

Updated on 30/05/08

**GLOBAL / OPEN / LIMITED TENDER ENQUIRY
BY SPEED POST/ REGD POST/ BY AIR MAIL**

GOVERNMENT OF INDIA, MINISTRY OF DEFENCE
FY :

CABLE:

TELEPHONE: 91-

FAX: 91-

INVITATION OF TENDERS

From:-

The General Manager

TO:-

Dear Sirs,

Sealed tenders in Two bid system are invited on behalf of the President of India for the items indicated below :

TENDER No. / /EO

Dated:

Brief Title	Tender will be accepted till.	?Tender will be opened on.	Tender will remain valid for acceptance for
	2.00 PM on opening date.	_____ at 3.00 PM	180 days from opening date.

The following documents are enclosed for submission of tenders :

- i. Instructions to tenderers (Annexure - A)
- ii. Technical Specification with all technical data including drawings etc. as necessary (Annexure - B)
- iii. General conditions of contract (Annexure - C)
- iv. Financial Bank Guarantee (Annexure – D)
- v. Compliance statement (Annexure – E)
- vi. Check list – Compliance Report (Annexure – F)
- vii. Manufacturer's Recommended List of Spares (MRLS) (Annexure – G)
- viii. Proforma for bank guarantee in lieu of EMD (Annexure – H)
- ix. Tender documents are not transferable;
- x. Purchaser reserves right to cancel the NIT/ tender without assigning any reason.
- xi. Tender documents are also available at our web site (www.tenders.gov.in)

Note : Tenderers are requested to read the enclosed Instructions to Tenderers, Technical Specifications and General conditions of contract carefully before submitting offer.

**General Manager
For and on behalf of President of India**

INSTRUCTIONS TO TENDERERS

1.0 *SUBMISSION OF TENDER:*

-
- 1.1 Tenders in double cover must be submitted in triplicate in Two parts (Technical Bid and Price Bid) in separate sealed covers (inner covers), super-scribing the Technical Bid or Price Bid, tender number and date of opening of tender on the covers. The outer cover should bear the address of the office issuing tender, tender number and date of tender opening. The tender shall be neatly arranged, plain and intelligible, typewritten with consecutively numbered pages in solid binding. They should not contain any terms and conditions, printed or otherwise, which are not applicable to the tender.
- 1.2 **Only one tender should be included in one cover. When more than one tenders are included in one cover, all tenders so enclosed in one cover will be liable to be ignored.** They shall contain a special declaration that the tenderer agrees to hold the tender open for period indicated in this invitation to tender. This period of validity of tender shall be six months from the date of opening of the tender and the prices quoted shall be deemed to remain valid for this period.
- 1.3 Tenders in sealed cover should be sent by registered post and if delivered by hand should be put in the Tender Box of the respective office inviting the tenders.
- 1.4 Tender documents are strictly non-transferable. i.e. offer can be submitted only by the tenderers to whom tender documents have been issued. The tender forms should be signed by a competent authority holding power of attorney to handle such job on behalf of tendering firm and this fact must be stated explicitly.
- 1.5 Insertions, postscripts, additions and alterations shall not be recognized, unless authenticated by the tenderer's signature.
- 1.6 The tenders shall be submitted in English/Hindi Language.
- 1.7 Tender is liable to be ignored if complete information is not given therein or if the particulars and data (if any) asked for in the schedule to the tender, are not fully filled in. Special attention must be paid to the delivery dates and also to the General Conditions of the Contract on Form No. DGS&D-68(Revised) and DGS&D-71 with latest amendments and those contained in this booklet as the contract shall be governed by them.

2.0 **LATE/ DELAYED TENDER**

2.1 Tenders or modifications to tenders received after opening of tenders are to be called as Late Tender. Tenders or modification to it received after time fixed for receipt of tenders, though before time fixed for opening is to be called Delayed Tenders. Price-bids received after opening of techno-commercial offer though before the time fixed for opening of price-bid will also be regarded as Late Offer. Such delayed/ late offers will not be opened.

3.0 ***Signing of tender***

3.1 Individual signing the tender or other documents connected with a contract must specify whether he signs as:

(i) 'Sole Proprietor' of the firm or constituted attorney of such Sole Proprietor.

(ii) A partner of the firm, if it be a partnership, in which case he must have authority to quote & to refer to arbitration dispute concerning the business of the partnership either by virtue of the partnership agreement or a power of attorney;

(iii) Constituted attorney of the firm if it is a company.

N.B. (1) In case of (ii) above, a copy of the partnership agreement or general power of attorney, in either, case, attested by a Notary Public should be furnished or affidavit on stamped paper of all the partners admitting execution of the partnership agreement or the general power of attorney should be furnished.

(2) In case of the partnership firms, where no authority to refer disputes concerning the business of the partnership has been conferred on any partner, the tender and all other related documents must be signed by every partner of the firm.

(3) A person signing the tender form or any documents forming part of the contract on behalf of another shall be deemed to warrant that he has authority to bind such other persons and if, on enquiry, it appears that the persons so signing had no authority to do so, the purchaser may, without prejudice to other civil and criminal remedies, cancel the contract and hold the signatory liable for all costs and damages.

(4) Each page of the tender, schedule to tender and Annexure, if any, should be signed by the tenderer.

4.0 OPENING OF TENDER

4.1 The tender will be received and opened at the office of the purchaser till the date and time specified in Invitation of Tenders. Only Technical Bid will be opened on due date of tender opening. The price bids of only technically acceptable bidders will be opened at later date which will be intimated to the bidders concerned.

