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Aviation/ Aerospace Roundup

SEPTEMBER 2016

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INDIAN DEFENCE PROCUREMENT PROCEDURE 2013 v/s 2016 – A COMPARATIVE OVERVIEW

Defence Procurement Procedure (**DPP**) is a set of guidelines approved by Defence Acquisition Council (**DAC**) for procurement of defence equipment and technology by private players. In DPP 2013, the aim was to ensure expeditious procurement and demonstrate higher degree of probity, public accountability, transparency in operations, free competition and impartiality while achieving the goals of self-reliance in defence equipment. As opposed to this and taking a major step forward, for the first time DPP 2016 has a **Preamble**, which sets the tone of the document and clearly identifies the following elements –

- Defence acquisition is not a standard open market commercial form of procurement and has certain unique features such as supplier constraints, technological complexity, foreign suppliers, high cost, foreign exchange implications and geo-political ramifications.
- On one hand the defence procurement has to maintain the highest standards of transparency, probity and public accountability, on the other hand it has to maintain a balance between competing requirements such as expeditious procurement, high quality standards and appropriate costs needs to be established.
- Self-reliance is a major corner-stone on which the military capability of any nation must rest and it is necessary to attain self-reliance in design, development and manufacturing in defence sector. SO, focus is on Make in India.
- Enhancing the role of MSMEs in defence sector is one of the defining features of DPP.
- The DPP favour swift decision making, provides for suitable timelines and delegates powers to the appropriate authorities to ensure an efficient and effective implementation of the procurement process, by all stakeholders concerned.

In continuation of our last edition of Update, we bring to you a comparative of 2013 and 2016 DPP.

BASIS	DPP 2013	DPP 2016
Capital acquisition under the BUY decision	• BUY signifies an outright purchase of the equipment. • Based on the source of procurement this category would be classified as Buy (Indian) and Buy (Global). • "Indian" would mean Indian vendor only and "Global" would mean foreign as well as Indian vendors. • Under the Buy (Indian) category it must have minimum 30% indigenous content ("**IC**") on cost basis and a minimum 30% would also be required in (i) basic cost of equipment; (ii) cost of manufacturers' recommended list of spares; and (iii) cost of special maintenance tools and special test equipment of "Evaluation Criteria & Price bid Format" taken together provided a minimum 30% IC is ensured in the basic cost of equipment at all stages of contract, including the FET stage.	• Introduced a new procurement category, Buy **(Indian–Indigenously Designed, Developed and Manufactured), or Buy (Indian – IDDM).** • In terms of prioritization, the new category, is placed above the existing Buy (Indian). • Under the new category, indigenously designed equipment with 40% IC, or equipment not necessarily designed in-house but having a 60% IC, is intended for procurement from the local industry. • Under the Buy (Indian) category it must have minimum 40% IC on cost basis and a minimum 30% would also be required in (i) basic cost of equipment; (ii) cost of manufacturers' recommended list of spares; and (iii) cost of special maintenance tools and special test equipment of "Evaluation Criteria & Price bid Format" taken together at all stages of contract, including the FET stage.

