

TENDER ENQUIRY



ऑप्टो इलेक्ट्रॉनिक्स फैक्टरी
आयुध निर्माणी बोर्ड की इकाई
भारत सरकार, रक्षा मंत्रालय
रायपुर, देहरादून-248 008 (उत्तराखण्ड)
Opto Electronics Factory

A Unit of Ordnance Factory Board
Government of India, Ministry of Defence
Raipur, Dehradun – 248 008 (Uttarakhand)

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सभी पत्राचार महप्रबंधक के नाम से करें, किसी अधिकारी के नाम से नहीं।

All correspondence to be addressed to the General Manager & not to any Officer by name.

NO: OLF/MM-2/T-1606041069

DATED: November 4, 2016

INVITATION OF BIDS FOR SUPPLY OF IMAGE INTENSIFIER TUBES
AGAINST TENDER ENQUIRY NO. : OLF/MM-2/T-1606041069 DATED 04NOV2016

1. **ELECTRONIC TWO BIDS** in sealed cover is invited for supply of items listed in Part-II of this Tender Enquiry. Please superscribe the above mentioned Title, TE number and date of opening of the Bids on the sealed cover to avoid the Bid being declared invalid.
2. The address and contact numbers for sending Bids or seeking clarifications regarding this TE are given below -

A	Bids/queries to be addressed to	The General Manager
B	Postal address for sending the Bids	The General Manager, OPTO Electronics Factory, (OLF) Raipur, DEHRADUN – 248 008, (Uttarakhand) (INDIA)
C	Name/designation of the contact personnel	Mr. K.R. SINGH, Works Manager
D	Telephone numbers of the contact person	91-135-2789941 91-135-2783042
E	e-mail ID of contact person	olf.ofb@nic.in & olfmm2.ofb@nic.in
F	Fax number	91 135 2787181

3. This TE is divided into 05 (five) Parts as follows and Annexure I to VIII:

PART-I	Contains General Information and Instructions for the Bidders about the TE such as the time, place of submission and opening of tenders, Validity period of tenders, etc.
PART-II	Contains essential details of the items/services required, such as the Schedule of Requirements (SOR), Technical Specifications, Delivery Period, Mode of Delivery and Consignee details.
PART-III	Contains Standard Conditions of TE, which will form part of the Contract with the successful Bidder.
PART-IV	Contains Special Conditions applicable to this TE and which will also form part of the contract with the successful Bidder.
PART-V	Contains Evaluation Criteria and Format for Price Bids.

ANNEXURE-I	Compliance Statement
ANNEXURE-II	Instructions to suppliers to overcome/avoid CARTEL formation
ANNEXURE-III	Instructions to tenderers
ANNEXURE-IV	Format for Performance Bank Guarantee (PBG)
ANNEXURE-V	Format for Quantity Claim
ANNEXURE-VI	Format for Quality Claim
ANNEXURE-VII	Arbitration Clause for foreign suppliers.
ANNEXURE-VIII	Format for Furnishing Earnest Money (EMD)

4. This TE is being issued with no financial commitment and the Buyer reserves the right to change or vary any part thereof at any stage. Buyer also reserves the right to withdraw the TE, should it become necessary at any stage.



(K. R. SINGH)

Works Manager/MM-II
For & on behalf of PRESIDENT of INDIA

PART I

(GENERAL INFORMATION)

1. **LAST DATE AND TIME FOR DEPOSITING THE BIDS:**

06-01-2017 (DD-MM-YY)

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

2. **MANNER OF DEPOSITING THE BIDS:**

Bids (technical and commercial, both together as tender is single bid) should be submitted electronically and hard copies of tender submitted should be dropped in the Tender Box marked as QUOTATION/OFFER or sent by registered post at the address given above. No responsibility will be taken for postal delay or non-delivery/non-receipt of Bid documents.

3. **TIME AND DATE FOR OPENING OF BIDS:**

06-01-2017 (DD-MM-YY) at 1500 hrs.

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

4. **LOCATION OF THE TENDER BOX:**

Admin Gate of the Factory (OLF)

5. **PLACE OF OPENING OF THE BIDS:**

Admin. Gate of the Factory (OLF)

6. **TWO-BID SYSTEM:**

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

7. **FORWARDING OF BIDS:**

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

8. **CLARIFICATION REGARDING CONTENTS OF THE TENDER ENQUIRY:**

The bidder requiring clarification regarding the contents of the bidding documents shall notify to the Buyer in writing about the clarifications sought prior to the date of opening of the Bids. Copies of the query and clarification by the purchaser will be sent to the bidder who has received the bidding documents.

9. **MODIFICATION AND WITHDRAWAL OF BIDS:**

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

10. **CLARIFICATION REGARDING CONTENTS OF THE BIDS:**

During evaluation and comparison of bids, the Buyer may, at its discretion, ask the bidder for clarification of his bid. The request for clarification will be given in writing and no change in prices or substance of the bid will be sought, offered or permitted. No post-bid clarification on the initiative of the bidder will be entertained.

11. **REJECTION OF BIDS:**

Canvassing by the Bidder in any form, unsolicited letter and post-tender correction may invoke summary rejection with forfeiture of EMD. Conditional tenders will be rejected.

12. **UNWILLINGNESS TO QUOTE:**

Bidders unwilling to quote should ensure that intimation to this effect reaches before the due date and time of opening of the Bid, failing which the defaulting Bidder may be delisted for the given range of items as mentioned in this RFP.

13. **VALIDITY OF BID:**

The Bid should remain valid till 180 DAYS from the last date of submission of the Bid.

14. **EARNEST MONEY DEPOSIT:**

Bidders are required to submit Earnest Money Deposit (EMD) ***for amount of ₹ 32,70,68400 or equivatable convertible currency alongwith the technical bid.*** The EMD should be in favour of Genreal Manager and may be accepted in the form of Account Payee Demand Draft, Fixed Deposit Receipt, Banker's Cheque or Bank Guarantee from any of the public sector banks or a private sector bank authorized to conduct government business as per ANNEXURE-VIII. EMD in the form of Cash or Cheque will not be accepted. EMD is normally to remain valid for a period of forty-five days beyond the final bid validity period.

EMDs of the unsuccessful bidders shall be returned to them at the earliest after expiry of the final bid validity and latest on or before the 30th day after the award of the contract. The Bid Security of the successful bidders shall be returned, without any interest whatsoever, after the receipt of Performance Security from them as called for in the contract.

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

Exemption for submission of EMD may be granted to those firms who are registered with Ordnance Factories, the Central Purchase Organization (e.g. DGS&D), National Small Industries Corporation (NSIC) or concerned Departments or Ministries of the Government of India. Proof of registration is required.

PART II (A) **(ESSENTIAL DETAILS OF ITEMS REQUIRED)**

1. **SCHEDULE OF REQUIREMENTS** – List of items required is as follows:

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

SL. NO	LF NO.	NOMENCLATURE	QTY. (NOS)
1	9001120820	HIGH PERFORMANCE SUPER GEN IMAGE INTENSIFIER TUBE "EAGC" (INVERTING TYPE) AS PER SPECN NO. OLF/IIT/HPSG(INV)/SPEC/01(M1)/2009-10 AND DRG. NO. OLF/R&D/IIT/197(M1)	764

2. **TECHNICAL DETAILS:**

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

3.0. **COMPLIANCE STATEMENT:**

Bidders are required to furnish clause by clause compliance of specifications bringing out clearly the deviations from specification, if any. The Bidders are advised to submit the compliance statement in the following format along with Technical Bid:

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

4.0 **DELIVERY PERIOD:**

Delivery starts after 02 months from the date of placement of order @ minimum 125 tubes per months. Please note that Supply Order/Contract can be cancelled unilaterally by the Buyer in case items are not received within the contracted delivery period. Extension of contracted delivery period will be at the sole discretion of the Buyer, with applicability of LD clause.

