

टेलिफोन / Telephone - 2581803से/To 2581809
फैक्स / Fax - 0431 -2581891
ईमेल- / E-Mail - mmhappfp.ofb@ofb.gov.in

पते से भेजे /सभी पत्रादि महाप्रबंधक के नाम)
कितगत किसी भी अधिकारी के व्य ,जाने चाहिए
A / नाम से नहीं।। correspondence should
be addressed to the GENERAL
MANAGER and not to any Officer by
name)



भारत सरकार, रक्षा मंत्रालय
GOVT. OF INDIA, MINISTRY OF DEFENCE
हेवी अलॉय पेनीट्रेटर प्रॉजेक्ट
HEAVY ALLOY PENETRATOR PROJECT
तिरुचिरापल्ली - 620 025
TIRUCHIRAPPALLI-620025

Tender No. HAPP/TE/160364/2016-17

दिनांक / Date: 08/04/2017

The Senior General Manager, Heavy Alloy Penetrator Project ('HAPP'), Tiruchirapalli on behalf of the President of India invites bids from the prospective manufacturers in **Two Bid (Techno-commercial & Price Bids) system**, in e-procurement mode for supply of item listed in Part-II of this Tender Enquiry ('TE'). **Established Suppliers (i.e) those suppliers who have supplied the item successfully to this establishment in the past, cannot quote, as this Tender is issued for developing New Sources only.**

01. Important information about the Tender Enquiry:

| | |
|--|--|
| TE Number & date | : HAPP/TE/160364/2016-17 & 25/03/2017 |
| Last date and Time for submission of Bid | : 30/05/2017 up to 14.00 Hrs. (IST) |
| Date and Time of Opening of Bid | : 30/05/2017 at 14.30 Hrs. (IST) |
| Place of Opening of Bid | : HAPP, Tiruchirapalli |
| Contact address for seeking any clarifications regarding this TE | : The Senior General Manager Heavy Alloy Penetrator Project Ministry of Defence, Govt. of India Tiruchirapalli – 620 025, Tamil Nadu, India. |
| Telephone Nos. | : +91 431 – 2581803 to 809, 2584218, 2584262 |
| Fax No. | : +91 431 – 2581891 |
| e-mail id | : mmhappfp.ofb@ofb.gov.in |
| Name of the website & URL (for enrolment in the e-portal, viewing / downloading the details of the Tender and for submitting bid, etc.) | : Indian Ordnance Factories e - procurement web portal https://ofbeproc.gov.in |
| Validity of Offer/Bid | : 180 days from the date of Opening of Bid. |
| Earnest Money Deposit (EMD) | : Please refer Para 11 under PART – I - General Information |
| Delivery period | : Please refer Para-4 under PART – II - Essential Details of item required |
| Liquidated Damages | : Please refer Para-8 under PART – III - Standard Conditions of TE |
| Distribution of Order Quantity | : Please refer Para-8 under PART – III - Standard Conditions of TE |
| Performance Bank Guarantee | : Please refer Para-1 under PART – IV - Special Conditions of TE |
| Payment terms | : Please refer Para-4 under PART – IV - Special Conditions of TE |

| | | |
|-------------------|---|--|
| Inspection Clause | : | Please refer Para-18 under PART – IV - Special Conditions of TE |
| Terms of Delivery | : | 1. For Foreign Sellers - CIF, Chennai. 2. For Indian Sellers – F.O.R HAPP, Tiruchirapalli |

02. This TE is containing seven Parts and four Annexures as follows:

- Part - I - General Information
Contains General information and Instructions for the Bidders about the TE such as the time, place of submission and opening of bids, validity period, etc.
- Part – II - Essential Details of Item Required
Contains essential details of the item required, such as the Schedule of Requirements (SoR), Technical Specifications, Delivery Period, Mode of Delivery and Consignee details, etc.
- Part - III - Standard Conditions of Tender Enquiry
Contains Standard Conditions of TE, which will form part of the Contract to be entered in to with the Successful Bidder.
- Part – IV - Special Conditions of Tender Enquiry
Contains Special Conditions applicable to this TE and which will also form part of the contract to be entered in to with the successful Bidder.
- Part – V - Evaluation Criteria and Price Bid Issues
Contains Evaluation Criteria applicable for this Tender Enquiry
- Part - VI - Compliance Statement
- Part - VII - Instructions regarding Cartel Formation
Contains Instructions regarding Cartel Formation
- Annexure – A - CQAM-58 Specification, which will govern the supplies to be made by the successful Bidder.
- Annexure – B - Monitoring Instruction for Inspection No: HAPP/QA/SC/G/028, Issue No. 01, Rev. No.02, Date of Issue 18/01/2017, which will govern the inspection of the supplies to be made by the successful Bidder
- Annexure – C - Bank Guarantee format for furnishing EMD
- Annexure – D - Performance Bank Guarantee Format