Capital acquisition under the BUY & MAKE decision	• Acquisitions covered under BUY & MAKE would mean purchase from a foreign vendor followed by licensed production/ indigenous manufacture in the country.	• BUY & MAKE category refers to an initial procurement of equipment in Fully Formed (FF) state from a foreign vendor, in quantities as considered necessary, followed by indigenous production through an Indian Production Agency (PA), in a phased manner involving Transfer of Technology (ToT) of critical technologies as per specified range, depth and scope, to the PA. With a view to maximize indigenous production in each procurement case, the AoN according authority would approve either an appropriate ratio of FF, Completely Knocked Down kits (CKD), Semi Knocked Down kits (SKD) and Indigenous Manufacture (IM) kits; or a minimum % of IC on cost basis for the Make portion of acquisitions under Buy and Make category. Acquisition under this category can also be carried out without any initial procurement of equipment in FF state.
Capital acquisition under the BUY & MAKE Indian decision	• Acquisitions covered under the Buy & Make (Indian) decision would mean purchase from an Indian vendor (including an Indian company forming JV/establishing production arrangement with OEM), followed by licensed production or indigenous manufacture in India. • Buy & Make (Indian) must have minimum 50% IC on cost basis. This implies that IC in the total must be at least 50% of the total contract value. • In addition, such cases require minimum 30% indigenous Indian content in the first basic equipment made/assembled in India and in subsequent deliveries thereof. However, no minimum IC shall be required for the 'Buy' portion of the contract, in case a 'Buy' portion is approved at the stage of accord of Acceptance of Necessity.	• Buy & Make (Indian) category refers to an initial procurement of equipment in FF state in quantities as considered necessary, from an Indian vendor engaged in a tie-up with a foreign OEM, followed by indigenous production in a phased manner involving ToT of critical technologies as per specified range, depth and scope from the foreign OEM. • Under this category of procurement, a minimum of 50% IC is required on cost basis of the Make portion of the contract. This implies that in the Make portion of the contract, minimum 50% IC will be required in the total of (a) basic cost of equipment; (b) cost of manufacturers' recommended list of spares; and (c) cost of special maintenance tools and special test equipment. • Acquisition under this category can also be carried out without any initial procurement of equipment in FF state. • Also, requirement of minimum 30% indigenous Indian content in the first basic equipment made/assembled in India and in subsequent deliveries thereof is not needed.
Capital acquisition under the MAKE decision	• The Defence Procurement Procedure 'Make' will cover all capital acquisitions of High Technology Complex Systems and upgrades undertaken by indigenous R&D and Design. A minimum 30% IC on cost basis shall be required in such cases in the successful prototype.	• Under the new DPP, Make (Indian) category has been divided into two parts. One is 90% government funded (previously 80%), while the second is industry funded. Project under Rs 10 Cr within government funded and projects under Rs 3 Cr. within industry funded are reserved for MSMEs (Micro, Small & Medium Enterprises). • For projects under make category, only firms with majority stake and controlled by Indian residents will be eligible.

Definition of Indian Vendor	DPP 2013 does not clearly define an Indian Vendor.	An Indian entity (*which could include incorporation, ownership model, and proprietorship, among others*) that is established under the Companies Act or any other applicable regulations. The definition does not, however, mean that all Indian vendor are eligible to participate in all types of defence tenders. DPP divides Indian vendors into two categories: one for defence products requiring industrial licence (**IL**) and the other for not requiring IL. As DIPP has already announced a list of defence products that are subject to IL so only the companies in the first category could participate in almost all defence tenders (*subject to certain restrictions under the 'Make' procedure*), whereas companies falling under the second category can participate in tenders involving non-licensable items only.
Hike in Offset Threshold Limit	The offset threshold limit was Rs. 300 crores.	The offset threshold limit is Rs. 2,000 crores. So, if a foreign vendor sells arms to India, then it has to invest 30% of procurement cost directly or indirectly into Indian firms. Now if the foreign vendor's equipment cost is Rs. 2000 crores or greater, then, it needs to invest 30% of the deal in Indian firms directly or indirectly.

Technical Evaluation in Processing of Offset Proposals	• The TOEC will scrutinize the technical offset proposals (excluding proposals for Technology Acquisition by DRDO) to ensure conformity with the offset guidelines. For this purpose, the vendor may be advised to undertake changes to bring his offset proposals in conformity with the offset guidelines. • The TOEC will be expected to submit its report within 4-8 weeks of its constitution.	• The TOEC will scrutinize the technical offset proposals (excluding proposals for Technology Acquisition by DRDO as per Para 8.3) to ensure conformity with the offset guidelines. For this purpose, the vendor may be advised to undertake changes to bring his offset proposals in conformity with the offset guidelines. • During TOEC, the vendor is expected to provide details pertaining to IOP wise work share, specific products and supporting documents indicating eligibility of IOPs in addition to conformity with other clauses in the offset guidelines. If the vendor is unable to provide these details at the time of the TOEC, the same may be provided to Defence Offset Management Wing (**DOMW**) either at the time of seeking offset credits or one year prior to discharge of offset obligations through that IOP. • If the vendor submits the required documents at the time of seeking offset credits, DOMW will establish eligibility of IOP, product and offset discharge avenue along with other compliance issues and if, found ineligible on any count, penalty will be imposed by treating the transactions as invalid. • If the vendor submits the required documents one year prior to discharge of offset obligations through a particular IOP, the final decision regarding admissibility of proposal shall be intimated by DOMW within three months of receipt of complete documents. If the proposal is found ineligible the vendor incurs the risk of re-phasing with consequent enhancement of 5 % in obligations, in case, the annual commitments change due to such ineligibility. • The TOEC will be expected to submit its report within 4-8 weeks of its constitution.
Exchange Rate Variation	Exchange Rate variation shall be applicable for Rupee contracts with Indian Vendors, based on RFPs issued under the category 'Buy (Global)'. ERV, however shall not be applicable in cases categorized as 'Buy (Indian)' except for DPSUs in ab-initio Single Vendor cases or when nominated as PA.	Rate variation shall be applicable for Rupee contracts with Indian Vendors, based on RFPs issued under all categories of capital acquisitions mentioned at Para 6 to 11 of Chapter I of DPP. The indigenous & import components as also the various currencies (of the import components) for ERV purposes, must be determined in advance.
Parameters while formulation of ERV Clause	In contracts with Indian Vendors in 'Buy (Global)' cases where there is an import content, ERV clause will be provided. It shall, however, not be applicable in 'Buy (Indian)' cases except for Defence PSUs in ab-initio Single Vendor cases or when nominated as PA.	In contracts with Indian Vendors in all categories of capital acquisitions where there is an import content, ERV clause will be provided. However, ERV clause shall not be applicable to contracts in following conditions: (i) The delivery period is less than one year; or (ii) The rate of exchange variation is within the band of +/- 2.5%.

