmed that concurrence of Finance has been taken.

- b) dated
- c) Inspection Authority (Address) – Please ensure timely inspection by the Inspecting officer.
- d) Consignee (Address) – for information and necessary action.

- e) Indentor (Address), if applicable –
- f) User (Address), if applicable -

2. Legal addresses of Buyer and Seller

SELLER

BUYER

(Full Name and Designation)

(Full Name and Designation)

Address , Telephone, Fax, e-mail details address, Telephone,
Fax e-mail details

ANNEXURE-27: ACKNOWLEDGEMENT OF ACCEPTANCE OF TENDER

(This slip should be completed, signed and returned to the office from which the Acceptance of Tender is received, immediately on its receipt)

Ref. Tender No. For supply of
.....
.....

Received Acceptance of _____ in respect of the above Tender No.
_____ Dated the _____ day of _____ 20...

Station

Date of Receipt

Signature of Contractor

**ANNEXURE-28: STANDARD FORM FOR INTIMATING FIRMS REGARDING
REJECTION OF THEIR OFFER**

M/s

Sub : Tender Enquiry No. opened on
..... Ref: Your quotation No. dated
.....

Dear Sir/Madam,

It is hereby informed that your above mentioned quotation could not be considered as :

- i) It was received late.
- ii) It was not furnished with EMD as required in the Tender Enquiry.
- iii) It was deficient of documents (to be specified).
- iv) It contained inconvenient / unacceptable terms and conditions in the tenders.
- v) Stores offered were not as per the tender enquiry specification.
- vi) Delivery schedule offered was not as per tender enquiry requirements.
- vii) You are not registered with _____ indicated in the enquiry.
- viii) Past performance was not meeting the required performance level.
- ix) Price quoted were not within the acceptable range.
- x) Due to revision of your original offer after tender opening.
- xi) Any other reason (to be specified as applicable)

(Tick mark whichever is applicable)

Yours faithfully,

For General Manager

ANNEXURE-29: CLOSURE OF SUPPLY ORDER

No.

To,

M/s
.....

Sub : S.O No. dated for supply
of

Dear Sir/Madam,

Please confirm that you have received 100% payment against the subject supply order and you have nothing due whatsoever so that this office may close the case.

Your reply should reach this office latest by failing which it will be presumed that you have no claim whatsoever in respect of the above contract and the case will be closed accordingly.

Yours faithfully,

(.....)
For General Manager

**ANNEXURE-30: FORMAT FOR BANK GUARANTEE FOR ADVANCE
PAYMENT**

From:

Bank.....

To

The General Manager

Unit Name:

Troop Comforts Limited

Sir,

With reference to contract No. _____
dated _____ concluded between the President of India, hereinafter
referred to as 'the Purchaser' and M/s _____ hereinafter
referred to as 'the Purchaser' and M/s _____ hereinafter referred to
as the "the contractor" for the development and supply of
_____ as detailed in the above contract which contract is
hereinafter referred to as "the Said Contract" and the consideration of the
Purchaser having agreed to make an advance payment in accordance with the
terms of the Said Contract to the said contractor, we the _____
bank, hereinafter call 'the Bank' hereby irrevocably undertake and guarantee to
you that if the Said Contractor would fail to develop and supply the stores in
accordance with the terms of the Said Contract for any reason whatsoever or fail
to perform the Said Contract in any respect or should whole or part of the said on
account of payments at any time become repayable to you for any reason
whatsoever, we shall, on demand and without demur pay to you all and any sum
up to a maximum of Rs. _____ (Rupees
_____ only) paid as advance to the Said
Contractor in accordance with the provisions contained in Clause _____ of the
Said Contract.

2. We further agree that the Purchaser shall be the sole judge as to whether
the contractor has failed to develop and deliver the stores in accordance with the
terms of the Said Contract or has failed to perform the said contract in any
respect or the whole or part of the advance payment made to Contractor has
become repayable to the Purchaser and to the extent and monetary
consequences thereof by the Purchaser.

3. We further hereby undertake to pay the amount due and payable under
this Guarantee without any demur merely on a demand from the Purchaser

stating the amount claimed. Any such demand made on the Bank shall be conclusive and binding upon us as regards the amounts due and payable by us under this Guarantee and without demur. However, our liability under this Guarantee

shall be restricted to an amount not exceeding Rs. _____ (Rupees _____ only).

4. We further agree that the Guarantee herein contained shall remain in full force and effect for a period of 12 months from the date of the last advance payment was made or for a period of 90 days from the date on which final delivery of the stores after development was made and accepted by the Purchaser whichever falls later unless the Purchaser in his sole discretion discharges the Guarantee earlier.

5. We further agree that any change in the constitution of the Bank or the constitution of the contractor shall not discharge our liability hereunder.

6. We further agree that the Purchaser shall have the fullest liberty without affecting in any way our obligations hereunder with or without our consent or knowledge to vary any of the terms and conditions of the Said Contract or to extend the time of development/delivery from time to time or to postpone for any time or from time to time any of the powers exercisable by the Purchaser against the contractor and either to forbear or enforce any of the terms and conditions relating to the Said Contract and we shall not be relieved from our liability by reason of any such variation or any indulgence or forbearance shown or any act or omission on the Purchaser or by any such matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of so relieving us.

7. We lastly undertake not to revoke the Guarantee during the currency of the above said Contract except with the prior consent of the Purchaser in writing.

Yours faithfully,

For _____ Bank
(Authorised Attorney)

Place: _____

Date: _____

Seal of the Bank

ANNEXURE-31: GUIDELINES ON CONFIRMATION OF BANK GUARANTEE OF FOREIGN BANKS BY INDIAN BANKS

1. In terms of RBI's guidelines issued vide letter No. AP(DIR Series) Circular No. 15 dated 17th September, 2003, all remittances of foreign exchange beyond US\$ 100,000 are to be against BGs/ stand by Letter of Credit from banks of international repute. Accordingly, Troop Comforts Limited will obtain Bank Guarantees (BGs) from foreign suppliers from banks of international repute for:-

- (a) Advances paid to them.
- (b) Performance of contracts as Performance BGs
- (c) Warranty bonds to ensure warranty support of equipments supplied by the vendors.

2. To ascertain whether BGs given by foreign vendors are from Banks of international repute.

3. While CNC commences its commercial deliberations, SBI's advice on the BG will be sought in parallel. The advisory role of SBI will be put into action in the following manner:-

- (a) On receiving details of BG proposed to be submitted by the foreign vendor, the matter is to be referred to SBI.
- (b) SBI will render its advice within 7 days from the date of receipt of reference / details of the BG from TCL.
- (c) SBI's advice will as follows:
 - i. In case the BG is from a Bank of international repute and country rating is satisfactory, SBI will advise MoD to accept BG without need for confirmation of the BG by an Indian Bank.
 - ii. In case the advice of SBI is that the BG is not from a Bank of international repute and / or a confirmation of a local bank is required to be obtained by TCL, the vendor will be asked by TCL to instruct its banker to mutually settle the issue of BG with SBI who will turn advise TCL regarding further action to be taken.
 - iii. Only in case the vendor's bank is unable to settle the issue of BG with SBI, the matter will be referred back to TCL by SBI.
 - iv. In such cases, as required, TCL will associate SBI officials in Contract Negotiation Committee (CNC) for settling the issue of BG with the vendors.

**ANNEXURE-32: FORM OF LETTER TO BE ADDRESSED TO BANK FOR
VERIFICATION OF BANK GUARANTEE**

REGISTERED ACKNOWLEDGEMENT DUE

To

..... i) Bank concerned

..... ii) Head Office of the Bank

Sub: Bank Guarantee – Verification of.

Sir,

With reference to our Contract No. placed on a
Bank Guarantee No. dated for Rs.
..... Issued from Bank located at
..... (Photostat copy of Bank
Guarantee enclosed) has been received.

2. It is requested that the genuineness of the Bank Guarantee may be verified and
intimated to the undersigned at the earliest.

Encl: As above.

Yours faithfully,

()
For and on behalf of the Purchaser

ANNEXURE-33: FORMAT FOR REFUND OF SECURITY DEPOSIT

To
The _____
(Purchase Officer)

Sir,

This refund of Performance Security Deposit amounting to Rs. _____ (Rupees only) against us and therefore its repayment may please be arranged. Necessary receipt duly stamped is given hereunder in Part-B.