03. Bidders are requested to refer OFB India website ([URL – 'ofbindia.gov.in'](http://ofbindia.gov.in)) regarding Vendor Registration and take necessary appropriate action to get their firms registered through 'Online' mode..

04. Tender Enquiry 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.

GENERAL INFORMATION

1. Last date and time for uploading the Bids: 30/05/2017 up to 14.00 Hrs (IST)

2. Manner of submitting the Bids:

The Bids (both Techno Commercial & Price bids) need to be submitted online for the particular Tender, clause by clause, in the Indian Ordnance Factories e-Procurement portal having URL <https://ofbeproc.gov.in>, within the stipulated date and time. The responsibility to ensure the same lies with the Bidder. The bidders are required to furnish details like TIN number, VAT/CST number, Bank address with EFT Account, Swift Code, Routing/IBAN No., etc. for e-payment/LC/DBT and complete postal & e-mail address of their office in their letter head and the scanned copy should be attached while bidding.

3. Time and date of opening of Techno-commercial Bids: 30/05/2017 at 14.30 Hrs. (IST)

In Two-bid system, only Techno-commercial Bids will be opened on the time and date mentioned above. Price Bids of only those firms, whose Techno-commercial Bids are found qualified (compliant/suitable) in Technical Evaluation done by the Buyer, will be opened and the date & time of opening of Price Bids will be intimated sufficiently in advance to the respective bidders separately.

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

4. Place of opening of Techno-commercial Bids:

The Senior General Manager
Heavy Alloy Penetrator Project
Ministry of Defence
Government of India
Tiruchirapalli – 620 025
Tamil Nadu, India.

5. Clarification regarding contents of the TE:

A prospective bidder requiring clarification regarding the contents of the bidding documents shall notify to the Buyer in writing about the clarifications sought, not later than 14 (fourteen) days prior to the date of opening of the Bids. Copies of the query and clarification by the purchaser will be sent to all prospective bidders who have received the bidding documents.

6. Modification and Withdrawal of Bids:

A bidder may modify or withdraw their bid after submission, in a similar fashion of submitting Bid for the particular Tender, prior to the deadline prescribed for submission of bids. No bid can be modified or withdrawn after the deadline for submission of bids. No bid can be withdrawn in the intervening period between the deadline for submission of bids and the day of expiry of specified bid validity. Withdrawal of a bid during this period will result in bidder's forfeiture of Bid Security.

7. 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.

8. Rejection of Bids:

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

9. Unwillingness to quote:

Bidders unwilling to quote should ensure that intimation to this effect reaches the Buyer before the due date and time of opening of the Bid, failing which, the defaulting Bidder will be delisted for the items specified in the Schedule of Requirements of this TE.

10. Validity of Bids: The Bids should remain valid for **180 days** from the Date of opening of Techno-commercial Bid.

11. Earnest Money Deposit:

Bidders are required to submit Earnest Money Deposit (EMD) for an amount of Rs. **2,95,000.00** or **for an equivalent amount in foreign currency** along with their bids. The EMD may be submitted in the form of Fixed Deposit Receipt or Bank Guarantee from any of the public sector banks or a private sector bank authorized to conduct Government business, as per the format given in Annexure - C. EMD is to remain valid for a period of forty-five days beyond the final validity period of Price Bid. EMD of the unsuccessful bidders will be returned to them at the earliest after expiry of the final bid validity and latest on or before the 30th day after the award of the contract. The Bid Security of the successful bidder would be returned, without any interest whatsoever, after the receipt of Performance Security from them as called for in the contract.

