

INDIAN DEFENCE PROCUREMENT POLICY

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INTRODUCTION

In April 2000, the prime minister of India constituted a high level Group of Ministers (GoM) to undertake a thorough review of the national security system and make recommendations for improving the existing system. The GoM submitted its report in 2001, containing various observations and recommendations with regard to internal security, intelligence apparatus, border management and management of defence. While making recommendations on management of defence, the GoM noted that "in view of our dynamic and rapidly changing security environment, the Ministry of Defence (MoD) needs to be suitably restructured and strengthened. Far-reaching changes in the structures, processes, and procedures in defence management would be required to make the system more efficient, resilient, and responsive. This would also ensure the maximisation of our defence capabilities through the optimal utilisation of our resources, potential, and establishment of synergy among the armed forces."¹ The report contained a series of comprehensive recommendations on revamping the organisational structures, administrative procedures, issues related to enhancement of military capability *et al.* On the issue of existing defence procurement system, the report noted that the "present system governing defence acquisitions suffers from a lack of integrated planning; weaknesses in linkages between Plans and Budgets; cumbersome

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1. GoM Report of the Review of National Security System, ch. VI, pp. 97 www.mod.nic.in.

administrative, technical and financial evaluation procedures; and absence of a dedicated, professionally equipped procurement structure within the MoD.² Having recognised the weaknesses in the organisational structures that were hindering efficient defence acquisitions, a series of broad recommendations were made for the creation of additional structures to facilitate speedier decision-making, while ensuring accountability and transparency. The aim of this paper is to examine the various measures that were initiated based on the GoM Report in fine tuning the defence procurement policy.

CLASSIFICATION OF DEFENCE PROCUREMENT

The defence budget of India is classified into two segments i.e. capital and revenue budgets. The revenue budget caters for maintenance or operating expenditure while the capital budget denotes creation of new assets. As per the current policy, expenditure on equipment costing Rs 10 lakh and above and with a life of seven years or more is typically classified as capital expenditure. The division of expenditure between capital and revenue heads assumes significance since it is the capital expenditure which predominantly determines the force modernisation. Further, all approvals for capital expenditure have to be necessarily accorded by the civilian authorities in the MoD while the financial powers under the revenue head are delegated to the Service Headquarters (Army, Navy and Air Force) up to certain limits. Other bodies such as the Defence Research and Development Organisation (DRDO), Ordnance Factories (OFs) and the Defence Public Sector Undertakings (DPSUs) have their own systems of procurement and financial powers, while the MoD continues to exercise control over these organisations.

The second important aspect related to defence procurement is the issue of indigenous production vs and import of equipment. While as a government policy the primary goal of defence procurement remains self-reliance, import of defence equipment has been invariably resorted to over the years owing to a host of reasons such as lack of requisite domestic technical expertise, economies of scale, cost effectiveness, criticality of time and security/strategic

2. Ibid., p. 98.

considerations, etc. For political and strategic reasons, the erstwhile Soviet Union and now Russia continued to be the major exporter of defence hardware to India. Other countries whose defence hardware is imported include the UK, France, Germany and, of late, Israel. With the help of domestic technology and transfer of technology (ToT) from abroad, the DPSUs, OFs, and various, shipyards also played a crucial role in meeting the requirement of defence equipment since independence.

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DEFENCE PROCUREMENT STRUCTURES

Until 1992, there was neither a formal defence procurement procedure nor a separate institutional mechanism for defence procurement in the MoD. A formal defence procurement procedure was brought into force in February 1992. But still, there was no specific organisation within the MoD for defence procurement. The GoM, which for the first time in independent India carried out an exhaustive study of the national security system, including management of defence, made elaborative recommendations on revamping the defence acquisition system. Consequently, a Defence Acquisition Council (DAC) headed by the defence minister was set up at the apex level. In addition, three boards under the DAC viz. Defence Procurement Board, Defence Production Board and Defence Research and Development (R&D) Board were set up, each with its own charter of duties and responsibilities.

Defence Acquisition Council

The DAC is the overarching structure with the defence minister as its chairman. Its members include the three chiefs of the Services and the defence secretary. The main functions of the DAC are: (a) according 'in principle' approval to capital acquisitions; and (b) such approval will involve the identification of either 'buy' (outright purchase) or 'buy and make' projects (purchase followed by licensed

production/indigenous development) or 'make' projects (indigenous production and Research & Development - R&D). The decisions of the defence minister based on DAC deliberations will flow down for implementation to the Defence Procurement Board, Defence Production Board and Defence R&D Board.³

Defence Procurement Board

The Defence Procurement Board (DPB) is chaired by the defence secretary and its members include the vice chiefs of the three Services. The DPB's role is to oversee all activities related to acquisition on the capital account in the Department of Defence flowing out of the 'buy' and 'buy and make' decisions of the DAC. It also functions as the body responsible for the coordination, supervision and monitoring of the acquisition process.⁴

Acquisition Wing

While the DPB is a supervisory body in the acquisition process, the actual handling of acquisition is undertaken by the Acquisition Wing. The Acquisition Wing, headed by the special secretary (acquisition) in the MoD handles all matters concerning, defence acquisitions of a capital nature. It consists of four divisions, viz. Land, Maritime, Air Force and Systems Divisions dealing with the army, navy and air force, and a Systems Division responsible for systems having tri-Service applicability. Each of the divisions will have an acquisition manager (a joint secretary level officer in the MoD), a technical manager (a Service officer of 2-star rank), and a finance manager (an additional financial advisor from the Finance Division of the MoD).⁵

With a brief background as above, let us now examine the defence procurement policy in the Indian context.