It is certified that I/We, have not received any complaints from the consignees regarding non-receipt, shortage or defects in the stores supplied under the contract.

(Signature of the Contractor)

PART-B

Received from the sum of Rs. amount in refund of may / our Performance Security Deposit in full in respect of :

Contract No _____
Station _____
Dated _____

(Contractor's dated signature)

(Revenue stamp for sums exceeding Rs. 5000/- should be affixed)

PART-C

(TO BE FILLED BY THE PURCHASE OFFICER)

It is certified that no demands against the above contractor are outstanding in the record of this office and that the instant Security Deposit (PSD) is free from the Government claims in terms of clause _____ of General Conditions of Contracts as far as A/T No. _____ is concerned and can be refunded to the Contractor by A/c Payee Cheque.

Signature Designation

Part-D

(FOR USE IN F&A OFFICE)

Pay Rs. _____ (Rupees _____ only)

**ANNEXURE-34: PERFORMANCE NOTICE FOR NOT SUBMITTING
ADVANCE SAMPLE**

SUPPLY ORDER NO.

No.

To,

M/s

Sub :

Ref:

Dear Sir/Madam,

Your attention is invited to the acceptance of Supply Order cited above, according to which advance samples ought to have been submitted by you on or before _____. In spite of the fact that the time for submission of acceptable advance samples stipulated in the supply order is all along of the essence of the contract. It appears that the acceptable advance samples are still outstanding even though the date of submission has expired.

2. Although not bound to do so, I hereby extend the date of submission of acceptable advance samples up to and you are requested to note that the submission of acceptable of advance samples by the said date is of the essence of contract and in the event of your failure to submit the samples within the date as hereby extended the contract shall be cancelled and the stores shall be purchased at your risk and cost.
3. Please communicate your acceptance of the aforesaid extension up to _____ and your readiness to act upon it within a week of the receipt of this letter failing which it shall be resumed that you are not interested in performance of the contract and the contract will be cancelled at your risk and cost. If having communicated the acceptance of the aforesaid extension, you fail to submit the acceptable advance samples, the contract will be cancelled at your risk and cost.
4. All other terms and conditions of the contract remain unaltered and shall be applicable.

Yours faithfully,
()

Registered Acknowledgement Due

To, M/s

Sub: _____ Contract No. _____ dated _____
for _____ supply of _____

Your attention is invited to the Supply Order cited above according to which supplies ought to have been submitted by you on or before _____. In spite of the fact that the time of delivery of goods stipulated in the contract is deemed to be of the essence of the contract. It appears that _____ (details of outstanding goods) are still outstanding even though the date of delivery has expired.

2. Although not bound to do so, the delivery date is hereby extended to _____ and you are requested to note that in the event of your failure to deliver the goods within the delivery period as hereby extended, the contract shall be cancelled for the outstanding goods at your risks and cost.

Yours faithfully,

(For Troop Comforts Limited)

ANNEXURE-36: MODEL FORMAT FOR CORRESPONDANCE WITH SELLER
AFTER BREACH OF CONTRACT

Registered Acknowledgement Due

No.

To,

M/s

Sub : Contract No. _____ dated
_____ for _____ supply of

Dear Sir/Madam,

The date of delivery of the subject contract expired on _____. As supplies against the same have not yet been completed, there is a breach of the contract on your part. As information is required regarding past supplies against this contract, you are requested to send the particulars regarding the quantity so far supplied and, also, the quantity so far inspected but not yet dispatched and the quantity so far not tendered for inspection before the expiry of the date of records and is not intended to keep the contract alive and does not waive the breach.

This is without the prejudice to the rights and remedies available to the Buyer in terms of the contract and law applicable in this behalf.

Yours faithfully,

(For Troop Comforts Limited)

ANNEXURE-37: SHORT CLOSURE AND CANCELLATION OF SUPPLY
ORDER

Registered Acknowledgement Due

No.

To,

M/s

Sub : Contract No. _____ dated _____
_____ for _____ supply of _____

Dear Sir/Madam,

Since you have failed to supply outstanding quantity of _____ of the above store as per subject contract, the contract is hereby cancelled for the balance quantity at your risk and cost in terms of clause no..... of the General terms and conditions of the contract. The amount of recovery involved, if any, as a result of the cancellation will be intimated to you in due course.

This is without the prejudice to the rights of the purchaser in accordance to the terms and conditions of the contract.

Yours faithfully,

(For Troop Comforts Limited)

Copy to:

ANNEXURE-38: LETTER FOR FINAL PAYMENT

No.

To,

M/s

Sub: Contract No. _____ dated _____ for supply
of _____

Dear Sir/Madam,

Please furnish the following information to enable this office to finalise the above case for your 5% payment:

- (a) Please intimate reasons for delay in supply and furnish details of dispatches.
- (b) Please confirm that you have received payment in full for all quantities supplied by you against the above contract, except 5% referred to above.
- (c) Please certify that you have no claims in connection with on arising out of the said contract by any of duties or otherwise whatsoever. Your reply should reach this office latest by failing which it will be presumed that you have no claims whatsoever in respect of the above contract and the case will be finalized accordingly.

Yours faithfully,

(For Troop Comforts Limited)

ANNEXURE-39: PUBLIC PROCUREMENT POLICY FOR MICRO AND SMALL ENTERPRISES (MSEs)

- i) From time to time, the Government of India (Procuring Entity) lays down procurement policies to help inclusive national economic growth by providing long-term support to micro, small and medium enterprises and disadvantaged sections of society. The Procurement Policy for Micro and Small Enterprises, 2012 [amended 2018 and 2021] has been notified by the Government in exercise of the powers conferred in Section 11 of the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006. Details of the policy along with the amendments issued in 2018 and 2021 are available on the MSME website.
- ii) Micro and Small Enterprises (MSEs) registered under Udyam Registration are eligible to avail the benefits under the policy.
- iii) The Policy is applicable to all the Central Government Ministries/ Departments/ CPSUs. However, the policy is not applicable to State Government Ministries/ Departments/ PSUs.
 - 1) To reduce transaction cost of doing business, MSEs will be facilitated by providing them tender documents free of cost, exempting MSEs from payment of earnest money deposit, adopting e-procurement to bring transparency in tendering process. However, exemption from paying Performance Bank Guarantee is not covered under the policy. MSEs may also be given relaxation in prior turnover and prior experience criteria during the tender process, subject to meeting of quality and technical specifications. However, there may be circumstances (like procurement of items related to public safety, health, critical security operations and equipment, etc.) where procuring entity may prefer the vendor to have prior experience rather than giving orders to new entities.
 - 2) Chapter V of the MSMED Act, 2006 also has provision for ensuring timely payments to the MSE suppliers. The period agreed upon for payment must not exceed forty-five days after the supplies. For delays in payment the buyer shall be liable to pay compound interest to the supplier on the delayed amount at three times of the bank rate notified by the Reserve Bank. For arbitration and

conciliation regarding recovery of such payments and interests, Micro and Small Enterprises Facilitation Council has been setup in states.

- 3) In tender, participating Micro and Small Enterprises (MSE) quoting price within price band of L1+15 (fifteen) per cent shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than a MSE and such MSE shall be allowed to supply up to 25(twenty five) per cent of total tendered value. The 25 (twenty five) per cent quantity is to be distributed proportionately among these bidders, in case there are more than one MSEs within such price band.
- 4) Within this 25% (Twenty Five Percent) quantity, a purchase preference of four (4) per cent s reserved for MSEs owned by Scheduled Caste (SC)/ Scheduled Tribe (ST) entrepreneurs and three (3) percent is reserved for MSEs owned by women entrepreneur (if they participate in the tender process and match the L1 price). However, in event of failure of such MSEs to participate in tender process or meet tender requirements and L1 price, four percent sub-target for procurement earmarked for MSEs owned by SC/ST entrepreneurs and three (3) percent earmarked to women entrepreneur will be met from other MSE. MSEs would be treated as owned by SC/ ST entrepreneurs:
 - a) In case of proprietary MSE, proprietor(s) shall be SC /ST;
 - b) In case of partnership MSE, the SC/ ST partners shall be holding at least 51% (fifty-one percent) shares in the unit;
 - c) In case of Private Limited Companies, at least 51% (fifty-one percent) share shall be held by SC/ ST promoters.
- iv) If subcontract is given to MSEs, it will be considered as procurement from MSEs.
- v) In case of tender item cannot be split or divided, etc. the MSE quoting a price within the band L1+15% may be awarded for full/ complete supply of total tendered value to MSE, considering the spirit of the Policy for enhancing Govt. Procurement from MSEs.