Change in IOP or Offset Component	In exceptional cases, DOMW may recommend change in offset partner or offset component on being convinced that the change is necessary to enable the vendor to fulfil offset obligations. Any change in IOP/offset component of a Tier-I sub-vendor will have to be forwarded to DOMW through the main/prime vendor. The overall value of offset obligations shall, however, remain unchanged. Any change in the IOP shall be approved by the Secretary (Defence Production). Any change in the offset component will require approval of the Raksha Mantri based on the recommendations of the Defence Procurement Board.	DOMW may recommend change in offset partner or offset component on being convinced that the change is necessary to enable the vendor to fulfil offset obligations. Any change in IOP/offset component of a Tier-1sub-vendor will have to be forwarded to DOMW through the main/prime vendor. The overall value of offset obligations shall, however, remain unchanged. Any change in the IOP and offset component shall be approved by the Secretary (Defence Production).
Solicitation of Offers	• Solicitation of offers will be as per 'Single Stage -Two Bid System'. • Cases in which bids had been submitted by more than one bidder in a competitive manner, and the Staff Evaluation after trials shortlists only one equipment for introduction into service, would not be considered as a single vendor situation, as the techno-commercial offers would have been received before trials and the commercial bids were competitive in nature. Bidders had submitted their offers in an open competition and were not aware of any single bidder getting approved after the trials.	• Accepting the uniqueness of defence procurement, DPP-2016 has incorporated two provisions – 'single OEM, multiple bids' and 'multiple bids by single Indian vendor' – in which although the bids are single-vendor in nature they would not be retracted because of lack of competition. • The first case is likely to arise in 'Buy and Make (Indian)' category in which a single foreign original equipment manufacturer (OEM) offers the same product through multiple bids in collaboration with a number of Indian companies. In such a situation, the new provision allows the authorities to continue with the procurement process, provided that the DAC, the highest decision-making body of the defence ministry, decides that changes in the RFP condition will not invite participation of any more foreign vendors. • The second case is likely to arise under the 'Buy and Make' procurement category in which one Indian company submits multiple bids in collaboration with a number of foreign vendors. Such a case is now acceptable under the new DPP. The main argument for accepting such a case as not a single vendor situation is that the technical and commercial arrangement of one foreign vendor would vary from that of others.
Reduced Validity and Sanctity of AoN	Earlier, the validity of AoN for the re-tracked RFP was increased by one year from the date of retraction, causing unpredictable delay and lack of accountability in the procurement process, delay and lack of accountability in the procurement process.	In a move to cut down the procurement time frame under the 'Buy' and 'Buy and Make' schemes, the new DPP makes two subtle changes, one by reducing the validity of the AoN from the earlier one year to six months, and the other by making the validity period sacrosanct. The reduced validity of AoN would mean that the RFP has to be issued within six months (from the date sanction of AoN), failing which the SHQ would "re-validate the case and seek fresh AoN with due justification for not processing the case in time." Making the AON validity sacrosanct, the new provision makes it mandatory for the SHQs to re-issue any retracted RFP within the original validity of AoN.