DEFENCE PROCUREMENT POLICY VS PROCEDURE

Whether in defence or any other organisational context, the policy and the procedural issues need to be studied and understood separately. It may be true

3. http://mod.nic.in/new_additions/procurement.htm

4. Ibid.

5. Ibid.

that policy and procedure relating to a particular issue would be closely linked, in that, procedures flow down from the policy directives. While the policy contains the core principles and a broad philosophy pertaining to an issue, the resultant procedures prescribe the mechanism of implementation of the policy pertaining to that issue. In India, when the existing defence procurement procedure was sought to be reviewed in 2001 based on the GoM's Report on Management of Defence, what resulted was the creation of new organisational structures in the MoD for defence procurement as well as promulgation of a detailed defence procurement procedure. *However, what was conspicuously absent was a broad procurement policy!*

Ideally, a policy statement must bring out the core government philosophy of defence procurement encompassing issues such as economy and efficiency and methods for achieving the same; management of people involved in procurement, including their training; accountability for timely acquisition and decision-making at various levels; ways and means for achieving excellence in defence acquisition and defining the best management practices; relationship with industry and suppliers, etc. One does not find most of these issues addressed in the revised defence procurement procedure. One would have logically expected the defence procurement procedure to flow out from a Defence Procurement Policy Statement. However, it must be added that despite the absence of a policy statement, a few issues could still be culled out from the procedure itself which have policy underpinnings such as the offset policy; an integrity pact that has a bearing on transparency; a level playing field for all through free competition and impartiality and transfer of technology in the case of 'buy and make' projects, and so on.

ISSUES WITH POLICY CONNOTATION

As aforesaid, in the absence of a Defence Procurement Policy Statement, one needs to cull out procedural issues that have policy underpinnings. The Defence Procurement Procedure (DPP)-2005 promulgated in June 2005 is quite comprehensive and covers all the procedural issues quite extensively. This procedure is applicable to all capital acquisitions whether through domestic

supply or ex-import. Similarly, a Defence Procurement Manual (DPM)-2005 was promulgated in June 2005, extensively covering the procedure related to revenue procurement. Some of the important procedural issues contained in DPP-2005 which have policy implications are discussed below.

Timely and Effective Decision-Making

The defence procurement procedure envisages expeditious procurement of equipment within the time limits fixed to match the anticipated capabilities of the armed forces. For long, the defence procurement mechanism in India was seen to be bogged down by cumbersome bureaucratic procedures leading to avoidable delays and resultant cost overruns. The decision-making process involved in procurement is neither structured nor accountable. Despite operational urgency, as expressed by the Services, there is indecisiveness and vacillation at times.⁶ On the aspect of delays in procurement, the GoM's Report noted that "the existing structure for procurement has led to sub-optimal utilisation of funds,

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long delays in acquisition and has not been conducive to the modernisation of the Services. The creation of a separate and dedicated institutional structure to undertake the entire gamut of procurement functions is expected to facilitate a higher degree of professionalism and cost-effectiveness in the process."⁷ However, the tedious bureaucratic procedure can be cited as one of the main reasons for the delay in decision-making. As a senior retired Service officer who was involved in the procurement process noted, "Generally, everyone blames complex procedures, 'play-safe' bureaucracy and over-zealous finance officials. Surprisingly, the fundamental cause for delays in procurements has remained unidentified and, hence, unaddressed so far. A comprehensive study of recent

6. V.K. Kapoor, "Defence Modernisation: Higher Defence Management, Procurement and Equipment Issues," in Satish Kumar, ed., *India's National Security-Annual Review 2004* (India Research Press, 2005).

7. n. 1.

cases reveals that faulty formulation of Services Qualitative Requirements (SQRs) has been the principal cause for delay in most instances."⁸ Poorly conceived, formulated and drafted SQRs create confusion, lend themselves to misinterpretations, vitiate the environment, and cause immense delays. At times, the whole process has to be aborted at an advanced stage or a number of special dispensations obtained to regularise infirmities.⁹ The revised defence procurement procedure now lays down a clear timeframe for each and every activity involved in procurement, right from the stage of acceptance of necessity (AON) till contract signing. The entire duration of the process now ranges from 24 to 35 months.¹⁰ Such a clear stipulation of timeframe for each activity is one of the important hallmarks of the current procurement procedure, thereby introducing an element of accountability for delays. However, what remains to be seen is whether these stipulations are being strictly adhered to at various stages. As noted by a retired defence secretary, "What has been really brought about by the setting up of the Defence Procurement Board is a fundamental shift in a decision-making process from an examination-on-file to decision-making by a corporate entity, literally across the table."¹¹

Free, Fair Competition and Impartiality

While the DPP outlines self-reliance as a goal, it does not discriminate between domestic suppliers (both public and private sectors) and vendors from abroad. It lays down a level playing field for both, thereby, ensuring free competition. In a related policy development, private sector investment in the defence industry has been permitted with effect from May 2001; 100 per cent private equity with a maximum of 26 per cent of foreign direct investment (FDI) is now permitted in defence industries. However, price preference is loaded in favour of public sector enterprises and small scale industries. According to a directive issued by the Government of India (Department of Public Enterprises) on October 26, 2004, all central public sector enterprises will be given purchase preference if the price

8. Maj. Gen. Mrinal Suman (Retd.), "Qualitative Requirements of Military Equipment," *Indian Defence Review*, October-December 2004.

9. Ibid.

10. Defence Procurement Procedure 2005, p. 17, www.mod.nic.in

11. Dr. Yogendra Narain, "Defence Procurement," *Indian Defence Review*, October-December 2003, p. 30.

quoted by any of them is within 10 per cent of the lowest bid. This provision is applicable to all tenders where the value is Rs 5 crore or more. Additionally, the Defence Procurement Manual 2005 stipulates that small scale industries can be given price preference up to 15 per cent in comparison to large industries. These are highly inequitable stipulations, which militate against the basic canons of the norms of fair play.¹² Such bye-laws found elsewhere in other government departmental procedures are not in tune with the objective of ensuring impartiality, which is one of the stated aims of DPP-2005. There are two other notable exceptions in ensuring fair competition. Firstly, if certain state-of-the-art equipment being manufactured by only one vendor is to be procured to get qualitative edge over a country perceived as an adversary, then such cases will be debated by the Defence Acquisition Council, paving the way for a single vendor situation. Secondly, in certain acquisition cases, the imperatives of strategic partnerships or major diplomatic, political, economic, technological or military benefits deriving from a particular procurement may be the principal factor determining the choice of a specific platform or equipment on a single vendor basis. Such open ended option clauses are essential to meet any contingency, wherein, a single vendor situation may arise in specified situations.

