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Defence Procurement Procedure, 2011 – An Overview.

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The Defence Procurement Procedure, 2011 -An Overview

Introduction

The Defence Procurement Procedure ("DPP"), 2011 issued by the Ministry of Defence ("MoD"), Government of India, lays down the comprehensive procedure formulated by the MoD for acquisition of procurements as approved by the Defence Acquisition Council, keeping in mind the requirements of the Armed Forces. The objective of this procedure is to ensure expeditious procurement of approved requirements of the Armed Forces in terms of capabilities sought and the time frame prescribed, by optimally utilizing the allocated budgetary resources of the MoD. The DPP 2011 covers all Capital Acquisitions (except medical equipment) undertaken by the MoD, Defence Services and Indian Coast Guard both from indigenous sources and ex-import. Although the DPP also covers the Ship Building Procedure and the refined Offset Policy guidelines for all forms of acquisitions, the present article is restricted to acquisition procedures pertaining to procurements flowing out of the "Buy", "Buy and Make" and "Make" Categories.

The DPP 2011 is an offshoot of and is a more refined set of guidelines from the original procedure for Defence Procurement issued by the Mod in the year 1992. The Procedure formulated in 1992 was further revised in 2002 to include procurements flowing out of the "Buy" decision of the Defence Acquisition Council. The scope was then enlarged in 2003 to include procurements flowing from "Buy and Make" through imported Transfer of Technology ("ToT") decision and thereafter, revised in the years 2005, 2006, 2008, 2009 and now in 2011, enhancing the scope to include "Make" Procedure and "Buy and Make (Indian)" categories.

Definitions

Capital Acquisitions by the Defense Forces are categorized on the basis of the type / category of decision made by the MoD to acquire defence equipments. These include:



a. Acquisitions under “Buy” Decisions: Buy means an outright purchase of the equipment. Depending on the source of procurement, this category is classified as “Buy (Indian)” – Indian vendors only and “Buy (Global)”-Foreign as well as Indian vendors. However, “Buy (Indian)” must have minimum 30% indigenous content if the systems are being integrated by an Indian vendor.

b. Acquisitions under “Buy and Make” Decisions: Buy and Make means purchase from a foreign vendor followed by licensed production/ indigenous manufacture in the country.

c. Acquisitions under “Buy and Make (Indian)” Decisions: these would mean purchase from an Indian vendor including an Indian company forming a Joint venture or establishing production arrangement with the original equipment manufacturer (“OEM”) followed by licensed production or indigenous manufacture in the country. However, procedure requires that “Buy and Make (Indian)” must have minimum 50% indigenous content on cost basis.

d. Acquisitions under “Make” Decisions: acquisitions under the “Make” category include high technology complex systems to be designed, developed and produced indigenously.

Acquisition Process-“Buy” And “Buy And Make” Category:

The defence procurement planning process for formulating proposals for acquisition of capital assets covers long-term, medium-term and short-term perspectives. These include the 15 years Long Term Integrated Perspective Plan (“LTIPP”), the 5 year Services Capital Acquisition Plan (“SCAP”) and the Annual Acquisition Plan (“AAP”). The planning process would be under the overall guidance of the Defence Acquisition Council and its decisions, as approved by the Defence Minister, will flow down for implementation to the Defence Procurement Board (“DPB”).

The Acquisition process for schemes categorized as “Buy” and “Buy and Make (with ToT)” will involve the following steps:

1. Service Qualitative Requirements(“SQRs”):

SQRs would be drafted by the user directorate at the Service Head Quarters (“SHQ”) and would consist of comprehensive and realistic requirements of the user (concerned department) specifying the requirements of military grade, ruggedized and commercially Off the Shelf (“COTS”) items. To make broad based SQRs, inputs will be invited by issue of Request For Information (“RFI”) on the MoD website from manufactures, defence attaches, defence journals / magazines among others. The RFI would also ask the vendors to provide all the elements which need to be structured into the costing of the equipment/equipment system. The RFI may also seek ToT aspects to include range and depth of ToT and key technologies identified by the Defence Research and Development Organization (“DRDO”). These inputs would then be made into a compliance table of SQRs and the Draft SQRs would be circulated by the SHQ to all concerned for additional comments. The performance parameters given in the SQRs would be classified as “Essential Parameters” i.e. the minimum essential military requirements corresponding to the task / tasks to be performed by the system. The SQRs would be finally approved by the Staff Equipment Policy Committee (“SEPC”).