4.2 Tenderer is at liberty to be present or authorize a representative to be present at the time of opening of the tender. However in case of visit of Foreigner, a prior permission from the concerned authority is essential.

5.0 ***Right of Acceptance of Offer***

5.1 The **purchaser reserves** his right to accept partly or reject any offer without assigning any reason thereof. The purchaser does not pledge itself to accept the lowest or any tender and reserves to itself the right of acceptance the whole or any part of the tender or portion of the quantity offered and the tenderer shall supply the same at the rate quoted. Tenderer is at liberty to tender for the whole or any portion or to state in the tender that the rate quoted shall apply only if the entire quantity is taken from him.

6.0 EARNEST MONEY DEPOSIT

6.1 TECHNICAL BID MUST ACCOMPANY EMD OF Rs.
IN THE FORM OF DEMAND DRAFT, FIXED DEPOSIT RECEIPTS,
BANKER'S CHEQUE, BANK GUARANTEE IN SPECIFIC FORMAT
(as per Annexure - H) VALID FOR 45 DAYS BEYOND THE PERIOD
OF VALIDITY OF OFFER. TECHNICAL BID RECEIVED WITHOUT
EMD WILL BE SUMMARILY REJECTED WITHOUT TECHNICAL
EVALUATION.

6.2 Tenderers registered with DGS&D, NSIC, KVIC or purchasing department will be exempted from submission of EMD. The tenderer should enclose an authenticated copy of their valid registration certificate with DGS&D, NSIC, KVIC or purchasing department for grant of exemption.

7.0 TECHNICAL BID

7.1 The tenderer shall carefully check the specifications and drawings and shall satisfy himself of the suitability of the equipment being offered and shall take full responsibility for the efficient operations and guarantee of specified output of the Plant and equipment offered.

7.2 The offer should be complete in all respects along with supporting documents and technical literature like catalogue, test charts, list of customers of similar m/c, performance feed back reports from users etc.

- 7.3 The tenderer is at liberty to offer alternative quotations for any modifications he considers advisable giving full reasons in support thereof. However, it will not be binding on purchaser to accept it in part or full.
- 7.4 The offer should conform to technical specification and general conditions of contract. However, deviations, if any, should be clearly brought out by the tenderers. The tenderer should invariably attach with their offer a clause-wise compliance statement against (I) Instruction to Tenderers (II) Technical specification (III) General conditions of contract in a specified format as per Annexure – E stating where they meet requirement in toto and where and how they deviate giving full details and remarks if any.
- 7.5 The tenderer should certify in the technical bid that the price-bid contains item-wise price as specified in Technical Specification.
- 7.6 *In order that no clarification is needed after opening of Price Bid of technically acceptable offers, it is essential that the unpriced copy of the price bid (REPEAT UNPRICED) alongwith other terms & conditions should be enclosed with the Technical Bid.*
- 7.7 The check list (Compliance Certificate) as per Annexure – F to be filled by the tenderer and to be submitted along with technical bid.
- 7.8 The tenderer shall inspect the site if considered necessary and shall satisfy himself of site conditions and shall collect himself any other information which he may require before submitting the tender. Claims and objections due to ignorance of site conditions will not be considered after submission of the tender.
- 7.9 Incomplete quotations or quotations without toolings and fixtures in case of Tooled-up machines are liable to be ignored.
- 7.10 Rates for Spares should be quoted separately item-wise and not to be included in the price of the machine. The price quoted for spares by the firms will not be taken into account for deciding the ranking position of the firm.
- 8.0 **Guarantee to provide Spares**
- 8.1 Acceptance of tender for the supply of equipment on the invitation will be subject to tenderers certifying that they have adequate servicing and spare parts facilities in respect of the equipment tendered for by them or that they shall arrange to provide such facilities simultaneously with the supply of the equipment.
- 8.2 Tenderers shall also undertake that supplies of necessary maintenance equipment and spare parts will be made available for life of the machine on a continuous basis.
- 8.3 The successful tenderer shall warranty that before going out of production of the spare parts he will give adequate advance notice to the purchaser so that the later may order his requirements of spares in one lot, if he so desires.