5.0. **INCOTERMS FOR DELIVERY AND TRANSPORTATION:** ("E" / "F" / "C" / "D" Terms).

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

Sl. No.	TERMS OF DELIVERY	DATE OF DELIVERY
A	Local Delivery at Site	The date on which the delivery is made at the consignee's site mentioned in the contract.
b	Ex-works	The date the Seller delivers the goods to the Buyer at Seller's factory / premises.
C	F.O.R Station of Dispatch	The date on which the goods are placed by the Seller on rail with clear Rail Receipt.
D	By Post Parcel	The date of postal receipt.
E	Dispatch by Air	The date of Air-way Bill.
F	F.O.R. Destination	The date on which the goods reach the destination railway station specified in the contract, unless otherwise stated.
G	C.I.P. Destination	The date on which the delivery is effected at the destination mentioned in the contract.
H	F.A.S. Port of Shipment	The date on which the Seller deliver the goods alongside the vessel at the specified port of shipment. This date is reflected in Bill of Lading.
I	F.O.B. Port of Shipment	The date on which the Seller delivers the goods on vessel's board at the specified port of shipment. This date is reflected in Bill of Lading.
J	C.I.F. Port of Destination	The date on which the goods actually arrived at the Destination Port.

FOREIGN BIDDERS ARE REQUESTED TO OFFER THEIR RATES ON CIF BASIS AND IT WOULD BE THE BASIS FOR THE PURPOSE OF COMPARISON OF VARIOUS BIDDERS.

NOTE -

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

The CIP terms of delivery may be applied both for domestic as well as imported supplies and consignment will be collected from IGI, Airport, New Delhi by paying **CUSTOM DUTY (CD)**.

6.0 CONSIGNEE DETAILS:

The General Manager or his authorized representative
C/o Dy. Director General (Coord),
Ordnance Factory Board New Delhi Office,
G-Block,
Ministry of Defence,
NEW DELHI – 110 001

PART III

(STANDARD CONDITIONS OF TENDER ENQUIRY)

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

1. **LAW:**

The Contract shall be considered and made in accordance with the laws of the Republic of India. The contract shall be governed by and interpreted in accordance with the laws of the Republic of India.

2. **EFFECTIVE DATE OF THE CONTRACT:**

The contract shall come into effect on the date of signatures of both the parties on the contract (Effective Date) and shall remain valid until the completion of the obligations of the parties under the contract. The deliveries and supplies and performance of the services shall commence from the effective date of the contract.

3. **ARBITRATION:**

All disputes or differences arising out of or in connection with the Contract shall be settled by bilateral discussions. Any dispute, disagreement or question arising out of or relating to the Contract or relating to construction or performance, which cannot be settled amicably, may be resolved through arbitration. The standard clause of arbitration is as per Annexure-VII.

4. **PENALTY FOR USE OF UNDUE INFLUENCE:**

The Seller undertakes that he has not given, offered or promised to give, directly or indirectly, any gift, consideration, reward, commission, fees, brokerage or inducement to any person in service of the Buyer or otherwise in procuring the Contracts or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the present Contract or any other Contract with the Government of India for showing or forbearing to show favour or disfavour to any person in relation to the present Contract or any other Contract with the Government of India. Any breach of the aforesaid undertaking by the Seller or any one employed by him or acting on his behalf (whether with or without the knowledge of the Seller) or the commission of any offers by the Seller or anyone employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act, 1986 or any other Act enacted for the prevention of corruption shall entitle the Buyer to cancel the contract and all or any other contracts with the Seller and recover from the Seller the amount of any loss arising from such cancellation. A decision of the Buyer or his nominee to the effect that a breach of the undertaking had been committed shall be final and binding on the Seller. Giving or offering of any gift, bribe or inducement or any attempt at any such act on behalf of the Seller towards any officer/employee of the Buyer or to any other person in a position to influence any officer/employee of the Buyer for showing any favour in relation to this or any other contract, shall render the Seller to such liability/ penalty as the Buyer may deem proper, including but not limited to termination of the contract, imposition of penal damages, forfeiture of the Bank Guarantee and refund of the amounts paid by the Buyer.

5. **AGENTS / AGENCY COMMISSION:**

The Seller confirms and declares to the Buyer that the Seller is the original manufacturer of the stores/provider of the services referred to in this Contract and has not engaged any individual or firm, whether Indian or foreign whatsoever, to intercede, facilitate or in any way to recommend to the Government of India or any of its functionaries, whether officially or unofficially, to the award of the contract to the Seller; nor has any amount been paid,

promised or intended to be paid to any such individual or firm in respect of any such intercession, facilitation or recommendation. The Seller agrees that if it is established at any time to the satisfaction of the Buyer that the present declaration is in any way incorrect or if at a later stage it is discovered by the Buyer that the Seller has engaged any such individual/firm, and paid or intended to pay any amount, gift, reward, fees, commission or consideration to such person, party, firm or institution, whether before or after the signing of this contract, the Seller will be liable to refund that amount to the Buyer. The Seller will also be debarred from entering into any supply Contract with the Government of India for a minimum period of five years. The Buyer will also have a right to consider cancellation of the Contract either wholly or in part, without any entitlement or compensation to the Seller who shall in such an event be liable to refund all payments made by the Buyer in terms of the Contract along with interest at the rate of 2% per annum above LIBOR rate. The Buyer will also have the right to recover any such amount from any contracts concluded earlier with the Government of India.

6. **ACCESS TO BOOKS OF ACCOUNTS:**

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

7. **NON-DISCLOSURE OF CONTRACT DOCUMENTS:**

Except with the written consent of the Buyer/ Seller, other party shall not disclose the contract or any provision, specification, plan, design, pattern, sample or information thereof to any third party.

8. **LIQUIDATED DAMAGES:**

In the event of the Seller's failure to submit the Bonds, Guarantees and Documents, supply the stores/goods and conduct trials, installation of equipment, training, etc as specified in this contract, the Buyer may, at his discretion, withhold any payment until the completion of the contract. The BUYER may also deduct from the SELLER as agreed, liquidated damages to the sum of 0.5% of the contract price of the delayed/undelivered stores/services mentioned above for every week of delay or part of a week, subject to the maximum value of the Liquidated Damages being not higher than 10% of the value of delayed stores.

9. **TERMINATION OF CONTRACT:**

The Buyer shall have the right to terminate this Contract in part or in full in any of the following cases:-

- (a) The delivery of the material is delayed for causes not attributable to Force Majeure for more than 03 months after the scheduled date of delivery.
- (b) The Seller is declared bankrupt or becomes insolvent.
- (c) The delivery of material is delayed due to causes of Force Majeure by more than 03 months provided Force Majeure clause is included in contract.
- (d) The Buyer has noticed that the Seller has utilised the services of any Indian/Foreign agent in getting this contract and paid any commission to such individual/company etc.
- (e) As per decision of the Arbitration Tribunal.