Introduction of L1-T1 Methodology for Award of Contracts	The CNC would prepare a Comparative Statement of Tenders (CST) with a view to evaluate the technically acceptable offers and determine the lowest acceptable offer (L1 Vendor). In multi-vendor cases, on opening of commercial offers, once L1 vendor is identified, the contract should be concluded with him and normally there would be no need for any further price negotiations. However, it is important that the reasonability of the prices being accepted for award of contract should be established. In case it is found that the lowest tenderer (L1) is not able to supply the entire quantity within the prescribed time-frame, the CNC will have the right to divide the quantity amongst other qualified tenderers.	DPP-2016 has, for the first time, introduced the L1-T1 methodology for selecting the supplier of military goods under the 'Buy' and 'Buy and Make' schemes. The new methodology, in essence, means that the final bidder would not necessarily be selected on the basis of lowest price quoted by the technically-compliant vendors (the so-called L1 methodology), but by a combination of price and superior technology offered by qualified vendors. The new methodology is intended to buy equipment with Enhanced Performance Parameters (EPP) – a newly introduced feature – which are a notch higher than the Essential Parameters required to be mandatorily met by all the suppliers participating in MoD tenders, in order to stay in competition.
Annual Acquisition Plan(AAP)	AAP of each service would be a two-year roll on plan for capital acquisitions and would consist of the schemes from approved five year Services Capital Acquisition Plan (SCAP)	AAP of each service would consist of two sections: (a) a two-year roll on plan for capital acquisitions and would consist of the schemes from approved SCAP; (b) a two-year roll on plan for schemes under the Make category.
Certification and Payments	In DPP 2013, only in case of Buy (Indian), an Indigenisation Plan was required to be submitted by vendor to meet the requirement of IC.	In DPP 2016, an Indigenisation Plan for Buy (Indian-IDDM), Buy (Indian), Buy & Make (Indian) and Buy & Make cases will be required to be submitted by the vendor to meet the requirement of IC as specified in Para 6 to 9 of Chapter I of DPP.
Fast Track Procedure	It ensured expeditious procurement for urgent operational requirements foreseen as imminent, or for a situation in which a crisis emerges without prior warning.	The scope of FTP is expanded to apply to items where undue/unforeseen delay, due to reasons beyond the control of acquisition set up, is seen to be adversely impacting the capacity and preparedness of the regular and special forces.
Selection of IPA	In DPP 2013, no OEMs were allowed to select their IPA.	In certain 'Buy and Make' programs, in which foreign OEMs are allowed to select their Indian PA, the RFP would stipulate the eligibility criteria for selection.
Hiring of experts to review rationalize and finalize SQRs	No such provision to hire experts.	Provision for Equipment Policy Committee (SEPC) to hire experts including from academia and industry for the purpose of "review, rationalisation and finalisation of SQRs.".

Buy '(Global)' Procurements	• 30% of the estimated cost of the acquisition in Buy (Global) category acquisitions will be the required value of the offset obligations. • For 'Buy (Global)' category procurements, if an Indian firm including a JV between an Indian Company and its foreign partner is bidding for the proposal, the clause relating to offset obligation will not be applicable if the IC in the product is 50% or more (by value). In case the IC in the product is less than 50%, the Indian firm or the JV has to ensure that offset obligations are fulfilled on the foreign exchange component of the contracted value. In case the IC is less than 50%, the Indian firm or JV shall submit an undertaking to fulfil the offset obligation along with the main technical bid. Failure to submit the undertaking at that stage shall render the bid non-responsive and liable to be rejected. IC (by value) will be determined on the basis of exchange rates prevailing on the last date for submission of the main technical bid.	• 30% of the estimated cost of the acquisition in "Buy (Global)" category acquisitions will be the required value of the offset obligations. • For Buy (Global) category procurements, if an Indian firm including a JV between an Indian Company and its foreign partner is bidding for the proposal, the clause relating to offset obligation will not be applicable if the IC in the product is 30% or more (by value). • In case the IC in the product is less than 30%, the Indian firm or the JV has to ensure that offset obligations are fulfilled to the tune of 30%-(minus) IC %. (IC is to be declared upfront at the time of submission of bid).

Conclusion

To sum up, a comparative overview of DPP 2013 and DPP 2016 indicates that though for the first time DPP 2013 attempted to provide a greater clarity on defining indigenisation but DPP 2016 has taken a step forward to show how this can be achieved. The definition of Indian Vendor, focus on IC, structural change in the AAP and Buy Indian IDDM are significant steps. This will increase the overall involvement of the domestic industry in defence production. The issues of delays in procurement process can come down by steps like the introduction of the reduced validity of AoN and its sanctity together with the measures to undertake procurement in single-vendor situations.

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