- 8.4 The successful tenderer shall further guarantee that if he goes out of production of spare parts, then he will make available blueprints, drawings of the spare parts and specifications of materials at no cost to the purchaser as and when required in connection with equipment to enable the purchaser to fabricate or procure spare parts from other sources.
- 8.5 In case spares are also ordered with the equipment, tenderer will undertake to offer spares for delivery along with the main equipment only and not before.
- 9.0 THE PRICE BID AND UN-PRICED BID ALONG-WITH TECHNICAL BID :
- 9.1 In the price bid , the tenderer shall include all elements of cost of Plant and Equipment strictly as per the scope of supply & services specified in technical specification. The price shall be item wise in accordance with and as stated in the specification. If the work is of turn-key nature, the vendor will be responsible for complete execution of the plants, Civil works etc. as specified in the scope of work.
- 9.2 For all plant and equipment, accessories, spares etc. of import origin from out side India, prices shall be quoted for delivery on F.O.B basis indicating the Port of shipment as well as for delivery on CIF basis indicating the port of entry i.e. ----- (in India) along-with the charges for transportation and insurance separately, directly by the Original Equipment Manufacturer (OEM) or the foreign supplier if authorised by the concerned Foreign Govt. However, order if any, will be on FOB basis only and all taxes, duties, fees or charges including Bank charges outside India for supply of P&M, Services and Spares ex-import including transportation, Seaworthy packing, preservation till FOB is the responsibility of the vendor.
- 9.3 In some cases, foreign plants suppliers stipulates that purchases can be made through their Indian counterpart/ collaborator (not agent). In such cases purchase can also be made against Rupee payment only for those P&Ms against offer from Indian tenderers, but the import clearance should be arranged by the tenderer and he should arrange inspection/ training in India and also provide after sale services. Prices for equipment, accessories, spares etc. shall be quoted in rupees for delivery ex-works. Statutory duty e.g. sales tax, service tax etc. if applicable, shall be indicated separately and distinctly. The freight charges, if any, shall be quoted separately. However, order if any, will be on FOR destination basis wherein freight charges, insurance charges, taxes and duties etc. will be paid on actual against documentary proof.
- 9.4 For all plant and equipment accessories, spares etc. of indigenous source, prices shall be quoted in rupees for delivery ex-works. Statutory duties e.g. excise duty and sales tax, service tax etc. if applicable, should be indicated separately and distinctly. The freight charges if any, shall be quoted separately. However, order if any, will be on F.O.R. destination basis wherein freight charges, insurance charges, taxes and duties etc. will be paid on actual against documentary proof.

9.5 Revision in price bid or technical bid having impact on prices will not be considered after opening of technical bids.

9.6 Quoted Price should be in words and figure. Any discrepancy between words and figures, the price in words shall prevail.

10.0 **TECHNICAL CAPACITY**

10.1 The tenderer shall satisfy the purchaser that he possesses the necessary technical experience and qualification and that he has at his disposal suitable modern facilities and staff of specialized nature to ensure that his contract work is of best quality and workmanship, according to the latest engineering practice. The tenderer shall furnish necessary particulars in this behalf with the tender.

10.2 In this regard the tenderer shall submit a detailed statement of similar plants built by him at least during the last 5 years and name and full address of the customers with order No., date of supply and performance report thereof.

11.0 **FINANCIAL CAPACITY:**

11.1 The tenderer shall produce satisfactory proof that he is financially in a position to fulfill the contractual obligations offered to be undertaken by him. In the case of Indian tenderer the tenderer shall also submit the following with their technical bid.

- (a) Copies of last three years annual report indicating profits and losses.
- (b) Copies of Partnership deeds.
- (c) Copy of certificate of incorporation and Articles of Association.
- (d) Copies of ownership documents in respect of manufacturing plant.
- (e) General power of attorney in favour of any signatory, other than the owner/head of the firm.
- (f) Affidavit that the firm has never been banned.

12.0 **LEGAL CAPACITY**

12.1 The tenderer shall satisfy the purchaser that he is competent and authorized to submit tender and/or to enter into a legally binding contract with the purchaser. To this effect, any person giving a tender shall render documentary evidence that his signature on the tender, submitted by him is legally binding upon himself, his firm or company as the case may be.

13.0 **QUERIES/CLARIFICATIONS:**

- 13.1 Queries/Clarifications of all nature, if any that may arise should be referred by the tenderer by Telex/ Cable/ Letter direct to the signatory at the following Address:
GENERAL MANAGER

_____,
_____,
_____, (INDIA)

14.0 **EVALUATION OF TECHNICAL BIDS**

- 14.1 Tender Evaluation will involve recording and analyzing the merits of each tender. The process will start with preparation of "Comparative Statement" based on compliance statement and other documents furnished by bidders incorporating the commercial terms offered in the NIT & TE and that sought by the vendor(s), analysis of the discordance and the impact of the same. A similar statement would be prepared in regard to deviations noticed in the delivery schedules, performance warranty, guarantee provisions, acceptance criteria, Engineering support Package (ESP) etc. Comprehensive analysis of the techno-commercial offer will form the basis for subsequent decision.

15.0 **EVALUATION OF PRICE BIDS OF TECHNICALLY ACCEPTABLE BIDDER**

- 15.1 For ranking of offers, price of complete scope of supply as detailed in technical specifications excluding the price of spares will be considered.
- 15.2 In case where all offers from indigenous sources are under consideration, ranking will be assessed on FOR destinations.
- 15.3 In case where all offers from foreign suppliers are under consideration, ranking will be assessed on CIF basis at port of entry on SBITT exchange rate prevailing on date of price bid opening.
- 15.4 In case where mixed offer i.e. some from foreign bidders and some from indigenous bidders are under consideration, the ranking will be assessed on CIF basis for foreign offers and ex-works basis for indigenous offers after off-loading Excise Duty on fully formed equipment and ignoring Sales Tax & other Local Levies etc.
To convert foreign currency into Indian Rupee, the SBITT selling rate for foreign currency prevailing on date of price bid opening will be considered.
- 15.5 However, order if any, on foreign bidders will be on FOB basis and indigenous offer on FOR destination basis including Excise Duty, Sales Tax and other local levies, Transportation Charges etc.
- 15.6 There will be no negotiation if price quoted is considered reasonable else negotiation will be held only with the lowest bidder i.e. L₁.