Accountability

The two main impediments in the Indian acquisition system are bureaucratic delays in decision-making and accountability. Since these bureaucratic layers are complex, involving various echelons in the MoD, Service Headquarters and other government departments such as the Ministry of Finance, it becomes very difficult to exactly pinpoint responsibility for delayed decision-making if an enquiry were to be held years after procurement decisions have been taken. There are organisations, however, within the government such as the comptroller and auditor general (C&AG) for commenting on inefficiency and wastage; and Central Vigilance Commission (CVC) for overseeing as well as preventing fraudulent and corrupt practices. In addition, there is enough scope for legislative oversight in the form of the Standing Committee on

12. Maj. Gen. Mrinal Suman (Retd.), "FDI in Defence Industry," *Indian Defence Review*, July-September 2005, p. 75.

Defence comprising members of Parliament selected from both ruling and opposition parties. This committee had critically commented on defence procurement procedures in its 10th, 11th, 15th, 16th, 18th, and 19th Reports. It had recommended that the inefficiencies and bottlenecks in procurement processes and procedures, which had been identified by the government, should be removed. The committee had also repeatedly stressed the need to simplify, rationalise and bring transparency into the acquisition procedure, together with ensuring timely acquisitions of defence equipment.¹³ Despite the existence of various in-built mechanisms for ensuring accountability in defence procurement, delays in acquisition are not uncommon. Such a phenomenon can, therefore, be attributed not to lack of procedures but the will to enforce such procedures strictly. While it is important to have procedures and organisational structures in place, what is more crucial is to ensure that the system functions efficiently and that the overall objective is achieved without any roadblocks.

In order to ensure absolute transparency and honesty in defence procurement, it needs no emphasis that the laid down procedures for evaluation and selection are strictly adhered to, records regarding defence purchases are scrupulously maintained and a concurrent audit of all defence purchases is undertaken in order to ensure accountability. The Parliamentary Committee has also recommended that whenever it is considered necessary, the role of serving/retired defence officers, bureaucrats and middlemen/agents in defence deals should be referred to and examined by the Central Vigilance Commission. It has also recommended that the Central Vigilance Commission clearance of the assets of the members of the Defence Procurement Board should be made mandatory, before, during and after their tenure. To ensure absolute probity, the government has already decided that all decisions taken by the ministry/Service Headquarters/inter-Service organisations (ISO) relating to major defence procurement/purchases/award of works, etc. valued at Rs 75 crore and above would be subject to a time-bound scrutiny by the C&AG and thereafter, wherever considered necessary,

13. n. 10, p. 25.

formal reference would be made to the CVC for initiating necessary action from the disciplinary / vigilance / legal angle.¹⁴

Transparency

Ensuring probity and public accountability in defence procurements has been stated as one of the key objectives of DPP-2005. On similar lines, transparency of operations has also been cited as an important objective of the revised procedure. Towards this end, certain important provisions have been incorporated in the standard contract clauses placed at Schedule IV of the revised procedure. These clauses relate to using 'undue influence' and signing of an 'integrity pact' by the vendor. Under the clause of 'undue influence,' the seller is required to render an

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undertaking that he has not given, offered or promised to give, any gift, consideration, reward, commission, fees, brokerage or inducement to any person in procuring the contract or any other act in relation to the contract. An 'integrity pact' is required to be

signed by the bidders and procuring authority (MoD). The integrity pact will contain a statement by the bidder that he has not paid, and will not pay, any bribes, in addition to an undertaking to disclose all payments made to anybody in connection with the contract. The pact will also include a statement by the procurement authority that its officials will not demand or accept any bribes, gifts, etc and that appropriate disciplinary or criminal sanctions will be imposed on the officials in case of violation of the relevant terms of the Integrity Pact.

Inclusion of the above clauses in the standard terms of the contract is to be welcomed, since defence deals in the recent years have been mired in controversy, leading to public outcry, adverse media coverage, parliamentary debates and frequent accusations by the opposition parties. To repose public faith in defence procurements, ensuring utmost transparency has, therefore, become imperative. It remains to be seen in the coming years whether the revised procedure has achieved this purpose.

14. Ibid., pp. 31-32.

Self-Reliance

Self-reliance has been cited as the goal in the DPP. Towards this end, private sector participation in the defence industry with 100 per cent equity has been permitted with effect from May 2001. Of this, a maximum of 26 per cent FDI has also been permitted. There are various reasons for setting the goal of self-reliance such as outflow of precious foreign exchange, unreliability of future support in the form of supply of spares, disposal of obsolete technology by arms exporting countries, etc. The GoM's Report mentioned that "the country's vast industrial and technological capabilities and its future potential need to be harnessed to further national security objectives."¹⁵ On the issue of private sector participation in defence exports, the report stated that "the review of the existing Defence Export Policy and ensuring the active involvement of private industry in promoting defence exports has to be accorded a higher priority. In addition to the expansion of employment opportunities, the economies of scale would help generate both the funds for R&D, and earn valuable foreign exchange. Such exports can also be used selectively for furthering our relationship with target countries."¹⁶ Thus, the government has set a target of procuring 70 per cent of its defence requirements from indigenous sources by 2010.¹⁷ However, such a target appears to be quite ambitious given that the initiative with regard to FDI in the private sector has not really taken off the way it was anticipated. The defence industry, as it exists today, is not in a position to satisfy the needs of the Indian armed forces, and it would be unrealistic to expect it do so in the near future after years of functioning in a sub-optimal manner.¹⁸ Dependence on import of defence equipment would, therefore, be inevitable for the next few decades. The procurement policy (including the policy of offsets) must be tuned accordingly keeping this inevitability of imports in view.

Offsets

The revised DPP has for the first time, a reference to the offset policy. Accordingly, the Request for Proposal (RFP) for all capital contracts with an

15. n. 1, p. 110.

16. Ibid.

17. n. 11.

18. Ajay Singh, "Quest for Self-Reliance," in Air Comm Jasjit Singh, ed., *India's Defence Spending-Assessing Future Needs* (New Delhi: Knowledge World in association with Institute for Defence Studies and Analyses), p. 149.

anticipated cost exceeding Rs 300 crore must include an offset clause amounting to 30 per cent of the indicative cost. These offsets could be in the form of direct purchase or providing market access for products or services of the designated industries of the buyer or they could be in the form of FDI in Indian public sector undertakings in defence industries. After the contract has been entered into, a defence public sector undertaking/ordnance factory board will be designated for monitoring the implementation of the offset clause. Penalties will be imposed on the vendor in case of failure to meet the offset obligations.