12. Exemption from Submission of Earnest Money Deposit:

EMD is not required to be submitted by those Bidders 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. The EMD will be forfeited if the bidder withdraws or amends, impairs or derogates from the tender in any respect within the validity period of their bids.

ESSENTIAL DETAILS OF ITEM REQUIRED

1. **Schedule of Requirements –**

| Nomenclature of the item | Quantity |
|--|---|
| Nickel Powder as per CQAM-58 Specification | 6,000 kg + 50% (under option clause) |

2. **Technical Details - As per following documents:**

Annexure – A - CQAM-58 Specification

Specification for governing supply of elemental powders.

**Annexure – B - Monitoring Instruction for Inspection No: HAPP/QA/SC/G/028
Issue No. 01, Rev. No.02, dated 18/01/2017.**

**Inspection Document which will govern the inspection of the
supplies to be made by the successful Bidder.**

3. **Compliance of TE terms:**

Bidders are required to furnish clause by clause compliance of all the terms of the TE, bringing out clearly the deviations, if any and fill up the compliance statement given in Part-VI of this Tender.

4. **Qualification criteria for acceptance of Technical bid:**

- a. The Original manufacturers / Authorized dealers / Distributors / Stockist of the Original manufacturers, having production capacity to produce Nickel powder as per specification, are eligible to participate in this tender.
- b. In case of Original manufacturer, the firm should submit information / documents as mentioned in the Monitoring Instruction for Inspection at page 2 of 3, for technical acceptance.
- c. In case of Authorized dealers / Distributors / Stockist of the Original manufacturer of Nickel powder, valid Authorisation Certificate issued by the Original manufacturer and the information / documents as mentioned in the Monitoring Instruction for Inspection at page 2 of 3, pertaining to the Original manufacturer, should be submitted for technical acceptance.
- d. The suppliers supplied this item already to this establishment are not eligible to participate in this tender.

5. **Delivery Period:**

Supply of Bulk quantity, after getting acceptance of Pilot Sample and Developmental batch and Bulk shipment clearance from the Buyer, has to be completed within **08** months from the date of Supply Order. The above Delivery Period includes **15 days** time each required for testing of Pilot Sample and sample of Developmental batch at Buyer's end.

Please note that 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.

6. **60:40 Clause:** Orders will be placed on two firms viz. L1 and L2 firms in the ratio of 60% quantity on L1 and 40% on L2 after acceptance of L1 price by the L2 firm. In case of cartel formation, the distribution may similar but rankings r1 and r2 (in place of L1 and L2) will be decided as per vendor rating indices of the firms.

7. Delivery and Transportation 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.

The terms for this contract are

**TERMS OF DELIVERY: 1. For Foreign Suppliers - CIF, CHENNAI
2. For Indigenous Sellers – F.O.R HAPP, Tiruchirapalli**

The term “Cost, Insurance and Freight” (CIF) means that the seller delivers the goods at the port of destination (i.e) Chennai. The seller must pay the costs and freight necessary to bring the goods to the port of destination (i.e) Chennai. The seller also has to procure necessary insurance against the buyer’s risk of loss of or damage to the goods during the carriage. Consequently, the seller contracts for insurance and pays the insurance premium. The seller requires to clear the goods for export. The date of delivery will be **the date (appearing on the Bill of Entry filed at the Destination port) on which, the goods actually arrive at the port of destination (i.e.) Chennai. However, Pilot Samples should be delivered directly at the Buyer’s premises through any fastest means of delivery, on “freight paid, free of cost” basis.**

The term “F.O.R HAPP, Tiruchirapalli” means that the seller delivers the goods at the Buyer’s premises at his own cost up to destination. **The Date of Delivery will be the date on which, the goods actually arrive at the Buyer’s premises. However, Pilot Samples should be delivered directly at the Buyer’s premises through any fastest means of transport, on “freight paid, free of cost” basis.**

8. **Consignee details:** The Senior General Manager
Heavy Alloy Penetrator Project
Ministry of Defence
Government of India
Tiruchirapalli – 620 025
Tamil Nadu, India.
Phone No.0431 2581803 to 2581809, 2584218, 2584262
Fax No. 2581891
E-mail id: mmhappfp.ofb@ofb.gov.in