10. **NOTICES:**

Any notice required or permitted by the contract shall be written in the English language and may be delivered personally or may be sent by FAX or registered pre-paid mail/airmail, addressed to the last known address of the party to whom it is sent.

11. **TRANSFER AND SUB-LETTING:**

The Seller has no right to give, bargain, sell, assign or sublet or otherwise dispose of the Contract or any part thereof, as well as to give or to let a third party take benefit or advantage of the present Contract or any part thereof.

12. **PATENTS AND OTHER INDUSTRIAL PROPERTY RIGHTS:**

The prices stated in the present Contract shall be deemed to include all amounts payable for the use of patents, copyrights, registered charges, trademarks and payments for any other industrial property rights. The Seller shall indemnify the Buyer against all claims from a third party at any time on account of the infringement of any or all the rights mentioned in the previous paragraphs, whether such claims arise in respect of manufacture or use. The Seller shall be responsible for the completion of the supplies including spares, tools, technical literature and training aggregates irrespective of the fact of infringement of the supplies, irrespective of the fact of infringement of any or all the rights mentioned above.

13. **AMENDMENTS:**

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

14. **TAXES AND DUTIES:**

a) **IN RESPECT OF FOREIGN BIDDERS:**

All taxes, duties, levies and charges which are to be paid for the delivery of goods, including advance samples, shall be paid by the parties under the present contract in their respective countries.

b) **IN RESPECT OF INDIGENOUS BIDDERS:**

i) **GENERAL:**

1. Bidders must indicate separately the relevant Taxes/Duties likely to be paid in connection with delivery of completed goods specified in RFP/TE. In absence of this, the total cost quoted by them in their bids will be taken into account in the ranking of bids.
2. If a Bidder is exempted from payment of any duty/tax upto any value of supplies from them, he should clearly state that no such duty/tax will be charged by them up to the limit of exemption which they may have. If any concession is available in regard to rate/quantum of any Duty/tax, it should be brought out clearly. In such cases, relevant certificate will be issued by the Buyer later to enable the Seller to obtain exemptions from taxation authorities.
3. Any changes in levies, taxes and duties levied by Central/State/ Local governments such as excise duty, VAT, Service tax, Octoroi/entry tax, etc on final product upwards as a result of any statutory variation taking place within contract period shall be allowed re-imbursement by the Buyer, to the extent of actual quantum of such duty/tax paid by the Seller. Similarly, in case of

downward revision in any such duty/tax, the actual quantum of reduction of such duty/tax shall be reimbursed to the Buyer by the Seller. All such adjustments shall include all reliefs, exemptions, rebates, concession etc, if any, obtained by the Seller. Section 64-A of Sales of Goods Act will be relevant in this situation.

4. Levies, taxes and duties levied by Central/State/Local governments such as excise duty, VAT, Service tax, Octroi/entry tax, etc on final product will be paid by the Buyer on actuals, based on relevant documentary evidence. Taxes and duties on input items will not be paid by Buyer and they may not be indicated separately in the bids. Bidders are required to include the same in the pricing of their product.

ii) **CUSTOMS DUTY:**

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

iii) **EXCISE DUTY:**

1. Where the excise duty is payable on advalorem basis, the Bidder should submit along with the tender, the relevant form and the Manufacturer's price list showing the actual assessable value of the stores as approved by the Excise authorities.
2. Bidders should note that in case any refund of excise duty is granted to them by Excise authorities in respect of Stores supplied under the contract, they will pass on the credit to the Buyer immediately along with a certificate that the credit so passed on relates to the Excise Duty, originally paid for the stores supplied under the contract. In case of their failure to do so, within 10 days of the issue of the excise duty refund orders to them by the Excise Authorities the Buyer would be empowered to deduct a sum equivalent to the amount refunded by the Excise Authorities without any further reference to them from any of their outstanding bills against the contract or any other pending Government Contract and that no disputes on this account would be raised by them.

3. The Seller is also required to furnish to the Paying Authority the following certificates:
- (a) Certificate with each bill to the effect that no refund has been obtained in respect of the reimbursement of excise duty made to the Seller during three months immediately preceding the date of the claim covered by the relevant bill.
 - (b) Certificate as to whether refunds have been obtained or applied for by them or not in the preceding financial year after the annual Audit of their accounts also indicating details of such refunds/applications, if any.
 - (c) A certificate along with the final payment bills of the Seller to the effect whether or not they have any pending appeal/protest for refund or partial refund of excise duties already reimbursed to the Seller by the Government pending with the Excise authorities and if so, the nature, the amount involved, and the position of such appeals.
 - (d) An undertaking to the effect that in case it is detected by the Government that any refund from Excise Authority was obtained by the Seller after obtaining reimbursement from the Paying Authority, and if the same is not immediately refunded by the Seller to the Paying Authority giving details and particulars of the transactions, Paying Authority will have full authority to recover such amounts from the Seller's outstanding bills against that particular contract or any other pending Government contracts and that no dispute on this account would be raised by the Seller.
4. Unless otherwise specifically agreed to in terms of the contract, the Buyer shall not be liable for any claim on account of fresh imposition and/or increase of Excise Duty on raw materials and/or components used directly in the manufacture of the contracted stores taking place during the pendency of the contract.

iv) **SALES TAX/VAT:**

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

v) **OCTROI DUTY & LOCAL TAXES:**

- 1. Normally, materials to be supplied to Government Departments against Government Contracts are exempted from levy of town duty, Octroi Duty, Terminal Tax and other levies of local bodies. The local Town/Municipal Body regulations at times, however, provide for such Exemption only on production of such exemption certificate from any authorised officer. Seller should ensure that stores ordered against contracts placed by this

office are exempted from levy of Town Duty/Octroi Duty, Terminal Tax or other local taxes and duties. Wherever required, they should obtain the exemption certificate from the Buyer, to avoid payment of such local taxes or duties.

2. In case where the Municipality or other local body insists upon payment of these duties or taxes the same should be paid by the Seller to avoid delay in supplies and possible demurrage charges. The receipt obtained for such payment should be forwarded to the Buyer without delay together with a copy of the relevant act or by-laws/notifications of the Municipality of the local body concerned to enable him to take up the question of refund with the concerned bodies if admissible under the said acts or rules.

15. **PRE-INTEGRITY PACT CLAUSE:**

An “Integrity Pact” would be signed between the Ministry of Defence/Buyer and the Bidder for purchases exceeding ₹ 10 crore. This is a binding agreement between the Buyer and Bidders for specific contracts in which the Buyer promises that it will not accept bribes during the procurement process and Bidders promise that they will not offer bribes. Under this Pact, the Bidders for specific services or contracts agree with the Buyer to carry out the procurement in a specified manner. The essential elements of the Pact are as follows:

- a. A pact (contract) between the Government of India (Ministry of Defence) (the authority or the “principal”) and those companies submitting a tender for this specific activity (the “Bidder”);
- b. An undertaking by the Principal that its officials will not demand or accept any bribes, gifts etc., with appropriate disciplinary or criminal sanctions in case of violation;
- c. A statement by each Bidder that it has not paid, and will not pay, any bribes;
- d. An undertaking by each Bidder to disclose all payments made in connection with the Contract in question to anybody (including agents and other middlemen as well as family members, etc., of officials); the disclosure would be made either at the time of submission of Bids or upon demand of the Principal, especially when a suspicion of a violation by that Bidder emerges;
- e. The explicit acceptance by each Bidder that the no-bribery commitment and the disclosure obligation as well as the attendant sanctions remain in force for the winning Bidder until the contract has been fully executed.
- f. Undertaking on behalf of a Bidding company will be made “in the name and on behalf of the company’s Chief Executive Officer”.
- g. The following set of sanctions shall be enforced for any violation by a Bidder of its commitments or undertakings:
 - i. Denial or loss of contracts;
 - ii. Forfeiture of the Bid security and performance bond;
 - iii. Liability for damages to the principal and the competing Bidders; and
 - iv. Debarment of the violator by the Principal for an appropriate period of time.
- h. Bidders are also advised to have a company code of conduct (clearly rejecting the use of bribes and other unethical behaviour and compliance program for the implementation of the code of conduct throughout the company.