2. Acceptance of Necessity ("AON"):

In order to obtain Acceptance of Necessity, the Service Headquarters is required to prepare a Statement of Case ("SoC") justifying the procurement proposal. The SoC would include the total quantities required, the break up based on five year plans and the quantity required to be procured in the next two years. The SoC would then be forwarded to DRDO, MoD (Finance) and Administrative Branch of MoD for comments. A compilation of comments of all concerned along with SoC would then be placed for consideration before the categorization committee, which after taking into account of all inputs, would approve the Services having a budget of INR 50 Crores and recommend cases beyond such amount to the Defence Procurement Board ("DBP") and Defence Acquisition Council ("DAC") respectively. Where ToT is being sought, the appropriate Production Agency, which may be a public or private firm, would be approved by the DAC based on recommendations of Services Capital Acquisition Plan Categorization Higher Committee ("SCAPCHC"). An AON, once granted, will be valid for two years within which a Request For Proposal ("RFP") has to be issued. In the event no RFP is issued, a fresh AON has to be sought following the same procedure.

After AON for procurement of common user equipment available at Director General of Supplies and Disposal ("DG S&D") rate contracts, has been approved, the technical managers would vet the technical parameters and after approval by the Competent Financial Authority ("CFA"), orders would be placed directly to the Rate Contract Holders i.e. the DG S&D approved source of supply. Further, products developed by Army Base Workshops, Naval Dockyards and Air Force Repair Depots for 'in-house' requirements can be procured from these agencies under "Buy (Indian)" category and the Service Headquarters may carry out user trials without issue of RFP. However, procurement of the equipment would be done by the Services by placing indents.

3. Solicitation of Offers:

Solicitation of offers would be as per "Single Stage-Two Bid System" i.e. RFP would be issued soliciting the technical and commercial offers together but in two different sealed envelopes. Once the SQRs are finalized, the vendors would be short-listed who would be the Original Equipment Manufacturers (OEMs) or the Authorized Vendors. In cases of ToT, short-listing would be done on the basis of a vendor's ability to transfer requisite technology for license production. In order to maximize competition, keeping security and other aspects in view, publicity through the internet and print media would be done.

As defence equipments are involved, procurements would be on the basis of limited tenders. Accordingly, the RFPs would be processed by the Service Head Quarters after due consultation with all concerned agencies. In case of ToT, the nominated Production Agency would vet the RFP. The RFPs would then be vetted by the Acquisition, Finance and Technical Managers respectively, before seeking the approval of the Director General (Acquisition) for issuing RFPs to all shortlisted vendors by the Technical Manager. No addition to the vendors would be allowed after issue of RFP. However, for procuring Commercially Off the Shelf items ("COTS"), the Acquisition Wing (MoD) can issue open tenders.

For cases categorized as "Buy and Make (Indian)", RFP will only be issued to Indian vendors, who are assessed to have requisite technical and financial capabilities to undertake such projects. For such selection, the SHQ is required to prepare a Capability Definition Document ("CDD") which outlines the requirement in operational terms and briefly describes the present capabilities determined on the basis of the existing equipment, manpower etc.

After identification and selection of a project, the CDD will be floated to Indian firms which would be shortlisted on the basis of the responses to RFI and through interaction with representatives of the firms with the MoD. These shortlisted firms would then be required to give a Detailed Project Proposal outlining the process for development and production of the item either by themselves or with the help of any production arrangement with foreign manufacturer. The production arrangement must be clearly spelt out giving details of the workshare, ToT in range and depth of the technology, and any other relevant details. The Indian partner should absorb the critical technologies, 50% of which will be in Categories I and II as given in Appendix-L to Schedule I. The Detailed Project Proposal will be appraised by a Project Appraisal Committee ("PAC"), which after verifying firm credentials and firming up technical requirements, would submit its report to the DG (Acquisition) for approval. Once approved, the SHQ would prepare and process the RFP for issue by the Acquisition Wing and thereafter the procedure under "Buy and Make" would be followed.