STANDARD CONDITIONS OF TENDER ENQUIRY

The Bidder is required to give confirmation of their acceptance of the Standard Conditions given 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 from the date of the Supply Order (Effective Date) and shall remain valid until completion of all the obligations under the contract. The deliveries, supplies and performance 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 the performance, which cannot be settled amicably, may be resolved through arbitration. The standard clause of arbitration is as per Forms OFBPM-32, OFBPM-33 and OFBPM-34 (Available in Ordnance Factory Board website).
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 so 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 referred to in this Supply Order 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 London Inter Bank Offered Rate (LIBOR). 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 Performance Guarantees and Documents, supply the stores/goods, 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 mentioned in the Schedule of Requirements 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 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, 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, 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 amendment in writing made after the date of this Contract and signed on behalf of the Buyer and which expressly states to amend the present Contract.
14. **Taxes and Duties:**
- i. **In respect of Foreign Sellers:** All taxes, duties, levies and charges which are to be paid for the delivery of goods including Pilot Samples in their respective countries, shall be paid by the Seller and **in case of Pilot samples, all taxes, duties, levies and charges if any, applicable in the Buyer's country, shall also be paid by the Buyer.**
 - ii. **In respect of Indigenous Sellers:**
 1. **General**
 - (a) Bidders must indicate separately the relevant Taxes / Duties likely to be paid in connection with the delivery of goods specified in Part – II. In absence of this, the total cost quoted in the bids will be taken in to account in the ranking of Bids.
 - (b) If a Bidder is exempted from payment of any Duty / Tax upto any value of supplies from them, the Bidder should clearly state that no such Duty / Tax will be charged up to the limit of exemption which the Bidder 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 Bidder to obtain exemptions from taxation authorities.
 - (c) Any changes in Levies, Taxes & Duties levied by Central / State / Local Governments such as Excise Duty, VAT, Service Tax, Octroi / Entry Tax, etc. on the goods upwards as a result of any statutory variation taking place within contract period shall be allowed reimbursement 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.
 - (d) Levies, Taxes and Duties levied by Central / State / Local Governments such as Excise Duty, VAT, Service Tax, Octroi/entry tax, etc on goods 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.

2. Customs Duty

- a. For imported stores offered against forward delivery, the Seller shall quote prices thereof exclusive of customs duty. The Seller 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. The actual amount paid as Customs duty will be reimbursed against submission of documentary proof as given below:
 - (i) Triplicate copy of Bill of Entry
 - (ii) Copy of Bill of Lading
 - (iii) Copy of Foreign Principal's invoice.However, if the Seller imports the stores against his own commercial quota Import Licences, in addition to the above documents, the Seller will be required to submit a certificate from his Internal Auditor on the bill itself, to the effect that the following items/quantity in the bill of entry is related to the stores imported against the Indian Defence Buyer's Supply Order.
- b. Subsequent to the reimbursement of Customs Duty, the Seller will submit 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, the Seller shall also submit 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.
- c. In case the Seller 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 shall forthwith furnish the details of the refund so obtained and afford full credit of the same to the Buyer.

3. Excise Duty

- a. Where the excise duty is payable according to the value of the stores despatched, the Seller should submit along with their Bid, the relevant form and the Manufacturer's Price List showing the actual assessable value of the stores as approved by the Excise authorities.
- b. Sellers 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.
- c. The Seller is also required to furnish to the Paying Authority the following certificates:
 - (i) 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.
 - (ii) 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.

- (iii) A certificate along with the final bills, to the effect that whether any appeal for refund or partial refund of excise duties already reimbursed to the Seller by the Government is pending with the Excise authorities and if so, the nature, the amount involved and the position of such appeals.
 - (iv) 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 the particular Supply Order or any other pending Government Orders and that no dispute on this account would be raised by the Seller.
- d. 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.

4. Sales Tax / VAT

- a. If it is desired by the Seller 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 Seller are inclusive of sales tax and no liability of sales tax will be developed upon the Buyer.
- b. 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.

5. Octroi Duty & Local Taxes

- i. 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.
- ii. 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. Return of paper particulars:

Any paper particulars / Copies of particulars supplied to the trade firms in connection with the TE/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, if any, for those particulars will be entertained.