PART IV

(SPECIAL CONDITIONS OF TENDER ENQUIRY)

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

1. **PERFORMANCE GUARANTEE:**

The Seller will be required to furnish a Performance Guarantee by way of a Bank Guarantee from Seller's Bank through an internationally recognised first class Bank in favour of the The Principal Controller of Defence Accounts (Fys), Kolkata to be confirmed by public sector bank or a private sector bank authorized to undertake government transactions (ICICI Bank Ltd., Axis Bank Ltd or HDFC Bank Ltd.) equal to 10% (ten percent) of the total value of this contract i.e. for US\$_____ (US Dollars (in words) only).

Performance Bank Guarantee should be valid up to 60 days beyond the date of warranty. The Performance Bank Guarantee shall be considered open upon receipt by the Buyer's Bank. In case any claims or any other contract obligations are outstanding, the Seller will extend the Performance Bank Guarantee as asked for by the Buyer till such time as the Seller settles all claims and completes all contract obligations. The Performance Bank Guarantee will be subject to encashment by the Buyer, in case the conditions regarding adherence to delivery schedule, settlement of claims and other provisions of the contract are not fulfilled by the Seller. The specimen of PBG is given in Form ANNEXURE-IV.

2. **OPTION CLAUSE:**

The contract will have an Option Clause, wherein the Buyer can exercise an option to procure an additional 50% of the original contracted quantity in accordance with the same terms & conditions of the present contract. This will be applicable within the currency of contract. The Bidder is to confirm the acceptance of the same for inclusion in the contract. It will be entirely the discretion of the Buyer to exercise this option or not.

3. **REPEAT ORDER CLAUSE:**

The contract will have a Repeat Order Clause, wherein the Buyer can order upto 50% quantity of the items under the present contract within six months from the date of supply/successful completion of this contract, the cost, terms & conditions remaining the same. The Bidder is to confirm acceptance of this clause. It will be entirely the discretion of the Buyer to place the Repeat order or not.

4. **TOLERANCE CLAUSE:**

To take care of any change in the requirement during the period starting from issue of RFP till placement of the contract, Buyer reserves the right to 5% plus/minus increase or decrease the quantity of the required goods upto that limit without any change in the terms & conditions and prices quoted by the Seller. While awarding the contract, the quantity ordered can be increased or decreased by the Buyer within this tolerance limit.

5. **PAYMENT TERMS FOR FOREIGN SELLERS:**

- a. The payment will be arranged through Letter of Credit from Reserve Bank of India/State bank of India/any other Public Sector bank Bank, as decided by the Buyer, to the Bank of the Foreign Seller. The Seller will give a notification within a specified period about the readiness of goods. Letter of Credit is to be opened by the Buyer within 30 days on receipt of notification of readiness from the firm. The Letter of Credit will be valid for 90 days from the date of its opening, on extendable basis by mutual consent of both the Seller and Buyer.

OR

- b. If the value of the contract is up to US \$ 100000, payments will be made by Direct Bank Transfer (DBT). DBT payment will be made within 30 days of receipt of clean Bill of Lading/AWB/Proof of shipment and such other documents as are provided for in the contract, but such payments will be subject to the deductions of such amounts as the Seller may be liable to pay under the agreed terms of the Contract.

5.1 **FOR INDIAN/INDIGENOUS VENDORS/SUPPLIERS:**

- (a) 100% Payment will be made within 30 days on receipt of acceptable stores inside the factory.
- (b) Payments terms by documents through Bank shall not be accepted, but shall be treated as 100% normal as (a) above.

6. **ADVANCE PAYMENTS:**

No advance payment(s) will be made.

7. **PAYING AUTHORITY:**

Paid shipping documents are to be provided to the Bank by the Seller as proof of dispatch of goods as per contractual terms so that the Seller gets payment from LC. The Bank will forward these documents to the Buyer for getting the goods/stores released from the Port/Airport. Documents will include:

- i. Clean on Board Airway Bill/Bill of Lading
- ii. Original Invoice
- iii. Packing List
- iv. Certificate of Origin from Seller's Chamber of Commerce, if any.
- v. Certificate of Quality and current manufacture from OEM.
- vi. Dangerous Cargo certificate, if any.
- vii. Insurance policy of 110% if CIF / CIP contract
- viii. Certificate of Conformity & Acceptance Test at PDI, if any.
- ix. Physio-sanitary / Fumigation Certificate, if any.
- x. Performance Bond / Warranty Certificate

8. **FALL CLAUSE:**

The following fall clause will form part of the contract placed on successful Bidder -

- a. The price charged for the stores supplied under the contract by the Seller shall in no event exceed the lowest prices at which the Seller sells the stores or offer to sell stores of identical description to any persons/Organisation including the purchaser or any department of the Central government or any Department of state government or any statutory undertaking the central or state government as the case may be during the period till performance of all supply Orders placed during the currency of the rate contract is completed.
- b. If at any time, during the said period the Seller reduces the sale price, sells or offer to sell such stores to any person/organisation including the Buyer or any Deptt, of central Govt. or any Department of the State Government or any Statutory undertaking of the Central or state Government as the case may be at a price lower than the price chargeable under the contract, the shall forthwith notify such reduction or sale or offer of sale to the Director general of Supplies & Disposals and the price payable under the contract for the stores of such reduction of sale or offer of the sale shall stand correspondingly reduced. The above stipulation will, however, not apply to:-

- i. Exports by the Seller.
- ii. Sale of goods as original equipment at price lower than lower than the prices charged for normal replacement.
- iii. Sale of goods such as drugs which have expiry dates.
- iv. Sale of goods at lower price on or after the date of completion of sale/placement of the order of goods by the authority concerned under the existing or previous Rate Contracts as also under any previous contracts entered into with the Central or State Govt. Depts, including their undertakings excluding joint sector companies and/or private parties and bodies.

9. **EXCHANGE RATE VARIATION CLAUSE:** Not applicable.

9.1 **EXCHANGE RATES FOR EVALUATION OF TENDER PRICE BID:**

- (i) BC selling rate of State Bank of India on the date of opening of price bid will be considered for evaluation of tenders if the evaluation takes places within 90 days of opening of price bid.
- (ii) If a tender cannot be finalized for placement of order within 90 days of opening of price bid, BC selling rate of State Bank of India prevailing on the date of evaluation of price bids will be adopted for evaluation of offers submitted against a tender. If, in the process the ranking of the firm alters and L1 (Lowest First Offer) determined on the basis of evaluation of BC selling rate on the date of opening of price bid seizes to be L1 due to exchange rate variation between date of price bid opening and date of evaluation, the original L1 firm will be asked to match the price quoted by the lowest offerer determined on the basis of exchange rate prevailing on the date of evaluation. Order will be placed on the original L1 on receipt of assent from the firm. If original L1 refuses to match the lowest bid based on FE rate on date of tender evaluation, order will be concluded on the new lowest firm.