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felt that the "offset threshold" for defence deals involving only Rs 300 crore and above is considered to be high. No offsets are sought for contracts up to Rs 300 crore. The British government for example, has laid down that all contracts over £ 10 million (\$ 18 /million) will inevitably have a minimum 100 per cent offsets.¹⁹ The DPP-2005 lays down a minimum

30 per cent offsets for deals involving Rs 300 crore and above. During commercial evaluation, no extra weightage is given to a vendor offering higher offsets over and above the minimum limit prescribed. The limit of 30 per cent offsets is considered to be very low, since 100 per cent or more of offsets is quite common in the defence procurement of various other countries. It is hoped that the policy would be amended in due course once experience is gained in offsets in defence deals.

Towards An Efficient Procurement System

Based on the GoM's Report, the defence procurement procedure was revised on December 31, 2002. This procedure was applicable for capital acquisitions involving 'buy' decisions. This procedure was revised in June 2003 (DPP-Version June 2003) incorporating both 'buy' and 'buy and make with transfer of technology' decisions. The procedure was further revised in June 2005 incorporating certain additional

19. Maj. Gen. Mrinal Suman (Retd.), "India's Offsets Policy," *Indian Defence Review*, July-September 2005, p. 85.

features in the procedure such as inclusion of 'offset' policy; standard clauses of contract, including provisions related to use of 'undue influence' by the vendor and execution of an 'integrity pact' by both the seller and buyer; procedure for indigenous shipbuilding by the public sector shipyards; and detailed guidelines on transfer of technology in 'buy and make' decisions. The DPP involving 'make' decisions is yet to be promulgated by the government. Overall, the revised procedure is quite exhaustive and comprehensive. It is by far the most detailed procedure brought out by the Government of India involving defence procurement.

Despite self-reliance being cited as an important goal of defence procurement, it appears that a road map has not been clearly laid out by the government.

Notwithstanding the publication of such a detailed procedure, there are quite a few areas in the defence procurement arena involving key policy decisions that have a significant impact on the overall procurement philosophy. Some of these are not procedural issues and, therefore, cannot be part of the DPP. Since most of these issues have policy connotations, they must be incorporated in the Procurement Policy Statement or Mission as and when such a Policy Statement is brought out by the government. Some of these issues are discussed, in brief, as follows.

Self-Reliance

Although, promotion of indigenous defence production capability is one of the stated aims of DPP-2005, there is not a single provision or incentive towards achievement of that aim. The Indian private sector, despite its immense potential, has been totally ignored.²⁰ Despite self-reliance being cited as an important goal of defence procurement, it appears that a road map has not been clearly laid out by the government. The primary goal of self-reliance through indigenisation must find a prominent place in the defence procurement policy. The government must also bring out the details of progress achieved on the progress of FDI in defence industry, which has been permitted as recently as 2001.

20. Maj. Gen. Mrinal Suman (Retd.), "Defence Procurement Regime," *Indian Defence Review*, October-December 2005, p. 107.

Focus on People Involved in Acquisition Process

Any policy is as good as the people who execute it. Recognition of defence acquisition as a specialised process and training of MoD and Service Headquarters/personnel to carry out such a specialised task are important issues in achieving economy and efficiency in defence procurement. Accordingly, 'people management' involved in the acquisition process must find a place in the policy statement. For example, on the role of personnel, the Defence Procurement and Acquisition Policy Mission and Vision Statement of the US Department of Defence states, "...lead the DoD acquisition, technology, and logistics community in recruiting, retaining, and training the right workforce with the right skill, at the right place, at the right time, with the right pay."²¹ Similarly, in the UK, the concept of the 'acquisition stream' was launched in February 2001 by the secretary of state for defence. The acquisition stream aims to create a highly committed, well-trained and skilled body of professional people in acquisition and to provide military and civilian acquisition staff with a common set of values and a framework within which to develop their skills and competencies. Besides, the commercial staff within the MoD is being encouraged to gain professionally recognised qualifications in addition to conducting joint training courses in collaboration with private industry to develop best practice guidelines for defence acquisitions.²²

In India, there is neither a dedicated cadre of personnel for capital acquisitions nor are there any specific training programmes for staff involved in the acquisition process. The civil servants and Service officers are neither selected for any displayed talent nor given special training to handle defence procurement. The approach continues to be entrenched in bureaucratic mediocrity and procedural quagmire.²³ It has generally been accepted the world over that an efficient acquisition workforce can not only expedite procurements but also affect a saving of up to 15 per cent of the capital expenditure in initial purchase price and associated life-cycle costs.²⁴ Therefore, the procurement policy must be explicit

21. <http://www.acq.osd.mil/dpap/about/missionvision.htm>

22. www.mod.uk

23. Maj. Gen. Mrinal Suman (Retd.), "Quality of Acquisitions Staff," *Indian Defence Review*, January-March 2005, p. 27.

24. *Ibid.*, p. 30.

with regard to management and training of acquisition staff. In addition, in order to address such an important issue, the proposed National Defence University must have a dedicated department for undertaking studies in defence acquisition.

Delegation and Decentralisation

The recently created organisational structures have adequate representation from the MoD and Service Headquarters. While the three chiefs of staff are members of the DAC, the DPB is represented by the vice chiefs of staff. Similarly, the acquisition manager and the technical manager in the Acquisition Wing are represented by senior officials from the MoD and Service Headquarters respectively. The Technical Oversight Committee (TOC) for supervising the technical evaluation process has adequate representation of staff from the MoD, Services, DRDO and quality assurance (QA) agencies. Involvement of all the stakeholders in procurement is a positive sign for effective evaluation and decision-making.