SPECIAL CONDITIONS OF TENDER ENQUIRY

The Seller 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:

- a. **In respect of Indigenous Sellers:** The Seller will be required to furnish a Performance Guarantee by way of a Bank Guarantee issued by a Public sector bank or a private sector bank authorized to conduct Government business (ICICI Bank Ltd., Axis Bank Ltd or HDFC Bank Ltd.) for a value equal to **10% of the Total Supply Order value** within **30 days of receipt of the confirmed order**. Performance Bank Guarantee should be valid up to 60 days beyond the date of warranty.
- b. **In respect of Foreign Sellers:** The Seller will be required to furnish a Performance Guarantee by way of a Bank Guarantee issued by an Internationally recognised first class bank in favour of the Government of India, Ministry of Defence, 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.), for a value **equal to 10%** (Ten percent) of the total value of the Supply Order, **within 30 days of receipt of the Supply Order**. Performance Bank Guarantee should be **valid up to 60 days beyond the date of warranty**.

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 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 Annexure - D.

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 Seller is to confirm 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 up to 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 Seller is to confirm acceptance of this clause. It will be entirely the discretion of the Buyer to place the Repeat order or not.

4. Payment terms:

- a. **For Indigenous Sellers:** 100% payment will be made through NEFT/RTGS mode within 30 days of receipt and acceptance of **Bulk quantities** at the Buyer's premises. **All the Pilot samples have to be delivered at the Buyer's premises "Free of cost"**. The Bulk quantities should be delivered at the Buyer's premises, along with the documents given below, for claiming payment:
 - i Mandate Form (duly filled, ink signed and sealed).
 - ii Ink signed and Sealed copy of Contingent Bill / Seller's Bill (in duplicate)

- iii Ink signed copy of Commercial Invoice / Seller's Bill, clearly specifying the Statutory levies (in duplicate).
 - iv Packing List (in duplicate)
 - v. Claim for Statutory and other levies along with requisite documents / proof of payment such as, Bill of Entry, Excise Duty challan, Customs Duty clearance certificate, Octroi receipt, proof of payment for EPF/ESIC contribution with nominal roll of beneficiaries etc. as applicable.
 - vi. Warranty Certificate
 - vii Any other document / certificate that may be stipulated in the Supply Order / Contract
- b. **For Foreign Sellers:** The normal mode of payment to Foreign Sellers for the **Bulk quantities** supplied against Supply Order will be through Irrevocable Letter of Credit (LC) or Direct Bank Transfer (DBT).

For Supply Orders valuing below USD 1,00,000.00, the payment will be made only through DBT. However, all the Pilot samples have to be delivered at the Buyer's premises "Free of cost".

In case of Direct Bank Transfer (DBT), the payment will be made within thirty days of receipt of goods/stores at the Buyer's premises. But such payments will be subject to the deductions of amounts the Seller may be liable to pay under the agreed terms of the Contract.

For Supply Orders valuing more than USD 1,00,000.00, the payment will be made through Irrevocable Letter of Credit (LC). However, all the Pilot samples have to be delivered at the Buyer's premises "Free of cost".

- i. In case of Irrevocable Letter of Credit, initially, **an LC will be opened for 95% value, within forty five days of receipt of notification of readiness of Bulk quantity for delivery from the Foreign Seller.** The Seller will normally be given forty five days from the date of Supply Order, for delivering Pilot sample and notifying such readiness. The period may be varied, as per requirement, but it will be decided while processing the case and accordingly will be indicated in the Supply Order. The period for notification of readiness of goods and opening of LC will be so fixed that **LC is opened three months prior to the expiry of the delivery period.** After opening of LC, 95% payment will be released as per the terms of LC.
- ii. The LC will be valid for **ninety days** from the date of its opening, on extendable basis by mutual consent of both the Buyer and the Seller. All expenses related to Letters of Credit outside India should be borne by the **Foreign Seller.**
- iii. **In case of extension of delivery period, both the LC and the delivery period will be extended and the LC charges should be borne by the Seller.**
- iv. The balance 5% value will be released subsequently through **Direct Bank Transfer**, within 45 days of receipt of Bulk quantity at the Destination port (i.e) Chennai port in this case.