- vi) To develop MSE vendors so as to achieve their targets for MSEs procurement, Central Government Ministries /Departments /PSUs shall take necessary steps to develop appropriate vendors by organizing Vendor Development Programmes (VDPs) or BuyerSeller Meets focused on developing MSEs for procurement through the Government eMarketplace (GeM) portal. In order to develop vendors belonging to MSEs for Public Procurement Policy, the Ministry of MSME is regularly organizing State Level VDPs and National Level VDPs under the Procurement and Marketing Support Scheme. For enhancing participation of MSEs owned by SCs /STs/ Women in Government procurement, Central Government Ministries/ Departments/ CPSUs have to take the following steps:
- a) Special Vendor Development Programmes/ Buyer-Seller Meets would be conducted by Departments/ CPSUs for SC/STs and Women.
 - b) Outreach programmes will be conducted by National Small Industries Corporation (NSIC) to cover more and more MSEs from SC/STs under its schemes of consortia formation; and
 - c) NSIC would open a special window for SCs/ STs under its Single Point Registration Scheme (SPRS).
 - d) A National SC/ST hub scheme was launched in October, 2016, for providing handholding support to SC/ST entrepreneur which is being coordinated / implemented by the NSIC under this Ministry.
- vii) Where any Aggregator has been appointed by the Ministry of MSME, themselves quote on behalf of some MSE units, such offers will be considered as offers from MSE units and all such facilities would be extended to these also.
- viii) This Policy is meant for procurement of only goods produced and services rendered by MSEs. Traders/ distributors/ sole agent/ Works Contract are excluded from the purview of the policy.
- ix) **Exemptions from the policy:** Given their unique nature, defence armament imports shall not be included in computing 25(twenty five) per cent goal for Ministry of Defence. In addition, defence equipments like weapon systems, missiles, etc. shall remain out of purview of such Policy of reservation. Monitoring of goals set under the policy will be done, in so far as they related to Defense sector, by Ministry of

Defense itself in accordance with suitable procedures to be established by them.

- x) To monitor the progress of procurement by Central Government Ministries/ Departments and CPSUs from MSEs, Ministry of MSME has launched the MSME 'Sambandh' Portal on 8th December, 2017 for uploading procurement details by all CPSUs on a monthly and an annual basis which is regularly monitored by the Ministry.
- xi) To redress the grievances of MSEs related to non-compliance of the Policy a Grievance cell named "CHAMPION Portal" has been set up in the Ministry of MSME.

Product Reservation and Preferential/Mandatory Purchase from certain sources

Reservation of Procurement of certain class of Products from certain agencies- Khadi Goods/Handloom Textiles

The Central Government has reserved all items of hand-spun and hand-woven textiles (Khadi goods) for exclusive purchase from Khadi & Village Industries Commission (KVIC). Of all items of textiles required by the Central Government departments, it shall be mandatory to make procurement of at least 20% from amongst items of handloom origin, for exclusive purchase from KVIC and/ or Handloom Clusters such as Co-Operative Societies, Self Help Group (SHG) Federations, Joint Liability Group (JLG), Producer Companies (PC), Corporations etc. including Weavers having Pehchan Cards.

Reservation of specific items for procurement from Micro and Small Enterprises (MSE)

To enable wider dispersal of enterprises in the country, particularly in rural areas, the Central Government Ministries or Departments or Public Sector Undertakings shall continue to procure items reserved for procurement exclusively from MSE (presently 358 (three hundred and fifty-eight) items including eight items of Handicrafts) from Micro and Small Enterprises, which have been reserved for exclusive purchase from them. The latest list may be seen from the website of the MSME Ministry. Ministry of MSME has clarified that the laminated paper Gr.I,II and III are not covered under the paper conversion product (SI.No.202) of the Public Procurement Policy. For locating the sources of such reserved items, NSIC may be contacted.

**LIST OF ITEMS RESERVED FOR PURCHASE FROM SMALL SCALE INDUSTRIAL
UNITS
INCLUDING HANDICRAFT SECTOR**

Sl.No.	Item Description	Sl.No.	Item Description
1.	AAC/and ACSR Conductor upto 19 strands	2.	Agricultural Implements (a)Hand Operated tools and implements (b)Animal driven implements
3.	Air/Room Coolers	4.	Aluminum builder's hardware
5.	Ambulance stretcher	6.	Ammeters/ohm meter/volt meter (Electro magnetic upto Class I accuracy)
7.	Anklets Web Khadi	8.	Augur (Carpenters)
9.	Automobile Head lights Assembly	10.	Badges cloth embroidered and metals
11.	Bags of all types i.e made of leather, cotton, canvas and jute etc including kit bags, mail bags, sleeping bags and waterproof bag.	12.	Bandage cloth
13.	Barbed Wire	14.	Basket can (Procurement can also be made from State Forest Corpn and State Handicrafts Copn)
15.	Bath tubs	16.	Battery Charger
17.	Battery Eliminator	18.	Beam Scales (upto 1.5 tons)
19.	Belt leather and straps	20.	Bench Vices
21.	Bituminous Paints	22.	Blotting Paper
23.	Bolts and Nuts	24.	Bots Sliding
25.	Bone Meal	26.	Boot Polish
27.	Boots and Shoes of all types including canvas shoes	28.	Bowls
29.	Boxes Leather	30.	Boxes made of metal
31.	Braces	32.	Brackets other than those used in Railways
33.	Brass Wire	34.	Brief Cases (other than moulded luggage)
35.	Brooms	36.	Brushes of all types
37.	Buckets of all types	38.	Button of all types
39.	Candle Wax Carriage	40.	Cane valves / stock valves (for water fittings only)
41.	Cans metallic (for milk and measuring)	42.	Canvas Products: (a) Water Proof Deliver, Bags to spec. No. IS-1422/70 (b) Bonnet Covers and Radiators Muff to spec Drg Lv7/NSN/1A/130295
43.	Capes Cotton and Woolen	44.	Capes Waterproof
45.	Castor Oil	46.	Ceiling roses upto 15 amps
47.	Centrifugal steel plate blowers	48.	Centrifugal Pumps suction and delivery 150mm x 150 mm
49.	Chaff Cutter Blade	50.	Chains lashing
51.	Chappals and sandals	52.	Chamois Leather

53. Chokes for light fitting	54. Chrome Tanned leather (Semi-finished Buffalo and Cow)
55. Circlips	56. Claw Bars and Wires
57. Cleaning Powder	58. Clinical Thermometers
59. Clothe Covers	60. Cloth Jaconet
61. Cloth Sponge	62. Coir fibre and Coir yarn
63. Coir matters cushions and matting	64. Coir Rope hawserlaid
65. Community Radio Receivers	66. Conduit pipes
67. Copper nail	68. Copper Napthenate
69. Copper sulphate	70. Cord Twine Maker
71. Cordage others	72. Corrugated Paper Board and Boxes
73. Cotton Absorbent	74. Cotton Belts
75. Cotton Carriers	76. Cotton Cases
77. Cotton Cord Twine	78. Cotton Hosiery
79. Cotton Packs	80. Cotton Pouches
81. Cotton Ropes	82. Cotton Singlets
83. Cotton Sling	84. Cotton Straps
85. Cotton tapes and laces	86. Cotton Wool (non absorbent)
87. Crates Wooden and plastic	88. (a) Crucibles upto No. 200 (b) Crucibles Graphite upto No.500 (c) Other Crucibles upto 30 Kgs
89. Cumblies and blankets	90. Curtains mosquito
91. Cutters	92. Dibutyl phthalate
93. Diesel engines upto 15 H.P	94. Dimethyl Phthalate
95. Disinfectant Fluids	96. Distribution Board upto 15 amps
97. Domestic Electric appliances as per BIS specification:- Toaster Electric, Elec Iron, Hot Plates, Elect Mixer Grinders, Room heaters and convectors and ovens	98. Domestic (Hose wiring) P.V.C. Cables and Wires, (Aluminium) Conforming to the prescribed BIS specifications and upto 10.00 mm sq. nominal cross section
99. Drawings and mathematical instruments	100. Drums and Barrels
101. Dust Bins	102. Dust Shield leather
103. Dusters Cotton all types except the items required in Khadi	104. Dyes: (a) Azo Dyes (Direct and Acid) (b) Basic Dyes
105. Electric Call bells/buzzers / door bells	106. Electric Soldering Iron
107. Electronic Transmission Line Hardware items like steel cross bars, cross arms clamps arching horn, brackets etc	108. Electronic door bell
109. Emergency light (Rechargeable type)	110. Enamel Wares and Enamel Utensils
111. Equipment camouflage Bamboo support	112. Exhaust Muffier
113. Expanded Metal	114. Eyelets
115. Film Polythene – including wide width film	116. Film spools and cans
117. Fire Extinguishers (wall type)	118. Foot Powder
119. French polish	120. Funnels
121. Fuse Cut outs	122. Fuse Unit
123. Garments (excluding supply from Indian Ordnance Factories)	124. Gas metals
125. Gauze cloth	126. Gauze surgical all types
127. Ghamellas (Tasllas)	128. Glass Ampules
129. Glass and Pressed Wares	130. Glue
131. Grease Nipples and Grease guns	132. Gun cases
133. Gun Metal Bushes	134. Guntape
135. Hand drawn carts of all types	136. Hand gloves of all types