As far as the delegation of financial powers for procurement is concerned, the delegation of financial powers by the MoD to the Services under the revenue head was enhanced in 2002. However, no delegation of financial powers under the capital head has taken place to the Services, with the MoD exercising the powers under this head. In order to cut down the delays involved in decision-making, it is perhaps time to consider delegation of financial powers to the Services under the capital head as well, to some extent, say, up to Rs 20 crore or so. Problems arise due to overcentralisation of authority within the MoD, as far as the administration of the capital budget is concerned. While a fair degree of devolution has occurred in the case of the revenue budget, corresponding changes have not been introduced for the capital budget administration. It is, perhaps, the single most important factor contributing to sub-optimal utilisation of the capital budget in recent years.²⁵

Dovetail with National Defence Policy

The defence policy of any country is an offshoot of the national strategic policy and objectives. The defence procurement policy must flow out of the strategic

25. Lt. Gen. Chandra Shekhar (Retd.), *Arming the Defence Forces-Procurement and Production Policies* (Manas Publications, 2004), p. 23.

defence policy as is the case with the US, UK, Canada, China, Australia, etc. The procurement philosophy and the capabilities sought to be achieved must be closely interlinked. This would be possible only if the procurement initiatives are dovetailed with defence plans and budgets. Any gap or mismatch amongst plans, budgets and acquisition process would lead to chaos and ad-hoc management. Ideally, therefore, the procurement policy statement must help in establishing such a linkage.

CONCLUSION

India does not have an explicitly framed Defence Procurement Policy Statement. However, the DPP-2002 (which has since been amended several times), promulgated based on the GoM's Report on Management of Defence is quite exhaustive and a major improvement over the earlier procedure of 1992. Though procedural in nature, it contains many aspects of policy significance. The creation of various organisational structures for defence procurement is also an important development for ensuring efficiency, accountability and transparency. Unlike earlier, when the entire defence procurement mechanism was like an enigma wrapped in mystery for the general public, these procedures are now easily available in the public domain, facilitating a free discussion and critical appraisal. However, true measurement of the success of these changes will only be possible if information sharing on defence procurement continues to be undertaken by the government in as much detail as possible within the security parametric ambit. Unless such free information sharing takes place, it will not be possible to assess the efficiency and transparency with which the defence acquisition system is being managed. It is hoped that the procurement policy facilitates such information sharing in future.

NOTE:

The main text of the Defence Procurement Procedure (DPP) - June 2005 (pp. 1 to 14), promulgated by the Ministry of Defence, Government of India, is placed as Appendix to this paper for reference. The full text of the procedure including various appendices and explanatory notes are available at site www.mod.nic.in

APPENDIX

DEFENCE PROCUREMENT PROCEDURE-2005

GENERAL

1. As part of the implementation of the report of the Group of Ministers on reforming the National Security System, new Defence Procurement Management Structures and Systems were set up in the Ministry of Defence (MoD) vide MoD order No SA/01/104/2001 dated 10 September 2001 and No 17179/2001-Def Secy/IC/2001 dated 11 October 2001. In order to implement the provisions laid out in the new Defence Procurement Management Structures and Systems, the procedure for Defence Procurement laid down vide MoD ID No 1(1)/91/PO (Def) dated 28 February 1992 was revised. The Defence Procurement Procedure – 2002 (DPP-2002) came into effect from 30 December 2002 and was applicable for procurements flowing out of 'Buy' decisions of the Defence Acquisition Council (DAC). The scope of the same was enlarged in June 2003 to include procurements flowing out of 'Buy and Make through Imported Transfer of Technology (TOT)' decisions. The Defence Procurement Procedure – 2002 (version June 2003), has been reviewed and modified based on experience gained in implementation. This procedure, named the Defence Procurement Procedure – 2005, is set out in the succeeding paragraphs.

AIM

2. The objective of this procedure is to ensure expeditious procurement of the approved requirements of the Armed Forces in terms of capabilities sought and timeframe prescribed by optimally utilising the allocated budgetary resources. While achieving the same, it will demonstrate the highest degree of probity and public accountability, transparency in operations, free competition and impartiality. In addition, the goal of achieving self-reliance in defence equipment will be kept in mind.

SCOPE

3. The Defence Procurement Procedure – 2005 (DPP-2005) will cover all Capital Acquisitions, (except medical equipment) undertaken by the Ministry of Defence and Defence Services both from indigenous sources and ex-import. Defence Research and Development Organisation (DRDO), Ordnance Factory Board (OFB) and Defence Public Sector Undertakings (DPSUs) will, however, continue to follow their own procedures for procurement.

CAPITAL ACQUISITIONS

4. Capital Acquisitions are categorised as under:

- (a) Acquisitions covered under the 'Buy' decision (outright purchase).
- (b) Acquisitions covered under the 'Buy and Make' decision (purchase followed by licensed production / indigenous development).
- (c) Acquisitions covered under the 'Make' decision (indigenous production and research & development).

5. This document is, however, restricted to the procedure for Capital Acquisitions flowing out of 'Buy' and 'Buy and Make' decisions only. The procedure for acquisitions covered under the 'Make' decisions will be promulgated separately. The procedure for Indigenous Warship Building (Shipbuilding) has been promulgated vide MoD ID No 52/Dir (Acq)/02 dated 18 March 2004 and is placed as Schedule I. Fast Track Procedure (FTP) has been promulgated vide MoD ID No 800/SS(A)/ 2001 dated 28 September 2001 which is applicable for urgent operational requirements.

LINKAGE TO ACQUISITION PLANS

6. Proposals for acquisition of capital assets flow out from the defence procurement planning process. This planning process will cover the long-term, medium-term and short-term perspectives as under:

- (a) 15 years Long-Term Perspective Plan (LTTP).
- (b) 5 years Services Capital Acquisition Plan (SCAP).
- (c) Annual Acquisition Plan (AAP).

7. Based on the Raksha Mantri's Operational Directive, Headquarters Integrated Defence Staff (HQ IDS), in consultation with the Service Headquarters (SHQs), would formulate the 15 years Long-Term Integrated Perspective Plan (LTIPP) for the Defence Forces. The Five-Year Defence Plans for the Services would also be formulated by HQ IDS, which would include requirements of 5 years Services Capital Acquisition Plan (SCAP). The SCAP should indicate the list of equipment to be acquired, keeping in view operational exigencies and the overall requirement of funds. The planning process would be under the overall guidance of the Defence Acquisition Council. Its decisions as approved by the Raksha Mantri will flow down for implementation to the Defence Procurement Board (DPB). The DAC will categorise all schemes as BUY, BUY and MAKE and MAKE on a five-year basis and accord overall Acceptance of Necessity. The AAP would be a subset of the SCAP and would also include schemes of value less than Rs 20 crores.