16.0 GENERAL CONDITIONS OF CONTRACT

16.1 In the event of an order being placed on you in pursuance of this invitation to tenders, the same will be governed by the condition of contract contained in forms DGS&D 68 (Revised) [excluding clause 24 and 14(10)] and DGS&D 71 (which are saleable publications and can be obtained from Govt. book depots) . Specific conditions stipulated in the tender document shall prevail upon the conditions of contract contained in form DGS&D-68 (Revised) and DGS&D-71 in case of variance, if any. The purchaser and inspecting authority in this case is OFB or his representative instead of DGS&D. Any other conditions indicated in the specifications attached to tender documents will also form part of the condition.

16.1.1 **Risk purchase and general damage** will be applicable as per DGS&D-68 (Revised) and as amended up to date.

16.2 PERFORMANCE SECURITY / SECURITY DEPOSIT :

Successful tenderer irrespective of their registration status with DGS&D or KVIC or purchasing department will be required to submit performance security within 30 days of contract for due performance of contract. The amount of performance security will be 5% of contract value in Indian Rupees. The performance security will be in the form of demand draft or fixed deposit receipts or bank guarantee on non-judicial stamp paper in the specified format (Annexure - D) – in the name of Pr. Controller of Accounts (Fys) / Controller of Finance & Accounts (Fys) of the concerned Group of Factories. The performance security deposit will remain valid upto 3 months from the date of receipt of last consignment. Failure to submit performance security may entail cancellation of contract and EMD will be forfeited for unregistered firms whereas in case of others the concerned registering agency will be informed for appropriate action. Performance Security will be forfeited and credited to the Govt. in the event of breach of contract.

SSI Units registered under NSIC will be exempted from submission of PS/ SD up to the monetary limit for which the unit is registered as per Development Commissioner, SSI, Min. of Small Scale Industries, Govt. of India letter vide F. No. 22(1)/ 2003/ EP&M dt. 29/7/2003.

16.3 DELIVERY :-

16.3.1 Time is the essence of the contract. The tenderer shall quote his best and earliest delivery so that machine is available at site at the earliest. The time schedule for the delivery of the Plant and equipment, civil engineering erection and putting into commission as specified in technical specification should be indicated suitably in the tender. Tenderer will submit a BAR CHART in this regard showing detailed activities for execution of the order if any and their time schedule for consideration of the purchaser.

16.3.2 Delivery quoted should be guaranteed

16.3.3 The tenderer will be responsible for co-ordinated delivery and erection of the complete plant, equipment and materials both from outside India and from indigenous sources and he shall ensure deliveries in the sequence in which they will be required for erection at site.

16.4 **L.D. CLAUSE**

16.4.1 If the contractor fails to deliver the stores or any installment thereof within the period fixed for such delivery or at any time repudiates the contract before the expiry of such period, the General Manager may without prejudice to the right of the Purchaser (the Factory) recover damages for breach of contract.

16.4.2 In the event of the seller's failure to have the stores delivered by the date/ dates specified in the contract, the buyer may, at his discretion withhold any payment until the whole of the stores have been supplied and the buyer may also deduct from the seller as agreed, liquidated damages and not by way of penalty the sum of **0.5%** of the contract price of the undelivered store for each and every week and part of a week for which the stores have been delayed subject to maximum of **5%** of the value of delayed store, in case the delay in delivery is acceptable to the buyer.

16.5 **PACKING:**

16.5.1 **FOR INDIGENOUS MACHINE:-**

16.5.1.1 The Contractor must ensure that sturdy packing is used to withstand rough handling during transit by rail/road. The Contractor will be responsible for internal damages if any, when outwardly there is no damage to the package.

16.5.2 **FOR IMPORTED MACHINE:-**

16.5.2.1 The packing must be such that it is able to withstand the vagaries of weather, shipping and roughness of handling by port labour, cranes and fork-lifts.

16.5.2.2 The consignments as far as possible must be shipped in containers (FCL/LCL). Shipment shall be arranged by Indian Flag Vessels only & not by vessels belonging to Pakistan or managed by Pakistani Crews or touching Pakistani Ports. Transshipment is not permitted.

16.5.2.3 In case the supplier fails to meet the qualitative requirements for packing, he must make good all losses arising out of his failure to meet contractual obligations. The contractor will be responsible for internal damages if any, when outwardly there is no damage to the package.

16.5.3 **MARKINGS: (COMMON FOR INDIGENOUS/ IMPORTED MACHINE).**

16.5.3.1 The following markings on two opposite faces and top side should be stenciled in legible ink on the packing cases containing the consignments at the time of dispatch:

Contract No & Date.
Full address of consignee.
Port of landing/Rly siding of the consignee.
Total No. of packages & Sl No of each packing case.
Up right arrow.
Gross weight.
Special marking for case.
Brief nomenclature of equipment.
Slinging position.

16.5.4 **PACKING DOCUMENTS: (COMMON FOR INDIGENOUS/ IMPORTED MACHINE).**

- 16.5.4.1 The following documents will be kept in the packing case:-
a) Packing List/Invoice.
b) Pre-delivery inspection certificate.

16.6.1 **STANDARD TERMS OF PAYMENT: (Applicable to FOR Supplies):**

I. Payment Terms for **CONVENTIONAL MACHINES/ EQUIPMENTS:**

90% value of material plus 100% Taxes, Duties if any, will be paid after acceptance in Pre-dispatch inspection of machine at Firm's works and on receipt of machine in safe condition at Purchaser's end. Freight charges will be payable on actuals against documentary evidence but not exceeding as quoted by the firm.