10. **RISK & EXPENSE CLAUSE:**

1. Should the stores or any installment thereof not be delivered within the time or times specified in the contract documents, or if defective delivery is made in respect of the stores or any installment thereof, the Buyer shall after granting the Seller 45 days to cure the breach, be at liberty, without prejudice to the right to recover liquidated damages as a remedy for breach of contract, to declare the contract as cancelled either wholly or to the extent of such default.
2. Should the stores or any installment thereof not perform in accordance with the specifications / parameters provided by the SELLER during the check proof tests to be done in the BUYER's country, the BUYER shall be at liberty, without prejudice to any other remedies for breach of contract, to cancel the contract wholly or to the extent of such default.
3. In case of a material breach that was not remedied within 45 days, the BUYER shall, having given the right of first refusal to the SELLER be at liberty to purchase, manufacture, or procure from any other source as he thinks fit, other stores of the same or similar description to make good:-
 - a. Such default.
 - b. In the event of the contract being wholly determined the balance of the stores remaining to be delivered thereunder.
4. Any excess of the purchase price, cost of manufacturer, or value of any stores procured from any other supplier as the case may be, over the contract price appropriate to such default or balance shall be recoverable from the SELLER. Such recoveries shall not exceed 25% of the value of the contract."

11. **FORCE MAJEURE CLAUSE:**

- a. Neither party shall bear responsibility for the complete or partial non-performance of any of its obligations (except for failure to pay any sum which has become due on account of receipt of goods under the provisions of the present contract), if the non-performance results from such Force Majeure circumstances as Flood, Fire, Earth Quake and other acts of God as well as War, Military operation, blockade, Acts or Actions of State Authorities or any other circumstances beyond the parties control that have arisen after the conclusion of the present contract.
- b. In such circumstances the time stipulated for the performance of an obligation under the present contract is extended correspondingly for the period of time of action of these circumstances and their consequences.
- c. The party for which it becomes impossible to meet obligations under this contract due to Force Majeure conditions, is to notify in written form the other party of the beginning and cessation of the above circumstances immediately, but in any case not later than 10 (Ten) days from the moment of their beginning.
- d. Certificate of a Chamber of Commerce (Commerce and Industry) or other competent authority or organization of the respective country shall be a sufficient proof of commencement and cessation of the above circumstances.
- e. If the impossibility of complete or partial performance of an obligation lasts for more than 6 (six) months, either party hereto reserves the right to terminate the contract totally or partially upon giving prior written notice of 30 (thirty) days to the other party of the intention to terminate without any liability other than reimbursement on the terms provided in the agreement for the goods received.

12. **SPECIFICATION:**

The following Specification clause will form part of the contract placed on successful Bidder -
“The Seller guarantees to meet the specifications as per Part-II of TE and to incorporate the modifications to the existing design configuration to meet the specific requirement of the Buyer Services as per modifications/requirements recommended after the Maintenance Evaluation Trials. All technical literature and drawings shall be amended as the modifications by the Seller before supply to the Buyer. The Seller, in consultation with the Buyer, may carry out technical upgradation/alterations in the design, drawings and specifications due to change in manufacturing procedures, indigenisation or obsolescence. This will, however, not in any way, adversely affect the end specifications of the equipment. Changes in technical details, drawings repair and maintenance techniques alongwith necessary tools as a result of upgradation/alterations will be provided to the Buyer free of cost within 45 days of affecting such upgradation/alterations”.

13. **OEM CERTIFICATE:**

In case the Bidder is not the OEM, the agreement certificate with the OEM for sourcing the spares shall be mandatory. However, where OEMs do not exist, minor aggregates and spares can be sourced from authorized vendors subject to quality certification.

14. **EXPORT LICENSE:**

The Bidders are to confirm that they have requisite export license from their Government and Authorization from the manufacturing plant, in case they are not the OEM, to export the military/non-military goods to India.

15. **EARLIEST ACCEPTABLE YEAR OF MANUFACTURE:**

Item(s) supplied under present tender shall be manufactured after the effective date of contract . Quality/Life certificate will need to be enclosed with the Bill.

16. **BUYER FURNISHED EQUIPMENT:**

The following equipment will be provided by the Buyer at his expense to the Seller:

17. **TRANSPORTATION:**

In case of foreign Bidders, the basic cost (CIF) quoted by them would be the basis for the purpose of comparison of various tenders. The following Transportation clause will form part of the contract placed on successful Bidder –

- a. **CIF/CIP** – The stores shall be delivered CIF/CIP IGI Airport, New Delhi. Seller will bear the costs and freight necessary to bring the goods to the port of destination. The Seller also has to procure marine insurance against the Buyer's risk of loss of or damage to goods during the carriage. The Seller will contract for insurance and pay the insurance premium. Seller is also required to clear the goods for export. The stores shall be delivered to the Buyer by Indian ships only. The date of issue of the Bill of Lading shall be considered as the date of delivery. No part shipment of goods would be permitted. Trans-shipment of goods would not be permitted. In case it becomes inevitable to do so, the Seller shall not arrange part-shipments and/or transshipment without the express/prior written consent of the Buyer. The goods should be shipped by Indian vessels only. However, the Seller can still utilize the services of the MoD, Govt of India Freight Forwarding Agent details for which will be provided by the Buyer. Seller will be required to communicate the following information invariably by telex/signed in case of import of Defence Stores being brought in commercial ships to Embarkation Head Quarters concerned well in advance before the Ship sails the port of loading:
- i. Name of the Ship
 - ii. Port of Loading and name of Country.
 - iii. ETA at port of Discharge i.e. Bombay, Calcutta, Madras and Cochin.
 - iv. Number of Packages and weight.
 - v. Nomenclature and details of major equipment.
 - vi. Special instructions, if any stores of sensitive nature requiring special attention.

OR

- b. **FOB/FAS** -The stores shall be delivered FOB (as per INCOTERMS 2000, or latest version). The stores shall be delivered to the Buyer by Indian Ships only. In case of FOB/FAS contracts, shipping arrangements shall be made by the Shipping Co-ordination and Chartering Division/Shipping Co-ordination and Officer, Ministry of Surface Transport, New Delhi, India. Notice about the readiness of Cargo for shipment shall be given by the supplier from time to time at least eight weeks in advance for finalizing the shipping arrangement, through Fax/Telex and courier, to the Chief Controller of Chartering, Shipping Co-ordination Officer, Ministry of Surface Transport, Government of India, New Delhi. Within 3 (three) weeks of receipt of the advance notice, as above, the said Chief Controller of Chartering, Shipping Coordination Officer will advise the supplier, through Fax/Telex and courier when and on board what vessels, these goods or such part thereof are to be delivered. If the advice for shipping arrangement is not furnished to the Seller within 3 (three) weeks as aforesaid or if the vessel arranged is scheduled to arrive at the specified port of loading later than 15 (fifteen) days of the date of readiness of cargo, as aforesaid, the

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

OR

- c. **FCA** - The delivery of the goods shall be FCA ____ Airport. The dispatch of goods shall be made by air to port consignee. The Buyer shall advise full details of its freight forwarder to the Seller no later than 60 days prior to the delivery of the first consignment otherwise the Seller may nominate the freight forwarder which shall be at the Buyer's expense. Any delay in advising or delay by the freight forwarder shall be at the responsibility of the Buyer. The date of issue of the Air Way Bill shall be considered as the date of delivery.

