

Amendments to Defence Procurement Procedure 2016

February 05, 2019

This amendment to the DPP 2016 contains the following key changes:

- a. **Amendment to the Repeat Order Clause** – It has been provided that an Acceptance of Necessity (“**AoN**”) for repeat orders must be obtained within a period of 5 years from the date of completion of warranty on final delivery against the previous contract.
- b. **Incorporation of Denial Clause** – A denial clause has been introduced into the Request for Proposals (“**RFP**”) and standard contract documents. It provides that where the delay in delivery is attributable to the seller or a non-force majeure event, the buyer may protect himself from any extra expenditure incurred as a result of such delayed delivery. Any increase in statutory duties, upward rise in prices or adverse fluctuations in foreign exchange during the extended delivery period are to be borne by the seller while the buyer reserves his right to get the benefit of downward revisions of the same.
- c. **Concurrent Benchmarking by a Costing Committee on receipt of acceptance of Trial Report** – On receipt of acceptance of Trial Report by the Service Headquarters (“**SHQ**”), concurrent benchmarking will be carried out by a Costing Committee led by Advisor (Cost) and comprising of representatives of the concerned SHQ Directorates. The recommendations of this Costing Committee are to be deliberated or accepted by the Contract Negotiation Committee (“**CNC**”), unlike earlier where only after General Staff (“**GS**”) evaluation is the CNC formed and the CNC undertakes the entire benchmarking exercise. *This will considerably reduce the time from completion of GS evaluation to conclusion of CNC and consequently, contract signing.*
- d. **Clarification on imposition of Liquidated Damages (“LD”) and Constitution of Professional Officers Valuation (“POV”) in Contract Amendment cases** – The existing clause on LD does not consider any leeway for delays on account of indigenisation (which otherwise was permitted under the contract but any delays on account of indigenisation were not addressed). Vide this clarification, detailed procedure for non-levy of LD as long as indigenisation-related delays are within six (6) months of the original date of delivery, is elucidated. In case of amendment to contracts, the assessment of the financial implications of the proposed contract amendments are to be done through a POV. Guidelines have been added on the procedure for imposing LD in upgradation/alteration cases.
- e. **Liberalising the process of evaluating Essential Parameters – B (“EPBs”) and accordingly doing away with Bank Guarantees (“BGs”) if EPBs are trial-evaluated** – Cases involving Essential Parameters ‘B’ (parameters developed and achieved by the vendors using advanced / available technologies over and above the minimum compliance to RFP) were earlier only to be trial evaluated after signing of the contract. However, with this amendment, trials for Essential Parameters ‘B’ may be conducted at the Field Evaluation Trial (“**FET**”) stage if the vendor(s) claims that such equipment can meet the Essential Parameters ‘B’ and are willing to get their equipment trial evaluated at that stage. If these EPBs are successfully trial-evaluated, the vendor(s) would not need to submit Additional BGs which s/he would otherwise need to submit if s/he chooses to have the EPBs evaluated after the contract signing.

A number of other minor amendments have also been added such as an amendment to incorporate applicability of the latest legislation to the DPP, inclusion of details of Independent Monitors in the RFPs as well as provision of the reckoning date of ERV where the Option clause is exercised. Detailed List of Amendments is available on MoD’s website at <https://mod.gov.in/sites/default/files/dppamen61218.pdf>

ELP COMMENTS

These amendments are a welcome addition to the existing DPP 2016 guidelines as they attempt to ease the procurement procedures and ensure timely delivery of defence goods to the armed forces. Many of these amendments such as non-levy of LD in indigenisation of products or doing away with BGs if EPBs are trial-evaluated during FET, are well-aligned to the spirit of Make-in-India and will result in small steps to encourage indigenisation. Further constitution of a Costing Committee to undertake benchmarking while the GS Evaluation is in progress is a progressive step to enable faster procurements. Vide these amendments, the MoD is attempting to address practical challenges that the vendors face in procurement of defence goods.

However, there are also potential risks in these amendments. With the introduction of a Denial Clause, a buyer is no longer liable for any price increases that may arise where the delivery of goods has been delayed through no fault of his own. This has two problems. First, ascertaining who caused the delay, the buyer or the vendor— more often than not, this issue itself leads to more delays in a contract. Second, this is onerous to an extent, in that, the amendments do not allude to the relief for a vendor in case the delays are on account of the buyer. Given this backdrop, it is imperative that MoD makes its officers responsible for ensuring timelines are adhered to with any slippages resulting in compensation for the vendor(s).

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