Balance 10% value of material plus 100% Erection & Commissioning (E&C) charges after commissioning and final acceptance on furnishing of Performance Bank Guarantee (PBG) for 10% value of contract valid till expiry of warranty period.

II. Payment Terms for **UNTOOLED UP CNC MACHINES AND TOOLED-UP CNC & OTHER MACHINES.:**

80% value of material plus 100% Taxes, Duties if any, will be paid after acceptance in Pre-dispatch inspection of machine at Firm's works and on receipt of machine in safe condition at Purchaser's end. Freight charges will be payable on actuals against documentary evidence but not exceeding as quoted by the firm.

Balance 20% value of material plus 100% Erection & Commissioning (E&C) charges after commissioning and final acceptance on furnishing of Performance Bank Guarantee (PBG) for 20% value of contract valid till expiry of warranty period.

III. Payment Terms for **FURNACES & SURFACE TREATMENT PLANTS:**

80% value of material plus 100% Taxes, Duties if any, will be paid after acceptance in Pre-dispatch inspection of machine at Firm's works and on receipt of machine in safe condition at Purchaser's end. Freight charges will be payable not exceeding as quoted by Firm on actuals against documentary evidence but not exceeding as quoted by the firm.

10% value of material plus 100% Erection & Commissioning (E&C) charges after commissioning of the equipment at purchaser's end.

Balance 10% value of material after final acceptance on furnishing of Performance Bank Guarantee (PBG) for 20% value of contract valid till expiry of warranty period.

16.6.2 **TERMS OF PAYMENT:** (Applicable in case of **FOB** Suppliers).

- (a) Payment will be made through irrevocable Letter of Credit only for 100% value of the order established on scheduled bank in India. In case of payment through confirmed LC, the charges of confirmation will be borne by the Tenderer. Purchaser will establish LC only three months prior to the actual date of delivery/ shipment. In case tenderer insists establishment of LC immediately after conclusion of contract/ placement of order irrespective of delivery/ shipment schedule, LC will be established by the purchaser immediately after conclusion of contract for a period of three months with a provision in LC that cost of further extension or validity of LC will be borne by the beneficiary and the issuing bank will be advised accordingly while amending the LC.
- (b) If any extension of the Letter of Credit (LC) is required due to the fault of the supplier, the supplier will have to pay for such extension.

(c) I. **Payment Terms for CONVENTIONAL MACHINES/
EQUIPMENTS**

90% value of FOB supply, services including training charges at firm's premises, if any, will be paid after acceptance in Pre-dispatch inspection of machine at Firm's works against dispatch documents i.e bill of lading / airway bill, acceptance certificate by PDI team etc.

Balance 10% value of FOB supply and services at firm's works plus 100% Erection & Commissioning (E&C) charges after commissioning and final acceptance on furnishing of Performance Bank Guarantee (PBG) for 10% value of contract valid till expiry of warranty period.

II. **Payment Terms for UNTOOLED UP CNC MACHINES
AND TOOLED-UP CNC & OTHER MACHINES.:**

80% value of FOB supply, services including training charges at firm's premises, if any, will be paid after acceptance in Pre-dispatch inspection of machine at Firm's works against dispatch documents i.e bill of lading / airway bill, acceptance certificate by PDI team etc.

Balance 20% value of FOB supply and services at firm's works plus 100% Erection & Commissioning (E&C) charges after commissioning and final acceptance on furnishing of Performance Bank Guarantee (PBG) for 20% value of contract valid till expiry of warranty period.

III. **Payment Terms for FURNACES & SURFACE
TREATMENT PLANTS:**

80% value of FOB supply, services including training charges at firm's premises, if any, will be paid after acceptance in Pre-dispatch inspection of machine at Firm's works against dispatch documents i.e bill of lading / airway bill, acceptance certificate by PDI team etc.

10% value of FOB supply and services at firm's works plus 100% Erection & Commissioning (E&C) charges after commissioning of the equipment at purchaser's end.

Balance 10% value of FOB supply and services at firm's works after final acceptance on furnishing of Performance Bank Guarantee (PBG) for 20% value of contract valid till expiry of warranty period.

16.7 **PURCHASE AND PRICE PREFERENCE POLICY**

- 16.7.1 **PURCHASE PREFERENCE POLICY**
The provision relating to purchase preference policy as per Government of India, Ministry of Heavy Industries and Public Enterprises, Department of Public Enterprises circular No. DPE/13 (12) 2003-FIN. Vol. II dt.18-07-05 and as amended up to date will be applicable to CPSE.
- 16.7.2 **PRICE PREFERENCE POLICY**
The provision relating to price preference policy as per Govt. of India, Min. of Small Scale Industries, letter vide F. No. 22(1)/ 2003/ EP&M dt. 29/7/2003 and as amended up to date will be applicable to SSI units registered with NSIC. However, such a preference will be considered strictly on merit in such a manner as to discourage inflation and prevent profiteering and creation of sense of self complacency in economy.
- 16.8 **GUARANTEE AND WARRANTY OF SUPPLIES:**
- 16.8.1 **Guarantee :-**
The supplier shall guarantee among other things the following :
(a) Satisfaction of technical and other parameters mentioned in the specification and contract.
(b) Quality and strength of materials used in the manufacture of the equipment considering the applicable codes of practice and regulation.
(c) Adequate factors of safety for all parts of the equipment to withstand the mechanical and/ or electrical stresses developed therein under specific operating conditions.
(d) Performance data furnished/ specified for the equipment should be actually obtainable when the equipment is installed and tested at site.
- 16.8.2 **Warranty :-**
(a) The supplier shall warranty that the equipment will be in accordance with the specification/ contract suitable in design and workmanship for conditions envisaged in the specification.
(b) The supplier shall warrant that the equipment will be free from defects in design, material or workmanship.
(c) Supplier's obligations under the warranty, shall involve repair, rectification and making good at site the defect, imperfection or fault attributable to defective design, material or workmanship.
(d) Inspection by purchasers representatives at various stages would not relieve the supplier of his obligations under the warranty.