137.	Hand Lamps Railways	138.	Hand numbering machine
139.	Hand pounded Rice (polished and unpolished)	140.	Hand presses
141.	Hand Pump	142.	Hand Tools of all types
143.	Handles wooden and bamboo (Procurement can also be made from State Forest Corpn and State Handicrafts Corpn)	144.	Harness Leather
145.	Hasps and Staples	146.	Haver Sacks
147.	Helmet Non-Metallic	148.	Hide and country leather of all types
149.	Hinges	150.	Hob nails
151.	Holdall	152.	Honey
153.	Horse and Mule Shoes	154.	Hydraulic Jacks below 30 ton capacity
155.	Insecticides Dust and Sprayers (Manuals chairs only)	156.	Invalid wheeled
157.	Inverter domestic type upto 5 KVA	158.	Iron (dhobi)
159.	Key board wooden	160.	Kit Boxes
161.	Kodali	162.	Lace leather
163.	Lamp holders	164.	Lamp signal
165.	Lanterns Posts and bodies	166.	Lanyard
167.	Latex foam sponge	168.	Lathies
169.	Letter Boxes	170.	Lighting Arresters – upto 22 KV
171.	Link Clip	172.	Linseed Oil
173.	Lint Plain	174.	Lockers
175.	Lubricators	176.	L.T Porcelain KITKAT and Fuse Grips
177.	Machine screws	178.	Magnesium Sulphate
179.	Mallet Wooden	180.	Manhole covers
181.	Measuring Tapes and Stick	182.	Metal clad switches (upto 30 Amps)
183.	Metal Polish	184.	Metallic containers and drums other than N.E.C (not elsewhere classified)
185.	Metric weights	186.	Microscope for normal medical use
187.	Miniature bulbs (for torches only)	188.	M.S Tie Bars
189.	Nail Cutters	190.	Naphthalene Balls
191.	Newar	192.	Nickel Sulphate
193.	Nylon Stocking	194.	Nylon Tapes and Laces
195.	Oil Bound Distemper	196.	Oil Stoves (Wick stoves only)
197.	Pad locks of all types	198.	Paint remover
199.	Palma Rosa Oil	200.	Palmgur
201.	Pans Lavatory Flush	202.	Paper conversion products – paper bags, envelopes, ice-cream cup, paper cup and saucers and paper plates
203.	Paper Tapes (Gunmed)	204.	Pappads
205.	Pickles and Chutney	206.	Piles fabric
207.	Pillows	208.	Plaster of Paris
209.	Plastic Blow Moulded Containers upto 20 litre excluding Poly Ethylene Terphthalate (PET) containers	210.	Plastic cane
211.	Playing Cards	212.	Plugs and Sockets electric upto 15 Amp
213.	Polythene bags	214.	Polythene Pipes
215.	Post Picket (Wooden)	216.	Postal Lead seals
217.	Potassium Nitrate	218.	Pouches
219.	Pressure Die Casting upto 0.75 Kg	220.	Privy Pans
221.	Pulley Wire	222.	PVC footwear
223.	PVC pipes upto 100 mm	224.	PVC insulated Aluminum Cables (upto 120 sq.mm) (ISS:694)

225. Quilts, Razais	226. Rags
227. Railway Carriage light fittings	228. Rakes Ballast
229. Razors	230. RCC Pipes upto 1200 mm dia
231. RCC Poles Prestressed	232. Rivets of all type
233. Rolling Shutters	234. Roof light Fittings
235. Rubber Balloons	236. Rubber Cord
237. Rubber Hoses (Unbranded)	238. Rubber Tubing (excluding braided tubing)
239. Rubberised Garments Cap and Caps etc	240. Rust/Scale Removing composition
241. Safe meat and milk	242. Safety matches
243. Safety Pins (and other similar products like paper pins, staples pins etc.)	244. Sanitary Plumbing fittings
245. Sanitary towels	246. Scientific Laboratory glass wares (barring sophisticated items)
247. Scissors cutting (ordinary)	248. Screws of all types including High Tensile
249. Sheet skin all types	250. Shellac
251. Shoe laces	252. Shovels
253. Sign Boards painted	254. Silk ribbon
255. Silk Webbing	256. Skiboots and shoes
257. Sluice Valves	258. Snapfastner (excluding 4 pcs ones)
259. Soap Carbollic	260. Soap Curd
261. Soap Liquid	262. Soap soft
263. Soap washing or laundry soap	264. Soap Yellow
265. Socket / pipes	266. Sodium Nitrate
267. Sodium Silicate	268. Sole leather
269. Spectacle frames	270. Spiked boot
271. Sports shoes made out of leather (for all Sports games)	272. Squirrel Cage Induction Motors upto and including 100 KW 440 volts 3 phase
273. Stapling machine	274. Steel Almirah
275. Steel beds stead	276. Steel Chair
277. Steel desks	278. Steel racks/shelf
279. Steel stools	280. Steel trunks
281. Steel wool	282. Steel and aluminum windows and ventilators
283. Stockinet	284. Stone and stone quarry rollers
285. Stoneware jars	286. Stranded Wire
287. Street light fittings	288. Student Microscope
289. Studs (excluding high tensile)	290. Surgical Gloves (except Plastic)
291. Table knives (excluding Cutlery)	292. Tack Metallic
293. Taps	294. Tarpaulins
295. Teak fabricated round blocks	296. Tent Poles
297. Tentage Civil/Military and Salitah Jute for	298. Textiles manufacturers other than N.E.C (not Tentage elsewhere classified)
299. Tiles	300. Tin Boxes for postage stamp
301. Tin can unprinted upto 4 gallons capacity	302. Tin Mess (other than can O.T.S)
303. Tip Boots	304. Toggle Switches
305. Toilet Rolls	306. Transformer type welding sets conforming to IS:1291/75 (upto 600 amps)
307. Transistor Radio upto 3 band	308. Transistorized Insulation – Testers
309. Trays	310. Trays for postal use
311. Trolley	312. Trolleys – drinking water
313. Tubular Poles	314. Tyres and Tubes (Cycles)
315. Umbrellas	316. Utensils all types
317. Valves Metallic	318. Varnish Black Japan
319. Voltage Stabilizers including C.V.Ts	320. Washers all types
321. Water proof covers	322. Water proof paper

323.	Water tank upto 15,000 litres capacity	324.	Was sealing
325.	Waxed paper	326.	Weighing Scale
327.	Welded Wiremesh	328.	Wheel barrows
329.	Whistle	330.	Wicks cotton
331.	Wing Shield Wipers (Arms and Blades only)	332.	Wire brushes and Fibre Brushes
333.	Wire Fencing and Fittings	334.	Wire nails and Horse shoe nails
335.	Wire netting of gauze thicker than 100 mesh size	336.	Wood wool
337.	Wooden ammunition boxes	338.	Wooden Boards
339.	Wooden Box for Stamps	340.	Wooden Boxes and Cases N.E.C (Not elsewhere classified)
341.	Wooden Chairs	342.	Wooden Flush Door Shutters
343.	Wooden packing cases all sizes	344.	Wooden pins
345.	Wooden plugs	346.	Wooden shelves
347.	Wooden veneers	348.	Woolen hosiery
349.	Zinc Sulphate	350.	Zip Fasteners