18. **AIR LIFT:**

The following Airlift clause will form part of the contract placed on successful Bidder - Should the Buyer intend to airlift all or some of the stores, "the Seller shall pack the stores accordingly on receipt of intimation to that effect from the Buyer. Such deliveries will be agreed upon well in advance and paid for as may be mutually agreed".

19. **PACKING AND MARKING:**

The following Packing and Marking clause will form part of the contract placed on successful Bidder:

- a. The Seller shall provide packing and preservation of the equipment and spares/goods contracted so as to ensure their safety against damage in the conditions of land, sea and air transportation, transshipment, storage and weather hazards during transportation, subject to proper cargo handling. The Seller shall ensure that the stores are packed in containers, which are made sufficiently strong, and with seasoned wood. The packing cases should have hooks for lifting by crane/fork lift truck. Tags with proper marking shall be fastened to the special equipment, which cannot be packed.
- b. The packing of the equipment and spares/goods shall conform to the requirements of specifications and standards in force in the territory of the Seller's country.

- c. Each spare, tool and accessory shall be packed in separate cartons. A label in English shall be pasted on the carton indicating the under mentioned details of the item contained in the carton. A tag in English with said information shall also be attached to six samples of the item. If quantity contracted is less than six then tag shall be affixed to complete quantity contracted of the item. The cartons shall then be packed in packing cases as required.
 - i. Part Number :
 - ii. Nomenclature :
 - iii. Contract annex number :
 - iv. Annex serial number :
 - v. Quantity contracted :
- d. One copy of the packing list in English shall be inserted in each cargo package, and the full set of the packing lists shall be placed in Case No.1 painted in a yellow colour.
- e. The Seller shall mark each package with indelible paint in the English language as follows:-
 - i. EXPORT
 - ii. Contract No. -----
 - iii. Consignee -----
 - iv. Port / airport of destination -----
 - v. Ultimate consignee -----
 - vi. SELLER -----
 - vii. Package No. -----
 - viii. Gross/net weight : -----
 - ix. Overall dimensions/volume : -----
 - x. The Seller's marking.
- f. If necessary, each package shall be marked with warning inscriptions: <Top>, "Do not turn over", category of cargo etc.
- g. Should any special equipment be returned to the Seller by the Buyer, the latter shall provide normal packing, which protects the equipment and spares/goods from the damage of deterioration during transportation by land, air or sea. In this case the Buyer shall finalize the marking with the Seller.

20. **QUALITY:**

The quality of the stores delivered according to the present Contract shall correspond to the technical conditions and standards valid for the deliveries of the same stores for in Seller's country or specifications enumerated as per RFP and shall also include therein modification to the stores suggested by the Buyer. Such modifications will be mutually agreed to. The Seller confirms that the stores to be supplied under this Contract shall be new i.e. not manufactured before (Year of Contract), and shall incorporate all the latest improvements and modifications thereto and spares of improved and modified equipment are backward integrated and interchangeable with same equipment supplied by the Seller in the past if any. The Seller shall supply an interchangeability certificate along with the changed part numbers wherein it should be mentioned that item would provide as much life as the original item.

21. **QUALITY ASSURANCE:**

Seller would provide the Standard Acceptance Test Procedure (ATP). Buyer reserves the right to modify the ATP. Seller would be required to provide all test facilities at his premises for acceptance and inspection by Buyer. The details in this regard will be coordinated during the negotiation of the contract. The item should be of the latest manufacture, conforming to the current production standard and having 100% defined life at the time of delivery.

22. **INSPECTION AUTHORITY:**

The Inspection will be carried out by The General Manager or his authorized service inspector. The mode of Inspection will be Departmental Inspection/User Inspection/Joint Inspection.

23. **FRANKING CLAUSE:**

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

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

24. **CLAIMS:**

The following Claims clause will form part of the contract placed on successful Bidder –

- a. The claims may be presented either: (a) on quantity of the stores, where the quantity does not correspond to the quantity shown in the Packing List/Insufficiency in packing, or (b) on quality of the stores, where quality does not correspond to the quality mentioned in the contract.
- b. The quantity claims for deficiency of quantity shall be presented within 45 days of completion of JRI and acceptance of goods. The quantity claim shall be submitted to the Seller as per Form OFBPM-32 (Available in OFB website and can be given on request).
- c. The quality claims for defects or deficiencies in quality noticed during the JRI shall be presented within 45 days of completion of JRI and acceptance of goods. Quality claims shall be presented for defects or deficiencies in quality noticed during warranty period earliest but not later than 45 days after expiry of the guarantee period. The quality claims shall be submitted to the Seller as per Form OFBPM-33 (Available in OFB website and can be given on request).
- d. The description and quantity of the stores are to be furnished to the Seller along with concrete reasons for making the claims. Copies of all the justifying documents shall be enclosed to the presented claim. The Seller will settle the claims within 45 days from the date of the receipt of the claim at the Seller’s office, subject to acceptance of the claim by the Seller. In case no response is received during this period the claim will be deemed to have been accepted.
- e. The Seller shall collect the defective or rejected goods from the location nominated by the Buyer and deliver the repaired or replaced goods at the same location under Seller’s arrangement.

- f. Claims may also be settled by reduction of cost of goods under claim from bonds submitted by the Seller or payment of claim amount by Seller through demand draft drawn on an Indian Bank, in favour of Principal Controller/Controller of Defence Accounts concerned.
- g. The quality claims will be raised solely by the Buyer and without any certification/countersignature by the Seller's representative stationed in India.

25. **WARRANTY:**

- a. The following Warranty will form part of the contract placed on the successful Bidder:
 - i. Except as otherwise provided in the invitation tender, the Seller hereby declares that the goods, stores articles sold/supplied to the Buyer under this contract shall be of the best quality and workmanship and new in all respects and shall be strictly in accordance with the specification and particulars contained/mentioned in contract. ***"The firm shall warranty the tubes to be free of defects in materials and workmanship within the specification on each tubes for a usage period of 18 (eighteen) months from the date of receipt of tubes by OLF, Dehradun. The firm shall also warranty for a period of 24 (twenty four) months from the date of receipt of tubes by OLF when tubes are stored in dark environment at 22±3°C and 55±10% Rh. If during this period any of the stores are found defective and same shall be replaced by the supplier/contractor immediately, free of cost at the consignee's depot inclusive of all freight and handling charges. Consignee will have a right to recover these charges from any payment due to contractor under any valid contract"***.
 - ii. Guarantee that they will supply spare parts, if and when required on agreed basis for an agreed price. The agreed basis could be and including but without any limitation an agreed discount on the published catalogue or an agreed percentage of profit on the landed cost.
 - iii. Warranty to the effect that before going out of production for the spare parts they will give adequate advance notice to the Buyer of the equipment so that the latter may undertake the balance of the lifetime requirements.
 - iv. Warranty to the affect that they will make available the blue prints of drawings of the spares if and when required in connection with the main equipment.