(e) The contractor/ seller hereby declares that the goods/ store/ articles sold/ supplied to the purchaser under this contract shall be of best quality and workmanship and new in all respects and shall be strictly in accordance with the specifications and particulars contained/ mentioned in the said contract. The goods/ stores/ articles would continue to conform to the description and quality aforesaid for a period of twelve months from the date of final commissioning of the said goods/ stores/ articles to the purchaser or 18 months from the date of shipment/ dispatch from the contractor's works, whichever is earlier and that notwithstanding the fact that the purchaser (Inspector) may have inspected and/ or approved the said stores/ articles. If during the aforesaid period of 12/ 18 months the said goods/ stores/ articles be discovered not conforming to the description and quality aforesaid or not satisfactory performing or have deteriorated, the decision of the purchaser in that regard shall be final and binding on the contractor/ Seller. The purchaser shall be entitled to call upon the contractor/ seller to rectify the goods/ stores/ articles or such portion/ portions thereof as is found to be defective within the reasonable period or such specific period as may be allowed by the purchaser in his discretion on an application made thereon by the contractor/ seller and in such an event the above mentioned warranty period shall be applied to the goods/ stores/ articles rectified from the date of rectification thereof, otherwise the contractor/ seller shall pay to the purchaser such compensation, as may arise from breach of the warranty herein contained.

16.9 ARBITRATION CLAUSE (for FOR Suppliers):-

16.9.1 ARBITRATION CLAUSE for FOR Suppliers (OTHER THAN PUBLIC ENTERPRISES/ GOVT. DEPARTMENTS) :

- (a) All the disputes and differences arising out of or in any way touching or concerning this agreement (except those for which specific provision has been made therein) shall be referred to Sole Arbitrator to be appointed by Director General Ordnance Factories, Government of India. The Arbitrator so appointed shall be a Government servant who had not dealt with the 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. for the time being or a Govt. Servant appointed by him the appointee shall not be Govt. Servant who had dealt with the matters to which this agreement relates and that in the course of his duties as Govt. Servant he had not expressed views on all or any of the matter in dispute or difference. The Award of the Sole Arbitrator shall be final and binding on the parties.
- (b) The Arbitration shall be as per Arbitration Act 1996 or any statutory modification thereof.
- (c) The venue of Arbitration shall be (place of factory)

16.9.2 ARBITRATION CLAUSE - FOR Suppliers (FOR PUBLIC ENTERPRISES/ GOVT. DEPARTMENTS) :

In the event of any dispute or difference relating to the interpretation and application of the provisions of the contract, such dispute or difference shall be referred by either party for Arbitration to the sole Arbitrator in the Department of Public Enterprises to be nominated by the Secretary to the Govt. of India in-charge of the Department of Public Enterprises. The Arbitration and Conciliation Act 1996 shall not be applicable to arbitration under this clause. The award of the Arbitrator shall be binding upon the parties to the disputes, provided however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law and Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary/ Additional Secretary, when so authorized by the Law Secretary, whose decision shall bind the Parties finally and conclusively. The Parties to the dispute will share equally the cost of arbitration as intimated by the Arbitrator. (Ref- Min. of HI & PE OM No. 1(24)/ 2005-DPE (PMA) dt. 22/1/04)

16.10 ARBITRATION (for FOB Suppliers):-

- (a) All disputes of differences arising out of or in connection with the present Contract, including the cases connected with the validity of the present Contract or any part thereof, shall be settled by bilateral discussions.
- (b) Any dispute, disagreement or any question arising out of or relating to the Contract or relating to the construction or performances (except as to any matters the decision or determination whereof is provided for by these conditions) which cannot be settled amicably shall within 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 still exists will be referred to the Arbitration Tribunal consisting of three Arbitrators.
- (c) Within 60 (Sixty) days of the receipt of the notice, one Arbitrator shall be nominated in writing by the SELLER and one Arbitrator shall be nominated in writing by the BUYER.
- (d) The third Arbitrator, who shall not be citizen or domicile of the country of either of the parties or of any other country unacceptable to any of the parties, shall be nominated by mutual consent of the parties within 90 (Ninety) days of the receipt of the notice mentioned above failing which the third Arbitrator may be nominated by the President of the International Chamber of Commerce at the request of either party but the said nomination would be after consultation with both the parties and shall preclude any citizen or domicile of any country as mentioned above from being so nominated. The Arbitrator nominated under this clause 4 shall not be regarded nor would act as Umpire.

- (e) The Arbitration Tribunal shall have its seat in New Delhi or such other place in India as may be mutually agreed to between the parties.
- (f) 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.
- (g) The decision of the majority of the Arbitrators shall be final and binding on the parties to this contract.
- (h). Each party shall bear its own cost of preparing and presenting its case. The cost of Arbitration including the fees and expenses of the third Arbitrator shall be shared equally by the SELLER and the BUYER.
- (i) 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.
- (j) In the event of one of the parties failing to nominate its Arbitrator 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.
- (k) If the office of the third Arbitrator falls vacant, his substitute shall be nominated according to the provisions herein above stipulated.
- (l) The parties shall continue to perform their respective obligations under this contract during the pendency of the Arbitration Proceedings except in so far as such obligations are the subject matter of the said Arbitration Proceedings.