The RFP will be a self-contained document and consist of generally four parts:

- e. First Part consisting of general requirements of the equipment, numbers required, time frames for deliveries, conditions of usage and maintenance, warranty/ guarantee obligations amongst others. It will also specify the prescribed procedure and the last date and time for submission of offers.
- f. Second Part incorporating the SQRs describing the technical parameters of the proposed equipments.
- g. The Third Part constitutes the commercial aspects of the procurement, and
- h. The Fourth Part defining the criteria for evaluation and acceptance, both in terms of commercial and technical contents.

In cases where ToT is involved, the RFP would include the requirements of license production under ToT. Further, the provisions of ToT to an Indian Public / Private Entity, for providing Maintenance Infrastructure, would be applicable for "Buy (Global)" category cases, where equipment is bought from foreign vendors. Consequent upon issue of RFP, bids will be opened and the technical offers will be sent to the Technical Evaluation Committee for evaluation and the commercial bids to the Acquisition Manager. It is to be noted that under the DPP 2011, extension of time for submitting bids may be granted by the MoD, not exceeding eight weeks.

4. Evaluation of Technical offers by Technical Evaluation Committee("TEC"):

The Technical Evaluation Committee will evaluate all the technical bids and examine the extent of variations, if any, in the technical characteristics of the equipments offered by the vendors with that of the QRs and prepare a Compliance Statement short-listing equipments for trials or induction into service, as applicable. A technical offer, once made, would not be permitted to be changed subsequently; however, minor variations that do not affect the basic character of the offer would be permitted. The original commercial quote has to remain fixed despite such changes. In the event of single vendor situations, RFPs would be retracted and fresh RFPs would be reissued after taking correcting measures including reformulating SQRs.

5. Field Evaluation (Trials):

Field Trials would be conducted by the User Service on the basis of trial methodology given in the RFP. All equipments would have to meet the Essential Parameters mentioned in the RFP. The requirement of Field trials would, however, not be applicable for procurement cases in respect of acquisition / construction of Ships, Submarines, Yard Crafts, Tugs, Ferry Crafts and Barges, where there is no prototype available for conduct of No Cost No Commitment ("NCNC") trials. However, technical evaluation and Acceptance trials for these would be carried out. In cases where field evaluation is not possible, trials would be conducted through computer simulation. Where vendors fail to produce equipments for trial, grace period would be given. Further, efforts would be made to conduct the entire trials i.e. user, technical, Maintainability Evaluation Trials(MET) and EMI/EMC would be conducted simultaneously to save time.

6. Staff Evaluation:

Based on field evaluations, a staff evaluation would be carried out, which would analyze the field trials report and short-list the equipment recommended for introduction into service. The staff evaluation report has to be approved by the Head Quarters and forwarded to the Acquisition Wing for acceptance. In case no vendor meets the criteria, fresh RFPs would be issued. Further, in cases of ToT, if a JV Company has participated in the tender then the company would qualify only if it has been able to absorb the technology as per the RFP requirements.

For Turnkey projects, vendors would be selected prior to issue of RFP. For such projects, a Detailed Project Report would be made by the Service Head Quarters. Once AON is sought, vendors would be short-listed and RFP would be issued. On receiving bids, technical and commercial evaluations would take place and after Competent Financial Authority approval is granted, contracts would be signed following establishment of Test Bed and Project implementation.

7. Oversight by Technical Oversight Committee("TOC"):

Once trials are done, a TOC constituted to provide expert oversight over technical evaluation process in proposals over INR 300 Crores, will see whether trials, trial evaluations, compliance to QRs and selection of vendors was done according to procedure. The report made by the TOC would be forwarded to Defense Secretary for acceptance.

8. **Commercial Negotiations by Contract Negotiation Committee (“CNC”):**

After the staff evaluation report is accepted by the Director General (Acquisition) or the TOC report by the Defence Secretary, the CNC would be constituted to carry out all processes from opening of bids till the conclusion of the contract. The CNC would negotiate commercial aspects including license production contracts along with contracts for the finished product. The Lowest Bidder (“L1”) would be selected if such vendor's price meets the benchmark established by the CNC. In case it is found that L1 is not able to supply the entire quantity within prescribed time-frame, CNC would be permitted to divide the quantity amongst the other qualified tenderers on the same price quoted by L1. L1 would also be required to give an undertaking that he has not supplied the same equipment's at a lower price to any other department of the Government of India.