HANDICRAFTS ITEMS

Sl.No.	Description	Source of Supply
351.	Cane furniture Handlooms	North Eastern Handicrafts and Development Corporation Assam Govt. Marketing Corpn. Craft Society of Manipur, Nagaland Handicrafts and Handlooms Development Corpn.
352.	Bamboo file tray, Baskets, Pencil Stand, side racks etc	-do-
353.	Artistic Wooden Furniture	Rajasthan Small Industries Corpn, U.P Export Corporation
354.	Wooden Paper weight, racks etc	- do-
355.	Glass covers made and grass jute of	- do- wood
356.	Jute furniture	West Bengal Handicrafts Dev. Corpn jute Dev. Corpn Orissa State Handicrafts Dev. Corpn
357.	Jute bags, file cover	- do -
358.	Woolen and silk carpets	U.P Export Corporation J and K Sale and Export Corporation

ANNEXURE-40: SURVEY COMMITTEE'S REPORT FOR DISPOSAL

(Refer Para 9.2)

SURVEY COMMITTEES REPORT

Report Reference No:												Date:	
Sr No.	Code No.	Description of Stores	Quantity		Book Value			Total	Total	User Dept.	Reason of Survey	Recommendation of Survey Committee	Remarks by the Competent Authority
			No.	Wt.	Rate	Unit	Amount	Est Scrap Value	Est Loss				
1	2	3	4	5	6	7	8	9	10	11	12	13	14
(Signature)				(Signature)				(Signature)					
Committee Member Designation				Committee Member Designation				Committee Member Designation					
Date and Place:													
Signature Competent Authority													

**ANNEXURE-41: FORMAT FOR SEEKING THE APPROVAL OF THE
COMPETENT AUTHORITY FOR INVITING GLOBAL TENDER ENQUIRY FOR
PROCUREMENTS LESS THAN RS. 200 CRORES**

- (i) Every page should be attested by Administrative Ministry
- (ii) Proposals are to be simultaneously sent to the following:
- Cabinet Secretariat, email: ca4-cabsec@gov.in
 - Department of Promotion of Industry & Internal Trade (DPIIT) email: manmeet.nanda@ias.nic.in & rajesh.gupta66@gov.in
 - Department of Expenditure, email: kanwal.irss@gov.in and sudesh.kumar85@gov.in

Table-1

S.No	Particulars	Remarks
1	Name of the Ministry:	
2	Name of the Department:	
3	Name of the sub-ordinate office (if applicable):	
4	Detailed Description of the Item	
5	Use of the Item	
6	Life time of the item proposed (in years)	
7	Whether item is procured regularly? [If so, details of procurement of the said item over the past three years (three completed financial years or last three tenders and the current financial year] inclusive of supply details as per format given under table-2.	
8	Quantity required to be procured with justification for the quantity (States/UT/Region wise projection)	
9	Estimated procurement price along with basic of such estimation (International Price comparison chart)	
10	Justification to be submitted as under	
	a. Detailed justification for Global Tender and essentially of import (item wise)	

	b. Who are the (possible) vendors of the item under procurement, in the global (including India) market?	
	c. Whether the Department has tried and floated the tender to identify the domestic suppliers in the past financial year (If not, the reason thereof)	
	d. Capacity of all domestic local suppliers as per the domestic tender floated, if any	
11	What are technical alternatives available within country and whether they can be used (<i>substituted</i>) for the proposed item under GTE?	
12	Whether the Department had in the past attempted at development of local suppliers/ phased indigenization/ promotion of alternative technology having sufficient local suppliers. (If so, details thereof)	
13	Consequences of non-procurement of the item through GTE.	
14	Whether BIS standards are available for the items proposed under procurement. If not, the efforts made to operationalize such standards.	
15	Whether the department had published procurement plan for next 5 years, for the item under discussion?	

The above proposal is submitted, with the approval of the Secretary of the Administrative Department/ Ministry, for the consideration of the Competent Authority, as mandated by D/o Expenditure order dated 15th May, 2020 regarding Amendment in GFRs-2017, regarding Global Tender Enquiry.

Also, it is informed that the above proposal had been sent to Cabinet Secretariat (via Email ID: ca4-cabsec@gov.in), D/o Expenditure (via Email ID: GTEnquiry-200@gov.in) and to DPIIT, for their consideration.

Stamp and Signature of the
Authorized officer of the proposing Department

Name

Designation
Contact Number
Email ID

Table-2

Details of procurement of the said item over the past three years (Three completed financial years and the current financial year) inclusive of supply details.

Year of contract	Item	Contract No. & date	Supplier	Quantity of supply with unit	Rate per unit	Completion date of contract	Country of Origin of goods	Local content in %

DPSU Name:										
Sl. No.	Name of Product	Whether the item registered on SRIJAN Portal (Yes/No) with Registration Date (Product Insert Date)	If registered, PI mention SRIJAN Portal Product ID (PRO No.)	Whether the item available for view in public domain to show interest by vendors (Yes/No)	Whether Image uploaded (Yes/No)	Whether features & details uploaded (Yes/No)	No. of Interest Shown by vendors (Date of interest)	Action in hand (EOI, Nil Value, SO, etc) / Present status on interest shown by vendors on Srijan portal	Whether the item is available in DPSU & DMA Positive Indigenisation List (Yes/ No) if Yes, please mention PIL (1st/2nd/3rd/4th)	Remarks (Reason for not including in any of four PILs)

Note: The details should be provided as available on Srijan Portal.

ANNEXURE-42: SOP FOR VENDOR REGISTRATION

TCL VENDOR REGISTRATION SOP

VERSION 1.0 (2023)

1. INTRODUCTION:

In pursuant to the decision of the Cabinet Committee on Security (CCS) to convert the 41 production unit of OFB into 7 DPSUs (with 100% Central Government of India owned DPSU under MoD, Department of Defence production), TCL has been carved out of erstwhile Ordnance Factory Board (OFB) and entered into existence w.e.f. 1st Oct 2021 as New Defence Company with its 04 manufacturing units and a training academy.

Keeping in view of the changed structure i.e. changes in the govt. policies, evolving scenario in the industrial environment and demands of the various stakeholders, it requires to revamp vendor registration SOP. Accordingly, the existing SOP has been reviewed with due care of changed structure/functioning of TCL.

2. AUTHORITIES:

a) Competent Authority:

GM/QA shall be competent authority in connection with Vendor Registration.

b) Appellate Authority:

Director/Operation shall be the Appellate Authority for Appeal preferred by Appellant Vendor.

3. SCOPE:

This SOP is intended for Vendor Registration for Direct Materials and Trade Fabrication.

4. DEFINITIONS:

a) Enrolment Form: This is online form to obtain Vendor Profile along with supporting documents uploaded. (Enclosed as Enrolment Form) and amendment time to time.

b) Enrolled Vendor: A new vendor which has obtained Login ID & Password after filling up the details in the enrolment form through TCL Online Vendor Registration Portal.

c) Vendor Registration Application Form: This is online form to obtain the information about the manufacturing facilities & inspection/testing facilities, both in-house & outsourced (as per CV Norms/Competency mapping). Information of Original Equipment

Manufacturer (OEM) is also captured of whom the vendor is sole selling agent/dealer/stockist. (Enclosed as Vendor Registration Application Form)

d) Registered Vendor: An enrolled vendor which has been awarded Vendor Registration Certificate.

e) Quality Assurance Management (QAM): QAM shall be the standing committee comprising of members proposed by QCO and approved by GM/QA. The QAM shall evaluate the self-declared documents submitted by the vendor and recommend for registration/otherwise. The head of QAM will be responsible for all processing of application and upload the same in the Centralized Online System.

The Standing Committee for QAM will comprise the following:

(i) Head of QAM	- QCO
(ii) Representative from Production	- JWM(SG)
(iii) Representative from QA (Final Ins.)	- JWM(SG)
(iv) Representative from QA (Matl Ins.)	- JWM(SG)

Note: In absence/non-availability of any of the above officer, GM/QA may nominate the higher level of officer.

5 REGISTRATION OF VENDORS:

5.1 Uploading of Advertisement for Registration:

Advertisements shall be uploaded with following details:

- i) Nomenclature of the store
- ii) Specification No.
- iii) Drawing No.
- iv) Manufacturing Technologies involved (as per CV Norms)
- v) Inspection/Testing facilities involved (as per CV Norms)
- vi) Qty. (Approx.) required

The above details will be available in the TCL Online Vendor Registration Portal for view. Vendor may visit Vendor Registration Portal at URL: <https://ovr.troopcomfortslimited.co.in> or TCL web site for viewing the items listed for registration.