16.11 FOR IMPORTED MACHINE ONLY:

- (a) For machines of imported nature involving payment in Foreign Exchange, have to be quoted by the Foreign Manufacturer/Supplier directly to General Manager, _____ (India) without associating Indian Agents, if any, on FOB price stating the Port of shipment.
- (b) Tenderer to confirm that their quoted price does not include payment of Agency Commission to any third party.
- (c) Tenderer should also confirm in their offer that Export License, if required, would be arranged by the Tenderer.

16.12 *PENALTY FOR USE OF UNDUE INFLUENCE*

- 16.12.1 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 contract or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the contract or any other contract with the Government for showing or forbearing to show favour or dis-favour to any person in relation to the contract or any other contract with the Government. Any breach of the aforesaid undertaking by the seller or any one employed by him or acting on his behalf (whether with or without the knowledge of the seller) or the commission of any offense 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 1947 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 has been committed shall be final and binding on the seller.
- 16.12.2 Giving or offering of any gift, bribe or inducement or any attempt to 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 the decision of the buyer directly or indirectly or any attempt to influence any officer/employee of the buyer for showing any favor 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.

16.13 *AGENTS/ AGENCY COMMISSION:*

16.13.1 The seller confirms and declares to the buyers that the seller is the original manufacturer of the stores 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 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 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 the rate. The buyer will also have the right to recover any such amount from any contracts concluded earlier with the Government of India.

16.14 *ACCESS TO THE BOOKS OF ACCOUNTS:*

16.14.1 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 document/information.

16.15 *INTEGRITY PACT*

16.15.1 An “**Integrity pact**” would be signed between MOD and the bidder for purchases exceeding **Rs. 100 Crores**. This is a binding agreement between the agency and bidders for specific contracts in which the agency promises that it will not accept bribes during the procurement process and bidders promise that they will not offer bribes. Under the **IP**, the bidders for specific services or contracts agree with the procurement agency or office to carry out the procurement in a specific manner. The essential elements of the **IP** 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 the 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 violations.

- (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 tender submission or upon demand of the principal, specially when a suspicion of a violation by the 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 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 behavior and compliance programme for the implementation of the code of conduct through out the company.

GUARANTEES & CO-ACCEPTANCES
GUARANTEE BOND

Bank Guarantee No. :
Bank Guarantee Amount:
Bank Guarantee cover From:to.....
Last date of lodgement of claim:

To,
The Principal Controller of Accounts (Fys)/
The Controller of Accounts (Fys),
.....
.....

- 1 In consideration of the President of India (herein after called 'the Government') having agreed to exempt _____ [herein after called 'the said contractor(s)'] from the demand, under the terms and conditions of an Agreement dated _____ made between _____ and _____ for _____ (herein after called 'the said Agreement') of Security Deposit for the due fulfillment by the said Contractor(s) of the terms and conditions contained in the said Agreement, on production of a Bank Guarantee for Rs. _____ (Rupees _____ only) . We referred to (indicate the name of the bank as 'the Bank') at the request of _____ [contractor(s)] do hereby undertake to pay to the Government an amount not exceeding Rs. _____ against any loss or damage caused to or suffered or would be caused to or suffered by the Government by reason of any breach by the said Contractor(s) of any of the terms or conditions in the said Agreement.
2. We _____ (indicate the name of the bank) do hereby undertake to pay the amounts due and payable under this guarantee without any demur, merely on a demand from the Government stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the Government by reason of any breach by the said Contractor(s) of any of the terms or conditions in the said Agreement or by reason of the contractor(s)' failure to perform the said Agreement. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs. _____.
3. We undertake to pay to the Government any money so demanded notwithstanding any dispute or disputes raised by the contractor(s) / supplier(s) in any suit or preceding pending before any Court or Tribunal relating thereto our liability under this present being absolute and unequivocal.

4. We _____ (indicate the name of the Bank) further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Agreement and that it shall continue to be enforceable till all the dues of the Government under or by virtue of the said Agreement have been fully paid and it's claim satisfied or discharged or till _____ Office/ Department/ Ministry of _____ certifies that the terms and conditions of the said Agreement have been fully and properly carried out by the said contractor(s) and accordingly, discharges this guarantee. Unless a demand or claim under this guarantee is made on us in writing on or before the _____ we shall be discharged from liability under this guarantee thereafter.
5. We _____ (indicate the name of the Bank) further agree with the Government that the Government shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extend time of performance by the said contractor(s) from time to time or to postpone for any time or from time to time any of the powers exercisable by the Government against the said contractor(s) and to forbear or enforce any of the terms and conditions relating to the said Agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said contractor(s) or for any forbearance, act or omission on the part of the Government or any indulgence by the Government to the said contractor(s) or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.
6. This guarantee will not be discharged due to the change in the constitution of the Bank or the contractor(s)/ supplier(s).
7. We, _____ (indicate the name of the Bank) lastly undertake not to revoke this guarantee during it's currency except with the previous consent of the Government in writing.
8. Dated the _____ day of _____ for _____ (indicate the name of the Bank).