In the event a commercial bid expires before acceptance of staff evaluation report, vendors would be permitted to extend such bids for a specific period.

9. **Approval by Competent Financial Authority (“CFA”):**

The CNC after commercial negotiations would forward its detailed report along with its recommendations to the CFA for approval.

10. **Award of Contract / Supply order (“SO”):**

Once the approval is granted by the CFA, the contract would be signed by the concerned Acquisition Manager or Director (Procurement) in the Acquisition Wing. The vendors would also be required to sign an Integrity Pact in all procurement schemes over INR 100 Crores that they would not offer any bribes. The date of signing of the contract would be the effective date of contract for all acquisitions.

11. **Contract Administration and Post Contract Management:**

Post Contract monitoring would be done by the Acquisition Wing. For Simple projects involving COTS, they would be reviewed by the Acquisition Manager in the Service Head Quarters. For Complex projects like those involving ToT, would be reviewed by a steering committee headed by the Director General (Acquisition) in the MoD or Principal Staff Officer at the SHQ with members from MoD, DRDO, DDP and SHQ. In such cases, the Acquisition Wing has to submit quarterly reports to the DPB.

Acquisition Process- “Make” Category:

The procedure for Indigenous Research, Design, Development and Production of Systems comes under the “Make” category. This procedure covers all capital acquisitions of High Technology Complex Systems and upgrades undertaken by indigenous Research, Design and Development and would be undertaken by the Ordnance Factory Board (“OFB”), Defence Public Sector Undertakings (“DPSUs”) and Indian Industry and industries defined as Raksha Udyog Ratna (“RUR”) / Consortia on a level playing field on shared development cost.

Briefly explained, the acquisition process under the “Make” category would commence with the issue of Defence Planning Guidelines. The Head Quarters Integrated Defence Staff (“HQ IDS”)

besides formulating a Defence Capability Plan Document and the Long Term Integrated Perspective Plan (“LTIPP”), would order a feasibility study for each project of LTIPP. The HQ IDS would be responsible for having the project categorized as “Make” and getting the Acceptance of Necessity by Defence Acquisition Council. After the approval of the DAC, the project would be processed by the Acquisition Wing. This would include, constitution of Integrated Project Management Teams (“IPMT”) which would prepare the Project Definition Document (“PDD”), issue the Expression of Interest (“EoI”) for short-listing of agencies and carry out detailed analysis of Detailed Project Report (“DPR”) and obtain the approval of the Competent Financial Authority.

After approval of CFA, RFPs would be issued. Once vendors are short-listed on meeting requirements of the RFP, user trials and staff evaluations would take place. On the basis of the staff evaluation reports, the Contract Negotiation Committee after commercial negotiations with the L1 Agency for Limited Series Production, would submit its report to the CFA for final approval. The lowest Bidder (“L1”) who meets the benchmark of reasonableness of prices established by the CNC would be awarded the Contract.

The monitoring of the projects during the Design and Development of prototype phase would be carried out by the IPMTs which would periodically appraise the progress of the project to Defence Production Board through Acquisition Wing. The conduct of trials and its evaluation would be under the aegis of the respective Service.

Conclusion

On review, it appears that the underlying principle for formulating a separate procedure for the "Make" category of procurement in the Defence Procurement Procedure is to enhance the indigenization component in the Defence Acquisitions. The close involvement of the Services at all stages of the development process and induction, which is an essential feature of the prototype development process under the "Make" procedure, should reduce substantially the lead time of acceptability and induction of equipment.

It is hoped that the Defence Procurement Procedure, 2011 is able to accomplish its aims of expediting decision making, simplifying of contractual and financial provisions, and establishing a level playing field for the Indian Defence Industry, both public sector and private sector, while confirming to the highest standards of transparency, probity and public accountability, as stated by the Defence Minister in his Forward to the procedure.



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