5.1.1. All items including items under current procurement should be available for registration all the time and the same will be uploaded on TCL Vendor Registration Portal.

5.2 Steps for Registration:

Interested Vendor need to carry out the following steps to apply for registration:

- a. Vendor will fill up the online Enrolment Form for getting the required **USER ID & PASSWORD**. This is one-time activity & handled by system automatically.
- b. Enrolled Vendor will select the items for which it desires to apply for registration.
- c. Vendor has to fill up details as well as upload required documents in the online Vendor Registration Application Form.
- d. Vendor will submit **Application Fee** through **Payment Gateway online**.
- e. On successful submission of the Application Form, vendor will get an **INVOICE No.** along with the **Confirmation Message** through e-mail.
- f. Vendor can view the status of its application online under my application.

Note: The completed form can be submitted online only after successful Payment of Fee.

5.3 Scrutiny of credentials of Vendors:

The items advertised for registration shall contain information about Manufacturing Technology involved and Inspection/Testing Facility required to produce the desired items as per CV Norms/Competency Mapping.

Self-declared details/documents submitted about Plant & Machineries and Inspection Capability shall be the basis on which a vendor will be considered for registration. The evaluation of the vendors should be based on the competency mapping in terms of the Plant & Machinery etc. as per CV Norms.

The various scenarios for different category of vendors are given below:

i) Manufacturing & System Integrator will be considered for registration provided, if it is found that:

a) The manufacturing facilities declared by the vendor (in-house as well as outsourced) are sufficient to produce & deliver an item.

OR

b) Manufacturing facilities declared by the vendor (in-house as well as outsourced), & verified through presentation or by physical CV (if required) on technical capabilities by the firm to support application is sufficient to produce & deliver an item.

ii) Sole Selling Agents/Dealers/Stockists will be considered for registration provided they have registered MoU from the OEM.

iii) A process flow chart of Process schedule that outlines the machines utilized for the processes declared by the units.

5.4 Time Frame: Scrutiny of credentials of vendors involve competency mapping and may at times require clarification/ additional information from vendor. ***The proposed time frame for registration of vendors where CV is not required and where CV is required to be limited to a maximum of 03 weeks.*** However, attempts to be made to minimize the same, especially in the case of items which does not involve in Capacity Verification (CV).

5.5 Issue of Registration Certificate:

- i) TCL VRC will register the firm and issue Vendor Registration Certificate online.
- ii) Registration will be valid for 03 years and renewal request to be made by vendor 06 months before expiring the registration.
- iii) Vendor registration certificate will be available in the Portal for view as well as to be downloaded by the registered vendor.
- iv) Vendors, not considered for registration, will be intimated by e-mail indicating the reasons for non-consideration.

6.0 ADDITION / DELETION OF ITEMS

A registered vendor can apply for adding more item (s) or deleting item (s) in the existing Registration Certificate by applying through the respective option in the portal accordingly, the registration certificate will be updated online.

7.0 PROFILE UPDATION BY VENDOR:

There might be necessity of updating vendor's profile. A registered vendor can apply online for the same through the Portal.

8.0 DEEMED/REGISTRATION:

There may be instances where some reputed Foreign Vendors and vendors recognized by technology providers/collaborator do not apply for registration. Such vendors may be considered as "Deemed Registered" for a period of 03 years without application fee in consultation with GM/QA after due deliberation by the committee of officers with proper justification has to be recommended.

9.0 APPLICATION FEE FOR REGISTRATION:

The application fee (Excluding GST) for fresh registration / Additional item registration shall be as under-

a) Large Scale Industries	Rs. 10000/-
b) Medium Scale Industries	Rs. 5000/-
c) Small	Rs. 3000/-
d) Micro	Rs 2000/-

- e) Authorised Dealers / Stockist / Sole Selling Agents
Rs 3000/-
- f) For profile updation of registered vendor Rs 1000/-

10.0 BANNING OF VENDOR:

Debarment / Banning of vendor is the sole discretionary power of the competent authority on the recommendation of committee of officers nominated for the specific purpose and action may be taken as per the provision of TCL Procurement Manual and as per the relevant CV norms . The time limit for Debarment / Banning of vendor shall be upto 02 years.

11.0 REMOVAL OF VENDORS FROM COMPENDIUM OF REGISTERED VENDORS:

Removal of vendors from the compendium of registered vendors may be considered on the following grounds-

- a) If it is established that the vendor is involved in any illegal activity, unethical practices, misrepresentation, cheating, banned by sister factories or any directives given by TCL HQ. De-registration should be 02 years for complete range of products.
- b) If a vendor is declared bankrupt or insolvent and in case of a limited company, it is wound up or taken into liquidation.
- c) If the vendor itself wants to remove its name from the list of registered vendors.
- d) If vendor rating performance of a firm during the execution of a contract is not satisfactory, firm should be de-registered for the remaining period of validity of registration certificate.

Further, In case a complaint is received against a vendor regarding falsification of documents, TCL HQ through concerned Factory shall arrange for physical verification of credentials of the vendor. On being found to be true, the vendor should be deregistered across the whole organization. Also the process of physical verification should also have a reasonable time limit to prevent disputes from dragging for too long.

12.0 Special Notes:

- i) Firms to give the declaration for supplying the materials with the same legal tie-up firm having validity of legal tie-up for minimum 03 years. (As per attached format)
- ii) Vendor shall give an undertaking regarding complete understanding of specification requirement of material. (As per attached format)

iii) In case falsification of documents and other instances, firm will be De-registered for the period of 02 years for entire range of products.

iv) If a firm is registered for any item, it will be considered as registered for all the similar items (as notified).

13.0 Wherever is required, clauses of TCL CV Norms shall be applicable.

14.0 As and when required, minor modification to this SOP will be carried out with the approval of TCL HQ.

Troop Comforts Limited

**ANNEXURE-43: FORMAT FOR EXTENSION OF DELIVER PERIOD/
PERFORMANCE NOTICE**

Name of the Procuring
Entity_____

Registered A/D or

Extension of Delivery Period/Performance Notice

To M/s (name and address of form)

Sub: Contract No ----- dated -----for the supply of -----

Ref: Your letter no. ----- dated: -----

Dear Sir,

1. You have failed to deliver {the (fill in qty.) of Stores/ the entire quantity of Stores} within the contract delivery period [as last extended up to] (fill in date). In your letter under reply you have asked for [further] extension of time for delivery. In view of the circumstances stated in your said letter, the time for delivery is extended from (fill in date) to (fill in date)
2. Please note that notwithstanding the grant of this extension in terms of Clause (fill in clause number) of the subject contract an amount equivalent to.....% (.....per cent) of the delivered price of the delayed goods for each week of delay or part thereof (subject to the ceiling as provided in the aforesaid clause) beyond the original contract delivery date/the last unconditionally re-fixed delivery date (as & if applicable), viz., (fill in date) will be recovered from you as liquidated damages. You may now tender the Stores for inspection [balance of the Stores] in terms of this letter. Stores if any already tendered by you for inspection but not inspected will be now inspected accordingly.
3. You are also required to extend the validity period of the performance guarantee for the subject contract from (fill in present validity date) to (fill in required extended date) within 15 (fifteen) days of issue of this amendment letter.
4. The above extension of delivery date will also be subject to the following Denial Clause.
 - 1) That no increases in price on account of any statutory increase in or fresh Imposition of customs duty, excise duty, Sales Tax, CST, VAT or on account of any other taxes/duty, including custom duty), leviable in respect of the Stores specified in the said contract which takes

place after (insert the original delivery date) shall be admissible on such of the said Stores, as are delivered after the said date; and.

- 2) That notwithstanding any stipulation in the contract for increase in price on any other ground including foreign exchange rate variation, no such increase which takes place after (insert the original delivery date) shall be admissible on such of the said Stores as are delivered after the said date.
- 3) But nevertheless, the purchaser shall be entitled to the benefit of any decrease in price on account of reduction in or remission of customs duty, excise duty, Sales Tax, VAT/CST or on account of any other Tax or duty or on any other ground as stipulated in the price variation clause or foreign exchange rate variation which takes place after the expiry of the above mentioned date namely (insert the original delivery date)
- 4) All other terms and conditions of the contract remain unaltered. This is without any prejudice to purchasers' rights under the terms and conditions of the subject contract.
- 5) Please intimate your unconditional acceptance of this amendment letter within 10 (ten) days of the issue of this letter failing which the contract will be cancelled at your risk and expense without any further reference to you.