Compliance Statement**Annexure - E**

<u>I. Instruction to Tenderers</u>			
Para of instruction to tenderers	Details	Compliance Yes or No.	In case of noncompliance, deviation to be indicated.

<u>II. Technical specification</u>			
Para of technical specification	Details	Compliance Yes or No.	In case of noncompliance, deviation to be indicated.

<u>III. General condition of contract.</u>			
Para of General condition of contract	Details	Compliance Yes or No.	In case of noncompliance, deviation to be indicated.

Check List Compliance Report**Annexure - F**

<u>Sl No.</u>	Description	Firm's Remarks Yes/No	In case of noncomplian ce, deviation to be indicated
--------------------------	--------------------	--------------------------------------	---

Submission of EMD

Confirmation for submission of performance security deposit .

Validity 180 days from the date of opening of tender documents.

Delivery period.

Warranty period

Submission of un priced copy of price bid along with technical bid.

Para-wise compliance statement.

Confirmation regarding scope of supply and prices available against each item in price bid as per scope of supply mentioned in the technical specification.

Payment terms.

Submission of catalogues / Drawing of the proposed machines.

Submission of Customers list / Reference list to whom the similar / proposed machines supplied by the tenderer .

Submission of test chart of the proposed machines.

Confirmation to risk purchase and L.D. clauses.

Confirmation to General Condition of contract Clause No. 16

MANUFACTURER'S RECOMMENDED LIST OF SPARES (MRLS)

EQUIPMENT: _____

Original Equipment Manufacturer (OEM)

Manufacturer's Part No	Source of Supply	Nomenclature	Nos fitted in one equipment	Spare Parts List (ISPL) as per TE	Unit Cost	Recommended scale for spare parts		Total Cost		REMARKS
						Unit	Cost	As per T..E	As per Recommended list of spares	
Total Cost										

Notes

- Maintenance spares/stores like lubricants, sealing compound, gases should be given separately giving source of supply.
- In 'Remarks' column Following information (if applicable) be given
 - If an item has a shelf / operational life it may be indicated ;
 - Matching set of components be indicated.
 - Items which can not be manufactured in India due to sophisticated design/technology may be indicated.
 - If a component/ assembly is common to other similar equipment offered by the OEM earlier these should be indicated.
- Modules / assemblies should be listed and their components should be included under them so as to relate each item of spare to their module / assembly.

PROFORMA FOR BANK GUARANTEE IN LIEU OF EARNEST MONEY DEPOSIT

(To be submitted on non judicial stamp paper of appropriate value purchased in the name of the issuing Bank)

This deed of guarantee made this _____ day of _____, INR _____(INR _____only) between _____ (name of Banker) having its registered office at _____ (place) and one of its local office at _____(herein after referred to as the surety) and Ordnance Factory _____on behalf of President of India (herein after referred to as the Government.

WHEREAS _____ (Tenderer's name hereinafter referred to as 'Tenderer') a company registered under _____ and having its registered office at _____ is bound to deposit with the Government by way of earnest money INR _____ (INR _____ only) in connection with its Tender for supply, installation, commissioning and testing of _____ and the specifications and terms and conditions enclosed therein.

WHEREAS the tenderer as per instructions to tenderers and special conditions has agreed to furnish a Bank Guarantee valid up to _____ instead of deposit of earnest money in cash.

NOW THIS WITNESSETH :

1. That the Surety in consideration of the above Tender made by the Tenderer to the Government hereby undertakes to guarantee payment on demand without demur to the Government the said amount of INR _____ (INR _____ only) within one week from the date of receipt of the demand from the Government on presentation of this deed of guarantee.
2. This guarantee shall not be affected by any infirmity or irregularity on the part of the Tenderer or by the dissolution or any change in the constitution of the Government, Tenderer or the Surety.
3. The Government shall be eligible to make any claim under this guarantee if the Tenderer after submitting his Tender, rescinds from his offer or modifies the terms and conditions thereof in a manner not acceptable to the Government or expresses his unwillingness to accept the order after the Government has decided to place order with the Tenderer
4. The Surety shall not and cannot revoke this guarantee during its currency except with previous consent of the Government in writing.
5. Notwithstanding anything contained in foregoing, the Surety's liability under the guarantee restricted to INR _____(INR _____only) .

6. This guarantee shall remain in force and effective up to_____ and shall expire and become in effective on intimation thereof being given to the Surety by the Government in which event this guarantee shall stand discharged.
7. The Surety will make the payment pursuant to the demand notice issued by the Government notwithstanding any dispute that may exist or arise between the Tenderer and the Government.
8. Any forbearance, act or omission on the part of Tenderer in enforcing any of the conditions of the said Tender or showing of any indulgence by the Government to the Tenderer shall not discharge the Surety in any way and the obligation of the Surety under this guarantee shall be discharged only on the intimation thereof being given to the Surety by the Government.
9. Notwithstanding anything contained hereinabove, unless a demand or claim under this guarantee is made on the Surety in writing on or before_____, the Surety shall be discharged from all liabilities under guarantee thereafter.
10. The Surety has the power to issue this guarantee under its Memorandum and Articles of Association and the person who is hereby executing this deed has the necessary power to do so under the power of Attorney granted to him by the Surety

SIGNED AND DELIVERED
For and on behalf of above named Bank

For and on behalf of
(Banker's Name and Seal)

Branch Manager
(Banker's Seal)