ANNUAL ACQUISITION PLAN (AAP)

8. HQ Integrated Defence Staff will work out the annual requirement of funds for capital acquisitions taking into account the schemes listed in SCAP and those proposed for the year ahead, carryovers, operational exigencies and proposed changes in priorities recommended by the respective Service Headquarters, by 31 December of each year. The details of these requirements would be scrutinised in the Acquisition Wing and then forwarded to Defence (Finance) for budgetary projections and allocations. Based on the budgetary projections and allocations, the AAP

will be formulated by the respective SHQs and approved by the DPB by 15 April of the relevant Financial Year. The AAP should be based on a two-year acquisition cycle and cater for adequate cushion to safeguard against surrender of funds. In case the SCAP is not finalised, the AAP would be approved by the DPB on the basis of categorisation recommended by the Services Capital Acquisition Plan Categorisation Higher Committee, prioritisation accorded by SHQs, and allocation of resources for Capital schemes in the Defence budget.

9. The DPB may also carry out amendments in the Annual Acquisition Plan, if considered necessary, on account of national security objectives, operational urgencies, budgetary provisions or any other exigency based on recommendations made by SHQ /HQ IDS/Department of Defence/Defence (Finance). The Acquisition Wing will process all acquisition proposals incorporated in the 'Annual Acquisition Plan' under the overall guidance of the DPB.

ACQUISITION PROCESS

GENERAL

10. The acquisition process for schemes categorised as 'BUY' and 'BUY and MAKE with ToT', will involve the following functions:

1. Services Qualitative Requirements (SQRs).
2. Acceptance of Necessity (AoN).
3. Solicitation of offers.
4. Evaluation of Technical offers by Technical Evaluation Committee (TEC).
5. Field Evaluation.
6. Staff Evaluation.
7. Oversight by Technical Oversight Committee (TOC) for Acquisitions above Rs 300 Crs.
8. Commercial negotiations by Contract Negotiation Committee (CNC).
9. Approval of Competent Financial Authority (CFA).
10. Award of contract / Supply Order (SO).
11. Contract Administration and Post-Contract Management.

SERVICES QUALITATIVE REQUIREMENTS (SQRs)

11. All Capital Acquisitions shall be based on Services Qualitative Requirements (SQRs). The SQRs should lay down the users' requirements in a comprehensive, structured and concrete manner. It should, however, be ensured that the SQRs are broad-based and realistic. The SQRs must express the users' requirements in terms of functional characteristics and its formulation must not prejudice the technical choices by being narrow and tailor made.

12. The SQRs will be drafted by the user directorate at SHQ and circulated to all concerned for obtaining their views/comments including other possible user directorates, maintenance directorate, HQ IDS, DRDO, Department of Defence Production (DDP), Director General of Quality Assurance

(DGQA)/Director General of Aeronautical Quality Assurance (DGAQA), Directorate of Standardisation, Technical Managers and any other department, as deemed necessary. These agencies will also be represented on the Staff Equipment Policy Committee (SEPC) for approving the SQRs. Records in respect of Qualitative Requirements (QRs) will be maintained by the User Service(s). In cases where commonality of equipment exists and standardisation of QRs is merited, it would be the responsibility of HQ IDS to constitute a Joint Staff Equipment Policy Committee, with representatives of all members as above, from the three Services, in order to formulate Joint Services Qualitative Requirements (JSQRs) for such equipment. The QRs shall be prescribed in clear-cut terms and they should not be vague or ambiguous. Prior to according approval to the SQRs, the SEPC should assess that it would result in a multi-vendor situation. If a single vendor situation is likely then the reasons for formulation of such SQRs should be recorded. SHQ may issue 'Requests For Information (RFIs)', where they are not certain of the specification of a system, in order to formulate realistic SQRs. However, such requests should be issued only in complex cases, which would be rare.

13. The QRs of the equipment to be procured should be of a contemporary technology widely available in the world /indigenous market. The performance parameters given in the SQR should be verifiable and classified as 'Essential Parameters'. These are defined as the minimum essential military requirements, corresponding to the task or tasks to be performed by the system. Accordingly the 'Essential' classification to a requirement must result from an in-depth critical analysis of the necessity of requirement. There would not be any Desirable Parameters in the SQRs.

14. Waiver of SQR Parameters. Waiver/amendment to parameters of SQR may be accorded by the SHQ concerned before issue of Request for Proposal (RFP). Thereafter no waiver of parameters would be granted.

ACCEPTANCE OF NECESSITY

15. Approval of the DAC to the SCAP will be construed as Acceptance of Necessity. However, there may be occasions when SCAP is not approved by DAC in time; in such cases, approval of Annual Acquisition Plan by DPB would be construed as Acceptance of Necessity. It should be ensured that MoD (Department of Defence) and MoD (Finance) are represented in the SCAP Categorisation Committees and the statement of cases are circulated by SHQs and HQ IDS indicating the scope of the proposal and indicative costs in the format at Appendix A. In the absence of the designated member, the authorised representative would be deemed suitably empowered to take decisions in the Categorisation Committee meetings.

Based on the Acceptance of Necessity as accorded by the DAC/ DPB, the SHQs / HQ IDS will submit a statement of case to MoD for quantity vetting. In cases which require approval of the Defence Secretary or at a higher level, the Additional Secretary will hold a meeting with the representatives of HQ IDS, DDP, DRDO, SHQs and Defence Finance, as required, to ensure proper examination in a time bound manner for vetting of quantities. Thereafter, such cases will be processed for approval of designated financial authority on file through Secretary (Def/Fin). In

cases of schemes less than Rs 20 crores, quantity vetting would be done by the authorities within their delegated powers by carrying out examination in a similar collegiate manner.

16. For orders to be placed on OFB for Capital items included in the AAP, statement of case will be processed for quantity vetting as prescribed in Para 15 above. Thereafter, in such cases, the Acquisition Manager will seek CFA approval and place indents on OFB.