Immediately after shipping the goods/stores ordered by the Buyer, the Seller should submit the following documents to the Buyer's Bank through any fastest means of delivery, but within 21 days from the date of shipping (date of Bill of Lading), for taking delivery of the consignment at the port of destination and for processing the payment at the Buyer's end:

- i Clean on board Airway Bill / Bill of Lading (3 copies in original).
- ii Original Commercial Invoice (3 copies in original).
- iii Original Packing List (3 copies in original).

- iv. Certificate of Origin from Seller's Chamber of Commerce (3 copies in original).
- v. Certificate of Quality and current manufacture (3 copies in original).
- vi. Dangerous Cargo certificate, if applicable.
- vii. Certificate of Conformity and Acceptance (3 copies in original).
- viii. Physio-sanitary / Fumigation certificate, if applicable.
- ix. Warranty Certificate
- x. Any other document / certificate that may be stipulated in the Supply Order / Contract

5. **Advance Payments:** No advance payment(s) will be made.

6. **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 present 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 Seller shall forthwith notify such reduction or sale or offer of sale to the Buyer 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 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.
- c. The Seller shall furnish the following certificate to the Paying Authority along with the claim for payment for supplies made against the Supply Order – “We certify that there has been no reduction in sale price of the stores of description identical to the stores supplied to the Government under the contract herein and such stores have not been offered/sold by me/us to any person/organisation including the purchaser or any department of Central Government or any Department of a State Government or any Statutory Undertaking of the Central or State Government as the case may be up to the date of claim / the date of completion of supplies against all supply orders placed during the currency of this Supply Order at price lower than the price charged to the Government under the present contract.

7. Risk & Expense clause:

- a. Should the stores or any instalment 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 instalment 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.
- b. Should the stores or any instalment thereof not perform in accordance with the specifications / parameters provided by the SELLER during the tests to be done in the buyer's country, the Buyer shall be at liberty, without prejudice any other remedies for breach of contract, to cancel the contract wholly or to the extent of such default.
- c. 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:-
 - i. Such default.
 - ii. In the event of the contract being wholly determined, the balance of the stores remaining to be delivered there under.
- d. Any excess of the purchase price, cost of manufacture, 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.

8. 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 Seller's 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 Buyer 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, the Buyer hereto reserves the right to terminate the contract totally or partially upon giving prior written notice of 30 (thirty) days to the Seller of the intention to terminate without any liability other than reimbursement on the terms provided in the agreement for the goods received.

9. **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.

10. **Earliest Acceptable Year of Manufacture:**

Current year of manufacturing and quality / life certificate will need to be enclosed with the Bill / Invoice.

11. **Transportation:**

The following Transportation clause will form part of the contract placed on successful Foreign Bidder:

CIF: The stores shall be delivered on CIF Chennai basis. Seller will bear the costs and freight necessary to bring the goods to the port of destination. The Seller also has to procure necessary insurance against the buyer's risk of loss or damage to goods during the carriage. The Seller will pay the insurance premium. Seller is also required to clear the goods for export. **The date of actual arrival of the goods / stores at Chennai shall be considered as the date of delivery.** No part shipment of goods would be permitted. Transshipment 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. Seller will be required to communicate the following information by any fastest means of despatch, in case of import of Defence Stores being brought in commercial ships / flights to Embarkation Head Quarters concerned well in advance before the Ship sails / flight leaves the port of loading:

- i. Name of the Ship/Flight carrier
- ii. Port of Loading and name of Country.
- iii. ETA at port of Discharge i.e. Chennai.
- iv. Number of Packages and weight.
- v. Nomenclature and details of stores shipped.
- vi. Special instructions, if any, for stores of sensitive nature requiring special attention

12. **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 an intimation to that effect from the Buyer. Such deliveries will be agreed upon well in advance.

13. **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 goods/stores 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 **50 Kg containers**, which are made sufficiently strong with a steel material. The packing cases should have hooks for lifting by crane/fork lift truck.
- b. The packing of the goods/stores shall conform to the requirements of specifications and standards in force in the territory of the Seller's country.
- c. A label in English shall be pasted on the packing indicating the under mentioned details of the item contained in the packing. The item should be packed as specified in the contract:

- i. Nomenclature
 - ii. Supply Order number
 - iii. Supply Order serial number
 - iv. Quantity
- 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 yellow colour.
- e. The Seller shall mark each package with indelible paint in the English language as follows:
 - i. EXPORT
 - ii. Supply Order No.
 - iii. Consignee
 - iv. Port 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.