PART V

(EVALUATION CRITERIA & PRICE BID ISSUES)

1. EVALUATION CRITERIA:

The broad guidelines for evaluation of Bids will be as follows:

- a. Only those Bids will be evaluated which are found to be fulfilling all the eligibility and qualifying requirements of the RFP, both technically and commercially.
- b. In respect of Two-Bid system, the technical Bids forwarded by the Bidders will be evaluated by the Buyer with reference to the technical characteristics of the equipment as mentioned in the RFP. The compliance of Technical Bids would be determined on the basis of the parameters specified in the RFP. The Price Bids of only those Bidders will be opened whose Technical Bids would clear the technical evaluation.
- c. The Lowest Bid will be decided upon the lowest price quoted by the particular Bidder as per the Price Format given at Para below. The consideration of taxes and duties in evaluation process will be as follows:
 - i. In cases where only indigenous Bidders are competing, L-1 bidder will be determined by excluding levies, taxes and duties levied by Central/State/Local governments such as excise duty, VAT, Service tax, Octroi/entry tax, etc on final product, as quoted by bidders.
 - ii. In cases where both foreign and indigenous Bidders are competing, following criteria would be followed –
 1. **In case of foreign Bidders, the basic cost (CIF) quoted by them would be the basis for the purpose of comparison of various tenders.**
 2. In case of indigenous Bidders, excise duty on fully formed equipment would be offloaded.
 3. Sales tax and other local levies, i.e. octroi, entry tax etc would be ignored in case of indigenous Bidders.
- d. In import cases, all the foreign quotes will be brought to a common denomination in Indian Rupees by adopting the exchange rate as Base Currency (BC) selling rate of the State Bank of India on the date of the opening of Price Bids.
- e. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price will prevail and the total price will be corrected. If there is a discrepancy between words and figures, the amount in words will prevail for calculation of price.
- f. The Lowest Acceptable Bid will be considered further for placement of contract / Supply Order after complete clarification and price negotiations as decided by the Buyer. The Buyer will have the right to award contracts to different Bidders for being lowest in particular items. The Buyer also reserves the right to do Apportionment of Quantity, if it is convinced that Lowest Bidder is not in a position to supply full quantity in stipulated time.
- g. Any other criteria as applicable to suit a particular case.
- h. **ST/VAT/CST exemption forms will not be issued to any indigenous Bidders. Therefore they need to quote their full rate of tax (ST/VAT/CST).**

COMPLIANCE STATEMENT

Clause no.	Commercial and General Terms	Compliance to TE specification (Y/N)	If not complied, specify deviations
	EMD submitted. Details of EMD i.e. Demand Draft/ FDR/ BG no. & date, validity and Banker's name furnished in quotation.		
	Price mentioned both in words and figure.		
	Price are quoted showing Basic Price and Taxes/Duties separately.		
	All inclusive price is quoted separately.		
	Installation/commissioning/Freight/Packing charges, if any		
	Prices quoted in Rupees/ Foreign Exchange.		
	Prices are firm and fixed.		
	Delivery & Prices on F.O.R basis.		
	Whether Price quoted with PV clause.		
	Whether the offered store is as per specifications mentioned in TE.		
	Whether samples submitted as per TE requirement.		
	Inspection at Factory/ At firm's premises.		
	Delivery as per Delivery Period mentioned in TE.		
	Payment Terms of the TE acceptable.		
	Agreed for option clause as mentioned in TE.		
	Guarantee/warranty clause accepted.		
	Agreed for Submission of Security Deposit/ Performance Security Deposit.		
	Liquidated Damages clause accepted.		
	Arbitration Clause accepted.		
	Dispute subject to _____ Jurisdiction accepted.		
	Whether the tender is signed by authorized signatory.		
	Return of Tender documents with all pages duly signed and stamped.		
	Whether Force Marjorie clause included in quotation?		
	Validity of offer – Minimum 180 days.		
	Pre-Integrity Pact clause accepted.		

Signature of Authorised Person With seal

N.B: (i) Please indicate YES/NO clearly. Also furnish details wherever required. Please note that the offer deviating from Tender Terms and Conditions likely to be ignored.

(ii) The offer must be accompanied by duly filled in compliance statement; otherwise the offer is likely to be ignored.

INSTRUCTION TO TENDER TO OVERCOME AVOID CARTEL FORMATION

- i. All the firms should desist from forming cartel as the practice is prohibited under Section 3(3)(a) & (d) of the Competition Act 2002.
- ii. 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 if CARTEL Formation is suspected. The management reserves the right to order any quantity on one or more firms.
- iii. Wherever 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 decided through vendor rating as per the SOP for capacity verification (under 'PARA 24').
- iv. In case of source development tender (where past – performance-based vendor rating is not available), the marks scored by the firm in Appendix II of QCS Letter No. 108/TIR/TS/QCS dated 13.09.2005 during capacity verification by the team of officers shall be the basis of Ranking.
- v. 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(R@) firms in the ratio 60:40 or among R1, R2 and Rank 3(R3) firms in the ratios 50:30:20 respectively.
- vi. The purchaser also reserves the right to delete the established firms who quote in CARTEL from list of approved sources or to debar them from competing for a period to be decided by the purchaser.
- vii. The name of the newly established firm which enters into CARTEL formation immediately on getting registered will be summarily deleted from the list of approved suppliers.
- viii. An undertaking from the new firms 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's will be taken while approving the new firms for participation against source development tender.

INSTRUCTIONS TO TENDERER

Return of paper particulars-Copies of particulars supplied to the trade firms in connection with the tender enquiry/contract remain the property of the Government of India and shall be returned to the indenting factory/inspecting officer immediately after submission of quotation or on completion/cancellation of contract/order. No claim for refund of money paid for those particulars will be entertained.

Pre-inspection - Supplier must satisfy themselves that the stores are in accordance with the terms and conditions and fully conform to the required specifications by carrying out a thorough pre-inspection of each lot before actually tendering the same for inspection of the Inspecting Officer nominated under the terms of the contract. The contractor/manufacturer must keep a record of the pre-inspection carried out of which must be submitted to the Inspecting Officer.

If the Inspecting Officer finds that the pre-inspection of the consignment as required above has not been carried out the consignment is liable to be rejected.

Warranty- The stores supplied against the Order resultant to this enquiry shall be deemed to have been warranted against defective workmanship and material by the contractor for a period of 12 months from the date of receipt of stores at consignee's end and if during this period any of the stores is found so defective the same shall be replaced by the contractor free of any charge at the consignee depot as soon as possible.

Advance Sample – Successful tenderers are required to submit Nos. of unpainted acceptable advance sample of the stores manufactured out of the approved material to the Inspecting Officer within 21 days of the receipt of the Contract for approval before commencing bulk manufacture in case advance sample is not submitted within the specified time of the sample so submitted is found unacceptable the contract is liable to be cancelled at the risk and cost of the contractor.

Packing-The stores should be securely packed to avoid loss or damage DURING TRANSIT SO THAT IT REACHES THE CONSIGNEE IN GOOD CONDITION. The packing and forwarding charges should be borne by the manufacturer/contractor.