17. The statement of case for quantity vetting of common user equipment available at Director General of Supplies & Disposal (DG S&D) rate contracts, would include compliance of parameters as vetted by the Technical Managers. Thereafter, the Acquisition Manager will seek approval of CFA and place orders directly, on the DG S&D approved source of supply.

18. Offsets. The SCAP Categorisation Committee will also recommend the inclusion of an offset clause amounting to 30 percent of the indicative cost in the RFP where the indicative cost of the contract is Rs 300 crore or more. The committee will also suggest the name of the lead DPSU / OFB which will assist MoD in monitoring the implementation of the offset contracts during the post contractual period. The SCAP Categorisation Higher Committee may consider changes in the offset amount, if felt necessary, while making recommendation to DAC for approval.

SOLICITATION OF OFFERS

19. Single Stage-Two Bid System. Solicitation of offers will be as per 'Single Stage - Two Bid System'. It will imply that a 'Request for Proposal' would be issued soliciting the technical and commercial offers together, but in two separate sealed envelopes. This system safeguards against the possibility of the vendor increasing his commercial offer consequent to development of a single vendor situation after evaluation. At this stage, the vendor will give a written undertaking to meet the offset obligations laid down in the RFP, as part of the technical offer. This undertaking will be binding and failure to discharge it at any stage of the acquisition process will disqualify the vendor from any further participation and his offer will be treated as null and void. The vendor will under no circumstances delay the execution of the main contract on the plea of failure of Indian Industry in executing various offset contracts.

20. Once the SQRs have been finalised, the sources of procurement of the weapon system/stores shall be ascertained and short-listing of the prospective manufacturers/suppliers carried out by the SHQ. The short-listed vendors will be the Original Equipment Manufacturers (OEMs)/ Authorised Vendors/ Govt Sponsored Export Agencies (applicable in the case of countries where domestic laws do not permit direct export by OEMs). In cases involving TOT, the short-listing of the vendors would take into account their ability to transfer requisite technology for licensed production. The list of short-listed vendors may be supplemented by the Technical Managers in the Acquisition Wing for which a databank will be maintained by them. Wherever possible, keeping the security and other relevant aspects in view, appropriate publicity may be given to the proposed procurement with a view to generate maximum competition.

21. It is well accepted that the market for state-of-the-art defence equipment and platforms is circumscribed by denial regimes. In addition, national security concerns prevent operational

parameters of equipment required by the defence Services being made public. The procurement of defence equipment on the basis of limited tenders, therefore, becomes imperative. Such RFPs would be processed by SHQs, after due consultation with all concerned agencies including User, Procurement and Maintenance Directorates at SHQ and the Quality Assurance (QA) agency. RFPs would then be vetted by the Acquisition Manager, Finance Manager and Technical Manager in a collegiate manner, before submission to the Special Secretary/Additional Secretary (Acquisition) for approval and issue to all shortlisted vendors by Technical Manager.

However, it would be open for the Acquisition Wing in MoD to procure Commercially Off the Shelf (COTS) equipment, not available on DGS&D rate contract (refer para 17), on the basis of open tenders.

22. In cases where TOT is being sought, the nominated Production Agency (PA) should vet the RFP on behalf of DDP. Inputs may be sought from DRDO on case to case basis. In the case of turnkey projects, detailed scope of work involved, bill of material and timeframe should also be indicated. No addition to vendors will be allowed after issue of the RFP.

23. Request for Proposal (RFP). The RFP will be a self-contained document that will enable vendors to make their offer after consideration of full requirements of the acquisition. A standardised RFP document is attached as Schedule II. This will be applicable for all acquisitions. It will generally consist of four parts as under:

- (a) The first part elaborates the general requirement of the equipment, the numbers required, the timeframe for deliveries, the environmental parameters for functioning, conditions of usage and maintenance, requirement for training, Engineering Support Package (ESP), and warranty/guarantee conditions, etc. It specifies the prescribed procedure and last date and time for submission of offers.
- (b) The second part of the RFP incorporates the SQRs describing the technical parameters of the proposed equipments in clear and unambiguous terms. In case equipment is being procured for the first time and needs to be evaluated, the RFP includes the requirement of field evaluation on a "No Cost - No Commitment" (NCNC) basis. Compliance of offers would be determined only on the parameters spelt out in the RFP.
- (c) The third part of the RFP outlines the commercial aspects of the procurement, including clear statements on Payment Terms, Performance Guarantees, Guarantees against Warranty Services to be performed by the supplier. It also includes standard contract terms along with special contractual conditions, if any.
- (d) The fourth part of the RFP defines the criteria for evaluation and acceptance, both in terms of technical and commercial contents. A format will be enclosed for submission along with commercial offer to facilitate preparation of Comparative Statement of Tenders (CST) and identification of Lowest (L1) vendor. Submission of incomplete format enclosed along with commercial offer will render the offer liable for rejection.

24. In cases where TOT is involved, the appropriate production agency would be nominated by DDP. In such cases, the RFP would include the requirement for licensed production under TOT. The

RFP should spell out the requirements of TOT in range and depth of the technology required. These could cover technology for repair and overhaul, production from Completely Knocked Down (CKD)/Semi-Knocked Down (SKD) kits and production from raw material and component level. Aspects to be included in the RFP in case production from SKD/CKD/Indigenous Manufacture (IM) Kits is based is given at Schedule III.

25. Normally, TOT will be negotiated along with the first procurement. However, there may be occasions where it is not feasible to negotiate the TOT simultaneously. To cater to such contingencies, the RFP should clearly indicate that Government reserves the right to negotiate TOT terms subsequently and that the availability of TOT would be a pre-condition for any further procurements. In such cases, terms and conditions of obtaining TOT would be included in subsequent RFP.

26. The offers received should be opened on the notified date/time, by the members of a committee chaired by the Technical Manager, in the presence of the bidders or their authorised representatives, as may choose to be present. The committee will open the envelope containing the sealed technical and commercial offers. The technical offer will be opened by the committee and sent to SHQ for evaluation by a Technical Evaluation Committee (TEC) and the sealed envelope containing the commercial bid will be sent to the Acquisition Manager, unopened. Offers which do not conform to the prescribed procedure for submission of offers as laid down in para 15 of the standardised RFP (Schedule II) or which are received after the scheduled time for submission of offers, and unsolicited offers will not be entertained.