14. Quality:

The quality of the goods/stores delivered according to the present Tender shall correspond to the technical specifications and standards valid for the deliveries of the same stores in Seller's country or specifications enumerated in the TE 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 goods/stores to be supplied under this Contract shall be new i.e. in the current year of manufacture and shall incorporate all the latest improvements and modifications thereto.

15. Quality Assurance:

Seller would provide the **Test results** of all the tests conducted, along with relevant documents, as specified in the Monitoring Instruction for Inspection (enclosed as Annexure - B), within one month from the date of Supply Order. The item should be of latest manufacture, conforming to the current production standard and having 100% defined life at the time of delivery.

16. Inspection Authority:

The Inspection will be carried out at HAPP premises by The Senior General Manager or his authorized representative in accordance with the following documents attached with the Tender.

- Annexure – A - CQAM-58 Specification
Specification for governing supply of elemental powders.**
- Annexure – B - Monitoring Instruction for Inspection No: HAPP/QA/SC/G/028, Issue
No. 01, Rev. No.02 dated 18/01/2017.**

17. 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."

18. 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 Inspection at HAPP and acceptance of goods. The quantity claim shall be submitted to the Seller as per Form OFBPM-32 (available in Ordnance Factory Board website and can be given on request).
- c. The quality claims for defects or deficiencies in quality noticed during the inspection at HAPP shall be presented within 45 days of completion of inspection 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 Ordnance Factory Board 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 the Performance Security Deposit submitted by the Seller or by payment of claim amount by Seller through demand draft drawn on any Indian Public Sector 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.

19. Warranty:

The following Warranty clause will form part of the contract placed on successful Bidder:

- i. The Seller warrants that the goods/stores/articles supplied under the contract conform to the Technical Specifications prescribed and shall perform according to the said Technical Specifications. The Seller also warrants that the goods/stores/articles supplied under the contract shall be free from all types of defects/failures.

- ii. The Seller warrants the said goods/stores/articles supplied to the Buyer, for a period of 12 months from the date of delivery at the Buyer's premises or 15 months from the date of shipment/despatch from the Seller's works, whichever is earlier and that notwithstanding the fact that the Buyer may have inspected and/or approved the said goods/stores/articles.
- iii. If within that period of warranty, the goods are reported by the Buyer to have failed to perform as per the specifications, the Seller shall either replace or rectify the same free of charge, within a maximum period of 45 days of notification of such defect received by the Seller. The Seller also undertakes to repair/replace the goods/stores/articles damaged in accidents by neglect or damage due to transportation during the warranty period, at the cost mutually agreed to between the Buyer and the Seller.

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 TE, both technically and commercially.
 - b. Initially, the Techno-commercial Bids submitted by the Sellers will be evaluated by the Buyer with reference to the Qualification criteria & Technical Specifications stipulated in the contract and Compliance Statement given in Part - VI of this TE. The Price Bids of only those Sellers, whose bids would clear the evaluation, will be opened.
 - c. The Lowest Bid will be decided upon the lowest price quoted by the particular Seller for this contract. The consideration of taxes and duties in evaluation process will be as follows:
 - i. In cases where only Indian Sellers 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 the goods, as quoted by the Bidders.
 - ii. In cases where only Foreign Sellers are competing, the landed Price at the port of Destination would be the deciding factor for ranking of Bids
 - iii. In cases where both Foreign and Indian Sellers are competing, following criteria would be followed:
 1. In case of foreign Sellers, the basic cost (CIF) quoted by them would be the basis for the purpose of comparison of various Bids.
 2. In case of Indian Sellers, Excise Duty on the finished goods would be offloaded. Sales Tax and other local levies, i.e. Octroi, entry tax etc would be ignored in case of Indian Sellers.
 3. In import cases, all the foreign quotes will be brought to a common denomination in Indian Rupees by adopting the exchange rate as BC Selling rate of the State Bank of India on the date of the opening of Price Bids.
 4. 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.
 - d. 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.
2. Every page of the TE document duly signed by the bidder should be enclosed along with their bid.
 3. Any other criteria as applicable to the particular case.