Yours faithfully,
(Authorised Officer)

Note: Select one option within { } brackets; delete portion within [] brackets, if not applicable; fill in () brackets. Brackets and this note are not to be typed.

Substitute following first para instead of first para in format above, for issuing a performance notice.

1. You have failed to deliver {the (fill in qty.) of Stores/ the entire quantity of Stores} within the contract delivery period [as last extended up to] (fill in date). In spite of the fact that the time of delivery of the goods stipulated in the contract is deemed to be of the essence of the contract, it appears that (fill in the outstanding quantity) are still outstanding even though the date of delivery has expired. Although not bound to do so, the time for delivery is extended from (fill in date) to (fill in date) and you are requested to note that in the event of your failure to deliver the goods within the delivery period as hereby extended, the contract shall be cancelled for the outstanding goods at your risk and cost.

ANNEXURE-44 (A): INVITATION AND DECLARATION FOR NEGOTIATIONS

Invitation for Negotiations

(On letterhead of the procuring entity)

No: _____ Dt: _____

To M/s _____ Registered A/D

Sub: **Tender No** ----- **opened on** ----- **for the supply of** -----

-

Dear Sir,

The rates quoted in your tender are considered high. You are therefore, requested to come for negotiations of rates, on..... (date) at..... (time) at..... (venue).

You should, however, come for negotiations only in case you are prepared to furnish before such date the declaration appended herewith.

A copy of the form in which you may submit your revised offer after negotiations is enclosed.

Yours faithfully,

Enclosure:

(Authorised Officer)

- i) Form of Declaration
- ii) Form of Revised Offer

FORM OF DECLARATION

(To be signed and submitted before start of negotiations)

(On company letterhead)

No: _____ Dt: _____

To _____

Sub: **Tender No** ----- **Opened on** ----- **for the supply of** -----

-

Ref: Your invitation for negotiations No: dated:

Dear Sir,

I _____ duly authorised on behalf of M/s. _____ do declare that in the event of failure of the contemplated negotiations relating to Tender No. _____ opened on _____ my original tender shall remain open for acceptance on its original terms and conditions.

Yours faithfully,

Place: _____ Date: _____

Signatures of bidder, or officer authorised to sign the bid documents on behalf of the bidder

ANNEXURE-44 (B): FORMAT OF REVISED OFFER IN NEGOTIATIONS

Revised Offer in Negotiations

(On company letterhead)

From.....

Full address.....

To

Sir,

Sub: **Tender No ----- opened on -----for the supply of -----**

Ref: Your invitation for negotiations no: dated:

On further discussions with your representatives on in response to your letter no dated

We are not prepared to reduce the rates already quoted in the original tender, which will remain valid up to.....

Or

1. I / we reduce my/our rates as shown in the enclosed schedule of items.
2. I / we am/are aware that the provisions of the original bidding document remain valid and binding on me.
3. I/we undertake to execute the contract as per following Schedule.....
4. I/we agree to abide by this tender on the revised rate quoted by me/us, it is open for acceptance for a period of 120/180 (one hundred twenty to one hundred eighty) days from this date, *i. e.*, up to and in default of my/our doing so, I/we will forfeit the earnest money deposited with the original tender/ attached herewith. Eligibility as valid tenderers shall be deemed to be the consideration for the said forfeiture.

Yours faithfully,
Signatures of bidder or
officer authorised to sign the bid
documents on behalf of the bidder

**ANNEXURE-45: RULES REALTED WITH BIDDERS FROM A COUNTRY
SHARES A LAND BORDER WITH INDIA**

F.No.6/18/2019-PPD
Ministry of Finance
Department of Expenditure
Public Procurement Division

161, North Block,
New Delhi
23rd July, 2020

Office Memorandum

Subject: Insertion of Rule 144 (xi) in the General Financial Rules (GFRs), 2017

Rule 144 of the General Financial Rules 2017 entitled 'Fundamental principles of public buying', has been amended by inserting sub-rule (xi) as under:

Notwithstanding anything contained in these Rules, Department of Expenditure may, by order in writing, impose restrictions, including prior registration and/or screening, on procurement from bidders from a country or countries, or a class of countries, on grounds of defence of India, or matters directly or indirectly related thereto including national security; no procurement shall be made in violation of such restrictions.



(Sanjay Prasad)
Joint Secretary (PPD)
Email ID: is.pfc2.doe@gov.in
Telephone: 011-23093882

To,

- (1) Secretaries of All Ministries/ Departments of Government of India
- (2) Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi

F. No.6/18/2019-PPD
Ministry of Finance
Department of Expenditure
Public Procurement Division

161, North Block,
New Delhi
23rd July, 2020

Order (Public Procurement No. 1)

Subject: Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs), 2017

Attention is invited to this office OM no. 6/18/2019-PPD dated 23rd July 2020 inserting Rule 144 (xi) in GFRs 2017. In this regard, the following is hereby ordered under Rule 144 (xi) on the grounds stated therein:

Requirement of registration

1. Any bidder from a country which shares a land border with India will be eligible to bid in any procurement whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority, specified in **Annex I**.
2. This Order shall not apply to (i) cases where orders have been placed or contract has been concluded or letter/notice of award/ acceptance (LoA) has been issued on or before the date of this order; and (ii) cases falling under **Annex II**.

Transitional cases

3. Tenders where no contract has been concluded or no LoA has been issued so far shall be handled in the following manner: -

a) *In tenders which are yet to be opened, or where evaluation of technical bid*

or the first exclusionary qualificatory stage (i.e. the first stage at which the qualifications of tenderers are evaluated and unqualified bidders are excluded) has not been completed: No contracts shall be placed on bidders from such countries. Tenders received from bidders from such

countries shall be dealt with as if they are noncompliant with the tender conditions and the tender shall be processed accordingly. entire process shall be scrapped and initiated *de novo*. The *de novo* process shall adhere to the conditions prescribed in this Order.

- b) *If the tendering process has crossed the first exclusionary qualificatory stage: If the qualified bidders include bidders from such countries, the*
- c) As far as practicable, and in cases of doubt about whether a bidder falls under paragraph 1, a certificate shall be obtained from the bidder whose bid is proposed to be considered or accepted, in terms of paras 8, 9 and 10 read with para 1 of this Order.

Incorporation in tender conditions

- 4. In tenders to be issued after the date of this order, the provisions of paragraph 1 and of other relevant provisions of this Order shall be incorporated in the tender conditions.

Applicability

- 5. Apart from Ministries I Departments, attached and subordinate bodies, notwithstanding anything contained in Rule 1 of the GFRs 2017, this Order shall also be applicable
 - a. to all Autonomous Bodies;
 - b. to public sector banks and public sector financial institutions; and
 - c. subject to any orders of the Department of Public Enterprises, to all Central Public Sector Enterprises; and
 - d. to procurement in Public Private Partnership projects receiving financial support from the Government or public sector enterprises/ undertakings.
 - e. Union Territories, National Capital Territory of Delhi and all agencies/ undertakings thereof

Definitions

- 6. "Bidder" for the purpose of this Order (including the term 'tenderer', 'consultant' 'vendor' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency, branch or office controlled by such person, participating in a procurement process.
- 7. "Tender" for the purpose of this Order will include other forms of procurement, except where the context requires otherwise.
- 8. "Bidder from a country which shares a land border with India" for the purpose of this Order means

- a) An entity incorporated, established or registered in such a country; or
- b) A subsidiary of an entity incorporated, established or registered in such a country; or
- c) An entity substantially controlled through entities incorporated, established or registered in such a country; or
- d) An entity whose *beneficial owner* is situated in such a country; or
- e) An Indian (or other) agent of such an entity; or
- f) A natural person who is a citizen of such a country; or
- g) A consortium or joint venture where any member of the consortium or joint venture falls under any of the above

9. "Beneficial owner" for the purpose of paragraph 8 above will be as under:

(i) In case of a company or Limited Liability Partnership, the beneficial owner

is the natural person(s), who, whether acting alone or together, or through one or more juridical person(s), has a controlling ownership interest or who exercises control through other means.