Rectification of defects- In the event of store is given back to the manufacturer for rectification of defects, the manufacturer will ensure that the defects are attended to immediately without loss of time so that store can be re-inspected. However, it should be noted that the manufacturer will not be entitled to dispose of the store which is given for rectification but not rejected without permission of the Inspector.

I.T.C.C. – Any tender not accompanied with the latest Income-Tax clearance Certificate and permanent Income-Tax Number will not be considered. This has since been amended as only PAN will be sufficient.

You are advised in your own interest to submit stores for inspection at least two weeks before the expiry of the delivery period stipulated in order to ensure inspection and release of inspection note in time, to enable you to deliver the stores by the due date. Your failure to submit the stores for inspection by the period recommended will not by itself be a ground for refusal to receive the stores by the inspector for inspection, if tender before the expiry of the stipulated delivery period but any delay in delivery of stores, on account of such failure, on your part, tendered by the period recommended any delay in inspection or release of inspection notes, resulting in delay in delivery beyond the stipulated delivery period, would ordinarily be condoned, provided such delay on the part of the inspector is established as the sole and direct cause of your failure to delivery the by the due date. The quotation should be submitted in duplicate. Any deviation in stores from tender specification should be clearly highlighted. Tender should be submitted in one enclosed envelope which should be used as inner cover.

** I/We accept the above conditions in full.

(Signature of tenderer with date)

PERFORMANCE BANK GUARANTEE/ WARRANTY BOND FORMAT

From:

Bank _____

To,

Pr. C.D.A (Factories), KOLKATA

Bank name - State Bank of India

Bank Address - 1, Strand Road, Samriddhi Bhawan, Kolkata-01

IFCS Code - SBIN0014524

Account no. - 11143631545

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.

2. 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.

3. In no case shall the amount of this guarantee be increased.

4. 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.

6. 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.

7. 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_____

Bank's Stamp:

Date:

SIGNATURE OF THE AUTHORISED/OFFICIAL
From the Bank

QUANTITY CLAIM**Form № 1**

to the Contract No _____
dated _____

CLAIM REPORT

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 № _____ Item Srl No
_____ 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 goods and others)

Chairman of the Commission _____
(signature and date)

Members of the Commission _____
(signature and date)

Conclusion of the chief of the group of the Seller's specialists (if available): _____
(signature and date)

For and on behalf of SELLER

For and on behalf of BUYER

QUALITY CLAIM**Form № 1**

to the Contract No _____
dated _____

CLAIM REPORT

Laid down on _____
(Name of the claimed equipment, №№ of chassis, engine)
Commission consisting of: Chairman: _____

And members: _____

The Commission has acquainted with the claimed equipment and made the following decision:

1. _____ Serial No _____ (Equipment)
manufactured by the factory-manufacturer _____
(Date of manufacture)

Date of beginning of operation of the equipment – _____ 200_____

No. of running hours from the beginning of operation: _____ hours (cycles), operating hours
until the first trouble: _____ hours (cycles).
With guarantee period of: _____
2. Indicate operation conditions of the equipment: _____

(in accordance with the Operation manual/ breach of the Operation manual)
3. Description of the defect: _____

4. List of damaged units and parts: _____

5. Conclusion of the Commission:
 - 5.1. The defect occurred _____ (within the
guarantee period, upon the expiry period) on the reason of _____
_____) manufacture defect, breach of rules of operation) and is subject to
correction _____ (repair, replacement).
 - 5.2. To settle the claim, the SELLER has to _____
(make repair, dispatch units and other parts)
 - 5.3. For repair of the equipment it's necessary to: to state denominations, drawing number and
quantity of defected units and parts)
On the basis of the above stated, the Commission makes a conclusion that the equipment
_____ is not in serviceable condition and cannot be further operated and is subject
to _____ (repair or
replacement with the new one) _____
(in case of repair to state a kind of repair and place of its fulfillment – in the user's organization
or at the Seller's factory) at the cost of _____.

6. Supplementary data: _____

6.1. The equipment was handed over in accordance with Contract No. _____ on (date) _____ and _____ accepted in accordance with _____ No. _____ of _____ 200____. (Handing over and acceptance certificate).

6.2. The following documents are enclosed to this claim report to support the justification of the claim: _____

Chairman of the Commission _____
(signature and date)

Members of the Commission _____
(signature and date)

Conclusion of the chief of the group of the Seller's specialists is written down on the 2nd copy of the claim report, issued to the Buyer, which will be forwarded to his managers separately

(signature and date)

(signature and date)

For and on behalf of SELLER

For and on behalf of BUYER

ARBITRATION CLAUSE

(For Foreign Bidders)

- 1.0 All disputes or differences arising out of or in connection with the present contract, including the ones connected with the validity of the present Contract or any part thereof, shall be settled by bilateral discussions.
- 1.1 Any dispute, disagreement or question arising out of or relating to this Contract 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 amicable, 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.
- 1.2 Within 60 days of the receipt of the notice, the Seller shall nominate one Arbitrator in writing and the Buyer shall nominate one Arbitrator.
- 1.3 The third Arbitrator, who shall not be a citizen or domicile of the country of either of the parties or any other country unacceptable to any of the parties shall be nominated by the parties within 90 days of the receipt of the notice mentioned above, failing which the third arbitrator may be nominated by the President of International Chamber of Commerce, Paris, at request of either party but the said nomination would after consultation with both the parties and shall preclude any citizen or domicile of any country as mentioned. The arbitrator nominated under this clause shall not act as umpire.
- 1.4 The Arbitration Tribunal shall have its seat in New Delhi, India or such other place in India as may be mutually agreed to between the parties.
- 1.5 The arbitration proceedings shall be conducted in India in English language under the Indian Arbitration and Conciliation Act, 1996 and the award of such Arbitration Tribunal shall be enforceable in Indian Courts only.
- 1.6 The decision of the majority of the Arbitrators shall be final and binding on the parties to this contract. Each party shall bear its own cost of preparing and presenting its case. The Seller and the Buyer shall share the cost of Arbitration including the fees and expenses of the third Arbitrator equally.
- 1.7 In the event of a vacancy caused in the office of any of the Arbitrators, the party which nominated such Arbitrator shall be entitled to nominate another in his place and the Arbitration proceedings shall continue from the stage they were left by the retiring Arbitrator.
- 1.8 In the event of the one of the parties failing to nominate its Arbitrators within 60 (sixty) days as above or if any of the parties does not nominate another arbitrator within 60 (sixty) days of the place of arbitrator falling vacant, then the other party shall be entitled after due notice of at least 30 (thirty) days to request the President of the International Chamber of Commerce to nominate another Arbitrator as above.
- 1.9 If the office of the third Arbitrator falls vacant, his substitute shall be nominated according to the provision herein above stipulated.
- 1.10 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 the subject matter of the said Arbitration Proceedings.

ARBITRATION CLAUSE

(For Indigenous Private 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 dispute, disagreement or question arising out of or relating to this contract 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, to be referred by concerned party to **Director General Ordnance Factories**, Government of India, Ordnance factory Board, 10 – A, S.K.Bose Road . KOLKATA 700001 for appointment of the sole arbitrator. The Arbitrator so appointed shall be a Government servant who had not dealt with matters to which this agreement relates and in course of his duties had not expressed views on all or any of the matter in disputes or differences. The Award of the Sole Arbitrator shall be final and binding on the parties.
- (iii) The venue of the arbitration shall be at OLF, Dehradun.

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 _____ 201

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)