COMPLIANCE STATEMENT

| Sl. No. | TE terms | Firm's compliance (YES / NO) | Remarks |
|---------|---|------------------------------|---------|
| 1. | Whether the Bidder is an Original manufacturer or an Authorised dealer or Distributor or Stockist ? | | |
| 2. | In case of Authorised dealer / Distributor / Stockist, has the copy of valid Authorisation Certificate issued by the Original manufacturer and documentary proofs as mentioned under para 4 'Qualification criteria for acceptance of Technical Bid' of PART – I and in the Monitoring Instruction for Inspection submitted ? | | |
| 3. | Whether the bids are valid for 180 days as mentioned in para 10 of PART – I ? | | |
| 4. | Whether "Earnest Money Deposit" as mentioned in para 11 of PART – I is submitted ? | | |
| 5. | If yes, furnish the details of EMD i.e. Demand Draft / FDR / BG No. & date, validity and Banker's name, along with the Bid. | | |
| 6. | In case exemption is claimed, whether copy of valid registration certificate as mentioned in para 12 of PART – I is submitted ?. | | |
| 7. | Whether the offer is for the Quantity mentioned under para 1 of PART – II ? | | |
| 8. | Whether the offer is as per the "Technical specifications" mentioned in para 1&2 of PART – II ? | | |
| 9. | Whether the offered "Delivery period" is as per the requirement given in para 5 of PART – II ? | | |
| 10. | Whether the "Distribution of quantity for placement of order" as mentioned in para 6 of PART – II is acceptable ? | | |
| 11. | Whether the offered "Terms of Delivery" is as per the requirement given in para 7 of PART – II ? | | |
| 12. | Whether the "Arbitration" clause as mentioned in para 3 of PART– III is acceptable ? | | |
| 13. | Whether the "Liquidated Damages" clause as mentioned para 8 of PART – III is acceptable ? | | |
| 14. | Whether submission of "Performance Guarantee" as mentioned in para 1 of PART – IV is acceptable ? | --- | --- |
| 15. | Whether "Option Clause" as mentioned in para 2 of PART – IV is acceptable ? | | |
| 16. | Whether "Payment Terms" as mentioned in para 4 of PART – IV is acceptable ? | | |
| 17. | Whether "Force Majeure clause" as mentioned in para 8 of PART – IV is acceptable ? | | |
| 18. | Whether the "Quality Assurance" & "Inspection Authority" clauses as mentioned in para 15 & 16 of PART – IV are acceptable ? | | |
| 19. | Whether "Warranty" clause as mentioned in para 19 of PART – IV is acceptable ? | | |

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 is likely to be ignored.

ii) The offer must be accompanied by duly filled in Compliance Statement, otherwise the offer is likely to be ignored.

INSTRUCTIONS REGARDING 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 Buyer 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.
- iv. In case of source development tender (where past performance - based Vendor Rating is not available), the marks scored by the firm during capacity verification by the team of officers, shall be the basis of Ranking.
- v. The Buyer reserves the right to place order on two firms: in such cases tender quantity will be distributed between Rank 1 (R1) and Rank 2 (R2) firms in the ratio of 60:40 respectively.
- vi. The Buyer also reserves the right to delete the established firms, who quote in CARTEL, from the list of approved sources or to debar them from competing for a period to be decided by the Buyer.
- 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 vendors, while approving the new firms for participation against source development tender.

BANK GUARANTEE FORMAT FOR FURNISHING EMD

Whereas..... (hereinafter called the "tenderer")
has submitted their offer datedfor 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.....19.../20.....

THE CONDITIONS OF THIS OBLIGATION ARE:

- (1) If the tenderer withdraws or amends, impairs or derogates from the tender in any respect within the period of validity of the tender.
- (2) If the tenderer having been notified of the acceptance of his tender by the purchaser during the period of its validity.
 - a. If the tenderer fails to furnish the Performance Security for the due perform- ance 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)

PERFORMANCE BANK GUARANTEE FORMAT

From:
Bank _____

To,
The President of India
Ministry of Defence,
Government of India
New Delhi

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.

5. 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.

6. 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 _____