Explanation—

- a. "Controlling ownership interest" means ownership of, or entitlement to, more than twenty-five per cent of shares or capital or profits of the company;
- b. "Control" shall include the right to appoint the majority of the directors or to control the management or policy decisions, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

(ii) In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;

(iii) In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;

(iv) Where no natural person is identified under (i) or (ii) or (iii) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

(v) In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

10. "Agent" for the purpose of this Order is a person employed to do any act for another, or to represent another in dealings with third persons.

Subcontracting in works contracts

11. In works contracts, including turnkey contracts, contractors shall not be allowed to subcontract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. The definition of "contractor from a country which shares a land border with India" shall be as in paragraph 8 above. This shall not apply to sub-contracts already awarded on or before the date of this Order.

Certificate regarding compliance

12. A certificate shall be taken from bidders in the tender documents regarding their compliance with this Order. If such certificate given by a bidder whose bid is accepted is found to be false, this would be a ground for immediate termination and further legal action in accordance with law.

Validity of registration

13. In respect of tenders, registration should be valid at the time of submission of bids and at the time of acceptance of bids. In respect of supply otherwise than by tender, registration should be valid at the time of placement of order. If the bidder was validly registered at the time of acceptance / placement of order, registration shall not be a relevant consideration during contract execution.

Government E-Marketplace

14. The Government E-Marketplace shall, as soon as possible, require all vendors/ bidders registered with GeM to give a certificate regarding compliance with this Order, and after the date fixed by it, shall remove non-compliant entities from GeM unless/ until they are registered in accordance with this Order.

Model Clauses/ Certificates

15. Model Clauses and Model Certificates which may be inserted in tenders / obtained from Bidders are enclosed as **Annex III**. While adhering to the substance of the Order, procuring entities are free to appropriately modify the wording of these clauses based on their past experience, local needs etc. without making any reference to this Department.

(Sanjay Prasad)

Joint Secretary (PPD)

Email ID:

is.pfc2.doeRgov.in

Telephone: 011-23093882

To

- (1) Secretaries of All Ministries/ Departments of Government of India for information and necessary action. They are also requested to inform these provisions to all procuring entities.
- (2) Secretary, Department of Public Enterprises with a request to immediately reiterate these orders in respect of Public Enterprises.
- (3) Secretary DPIIT with a request to initiate action as provided under Annex I
- (4) Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi

Annex I: Competent Authority and Procedure for Registration

- A. The Competent Authority for the purpose of registration under this Order shall be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT)*.
- B. The Registration Committee shall have the following members*:
- i. An officer, not below the rank of Joint Secretary, designated for this purpose by DPIIT, who shall be the Chairman;
 - ii. Officers (ordinarily not below the rank of Joint Secretary) representing the Ministry of Home Affairs, Ministry of External Affairs, and of those Departments whose sectors are covered by applications under consideration;
 - iii. Any other officer whose presence is deemed necessary by the Chairman of the Committee.
- C. DPIIT shall lay down the method of application, format etc. for such bidders as stated in para 1 of this Order.
- D. On receipt of an application seeking registration from a bidder from a country covered by para 1 of this Order, the Competent Authority shall first seek political and security clearances from the Ministry of External Affairs and Ministry of Home Affairs, as per guidelines issued from time to time. Registration shall not be given unless political and security clearance have both been received.
- E. The Ministry of External Affairs and Ministry of Home Affairs may issue guidelines for internal use regarding the procedure for scrutiny of such applications by them.
- F. The decision of the Competent Authority, to register such bidder may be for all kinds of tenders or for a specified type(s) of goods or services, and may be for a specified or unspecified duration of time, as deemed fit. The decision of the Competent Authority shall be final.
- G. Registration shall not be granted unless the representatives of the Ministries of Home Affairs and External Affairs on the Committee concur*
- H. Registration granted by the Competent Authority of the Government of India shall be valid not only for procurement by Central Government and its agencies/ public enterprises etc. but **also for procurement by State Governments and their agencies/ public enterprises etc. No fresh registration at the State level shall be required.**

- I. The Competent Authority is empowered to cancel the registration already granted if it determines that there is sufficient cause. Such cancellation by itself, however, will not affect the execution of contracts already awarded. Pending cancellation, it may also suspend the registration of a bidder, and the bidder shall not be eligible to bid in any further tenders during the period of suspension.
- J. For national security reasons, the Competent Authority shall not be required to give reasons for rejection / cancellation of registration of a bidder.
- K. In transitional cases falling under para 3 of this Order, where it is felt that it will not be practicable to exclude bidders from a country which shares a land border with India, a reference seeking permission to consider such bidders shall be made by the procuring entity to the Competent Authority, giving full information and detailed reasons. The Competent Authority shall decide whether such bidders may be considered, and if so shall follow the procedure laid down in the above paras.
- L. Periodic reports on the acceptance/ refusal of registration during the preceding period may be required to be sent to the Cabinet Secretariat. Details will be issued separately in due course by DPIIT.

[*Note:

- i. In respect of application of this Order to procurement by/ under State Governments, all functions assigned to DPIIT shall be carried out by the State Government concerned through a specific department or authority designated by it. The composition of the Registration Committee shall be as decided by the State Government and paragraph G above shall not apply. However, the requirement of **political and security clearance as per para D shall remain and no registration shall be granted without such clearance.**
- ii. Registration granted by State Governments shall be valid only for procurement by the State Government and its agencies/ public enterprises etc. and shall not be valid for procurement in other states or by the Government of India and their agencies/ public enterprises etc.]

Annex II: Special Cases

- A. Till 31st December 2020, procurement of medical supplies directly related to containment of the Covid-19 pandemic shall be exempt from the provisions of this Order.
- B. *Bona fide* procurements made through GeM without knowing the country of the bidder till the date fixed by GeM for this purpose, shall not be invalidated by this Order.
- C. *Bona fide* small procurements, made without knowing the country of the bidder, shall not be invalidated by this Order.
- D. In projects which receive international funding with the approval of the Department of Economic Affairs (DEA), Ministry of Finance, the procurement guidelines applicable to the project shall normally be followed, notwithstanding anything contained in this Order and without reference to the Competent Authority. Exceptions to this shall be decided in consultation with DEA.
- E. This Order shall not apply to procurement by Indian missions and by offices of government agencies/ undertakings located outside India.

Annex III

Model Clause /Certificate to be inserted in tenders etc.

(While adhering to the substance of the Order, procuring entities and GeM are free to appropriately modify the wording of the clause/ certificate based on their past experience, local needs etc.)

Model Clauses for Tenders

- I. Any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority.
- II. "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.
- III. "Bidder from a country which shares a land border with India" for the purpose of this Order means: -
 - a. An entity incorporated, established or registered in such a country; or
 - b. A subsidiary of an entity incorporated, established or registered in such a country; or
 - c. An entity substantially controlled through entities incorporated, established or registered in such a country; or
 - d. An entity whose *beneficial owner* is situated in such a country; or
 - e. An Indian (or other) agent of such an entity; or
 - f. A natural person who is a citizen of such a country; or
 - g. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above
- IV. The *beneficial owner* for the purpose of (iii) above will be as under:
 1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means. Explanation—

- a. "Controlling ownership interest" means ownership of or entitlement to more than twenty-five per cent. of shares or capital or profits of the company;
 - b. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;
2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
 3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;
 4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
 5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.
- V. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.
- VI. *[To be inserted in tenders for Works contracts, including Turnkey contracts]*

The successful bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority.

Model Certificate for Tenders (for transitional cases as stated in para 3 of this Order)

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I hereby certify that this bidder is not from such a country and is eligible to be considered."

Model Certificate for Tenders

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached!]"

Model Certificate for Tenders for Works involving possibility of sub-contracting

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached]"

Model Certificate for GeM:

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this vendor/ bidder is not from such a country or, if from such a country, has been registered with the Competent Authority. I hereby certify that this vendor/ bidder fulfills all requirements in this regard and is eligible to be considered for procurement on GeM. [Where applicable, evidence of valid registration by the Competent Authority shall be attached]"

Troop Comforts Limited

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TROOP COMFORTS LIMITED

CORPORATE HQRS & REGISTERED OFFICE

TCL Corporate Bhawan,
G.T. Road, Kanpur, (U.P.)-208013
Phone: 0512-2451781-82
Email: info@troopcomfortslimited.co.in