27. Extension of Time. Notwithstanding the above, situations may arise in which it may be appropriate to extend the time allowed for submission of offers. The extension so granted should not exceed a period of four weeks from the original date of submission of offers.

TECHNICAL EVALUATION COMMITTEE (TEC)

28. A TEC will be constituted by the SHQ for evaluation of the technical bids received in response to RFPs, with reference to the QRs, under an officer from the SHQ. It will include, apart from the representatives of the user service and maintenance agency, representatives of QA. In addition, in cases where TOT is involved, TEC will also include representatives of PA and DRDO, as deemed necessary. The TEC will examine the extent of variations/ differences, if any, in the technical characteristics of the equipment offered by various vendors with reference to the QRs and prepare a 'Compliance Statement' short listing the equipment for trials/induction into service, as applicable. While preparing the compliance statement, the TEC will ensure that the same equipment has not been offered by two or more vendors. In such an eventuality, the equipment offered by the OEM will only be accepted. The TEC may invite the vendors for technical presentations/ clarifications on technical issues.

29. A technical offer, once submitted, should not be materially changed subsequently. However, minor variations which do not affect the basic character/ profile of the offer may be acceptable. The following must be ensured:

- (a) An opportunity for the revision of minor technical details should be accorded to all vendors in an equal measure to ensure fair play.
- (b) No extra time to be given to any vendor to upgrade his product to make it SQR compliant.
- (c) No dilution of SQR is carried out.
- (d) The original commercial quote submitted earlier must remain firm and fixed.

30. The Special Secretary/Additional Secretary (Acquisition) will formally accept the report of the TEC on recommendations of the Technical Managers. If at the TEC stage, only one vendor is found complying to all the SQR parameters, then the RFP would be retracted on approval of the Special Secretary/Additional Secretary (Acquisition) and a fresh RFP issued by suitably reformulating the SQRs.

FIELD EVALUATIONS (TRIALS)

31. Field Evaluations (Trials), if required, will be conducted by the User Service on the basis of Standard Operating Procedures (SOP) evolved by them. The manufacturers of the short listed equipment shall be asked to send the desired number of units of the equipment/weapon system to India for Field Evaluation. SHQ will formulate the Trial Directive and constitute the Trial Team. The trial directive must specify the fundamental points that need to be addressed for validating the 'Essential' parameters. The SQRs of the equipment would be a part of the trial directive. Parameters not mentioned in the RFP should not be considered for field evaluation. The validation of the support system and maintainability trials, integral to and complementing the trial programme of the weapon system should be held simultaneously, wherever feasible. Representatives of DRDO, QA agency may also be part of the field evaluation, on as required basis. A representative of the Acquisition Wing may also participate in the field evaluation as an observer. The field evaluation shall be conducted by the user in all conditions where the equipment is likely to be deployed, and a detailed Field Evaluation Report shall be drawn up and sent to SHQ for preparation of Staff Evaluation. Similar action would be taken in the cases where Trial Teams are deputed abroad for evaluation purposes.

32. In certain conditions the Acquisition Wing, particularly in cases involving integration of systems or sensitive equipment, can depute a multi-disciplinary Technical Delegation abroad for evaluation and an Empowered Committee for negotiation purpose. Both could be combined as a Multi-Disciplinary Committee. The Technical Delegation should have representatives, on need basis, from the user service, DRDO, Maintenance agency, QA agency and the Technical Managers. In addition, Acquisition Manager, and Finance Manager or their representatives will be included in the Empowered Committee. Such committee would be constituted after due approval of the DPB.

33. The field evaluation will normally be conducted on NCNC basis.

34. Field Evaluation (Trial) in India, in the manner suggested earlier, may not be possible in all cases. Where field evaluation is not feasible, the possibility of conducting evaluation through computer simulation should be explored. Field evaluation/computer simulation may be dispensed

with only after approval of the DPB, on recommendations at appropriate levels in the SHQ. All evaluations for confirmation/ validation of parameters should be completed and accepted prior to commencement of the CNC. In cases where subsequent confirmation/validation is merited, the same would be duly justified and recorded in the CNC minutes. Approval of CFA would be sought specifically on such issues.

STAFF EVALUATION

35. Based on the field evaluation carried out as described in paragraph 31 onwards, the SHQ will carry out a staff evaluation, which gives out the compliance of the demonstrated performance of the equipment vis-a-vis the SQR. The staff evaluation will analyse the field evaluation results and shortlist the equipment recommended for introduction into service. The staff evaluation report will be approved by the Service HQ and forwarded to the Acquisition Wing for acceptance. The Technical Manager would receive the Staff Evaluation Report, and after due examination, submit the report to the Special Secretary/Additional Secretary (Acquisition) with his recommendations for acceptance or otherwise. In case no vendor meets the SQRs in the field evaluations then the case would be foreclosed on approval of Special Secretary/Additional Secretary (Acquisition) and a fresh RFP issued after reformulating the SQRs. However, waivers/ amendments to SQRs can be sought only for 'Make' projects of DRDO/OFB/DPSUs which are developmental in nature. In such cases, approval of Raksha Mantri would be taken prior to acceptance of Staff Evaluation Report.

36. Acquisition Wing will ask from those vendors, whose equipment has been shortlisted, to submit detailed offset offers in a sealed envelop within six weeks. These offers shall be evaluated by the CNC prior to the opening of the commercial offers already submitted by the vendors. Commercial offers of only those vendors whose offset offers are found to be in order, will be opened.

TECHNICAL OVERSIGHT COMMITTEE (TOC)

37. TOC provides expert oversight over the technical evaluation process. Defence Secretary will constitute TOCs for selected acquisition proposals in excess of Rs 300 Crores and any other case recommended by the DPB. A TOC will comprise of 3 members, one Service Officer, one DRDO scientist and one representative of DPSU preferably not involved with that acquisition. The TOC will be tasked to see whether the trials, trial evaluations, compliance to QRs and selection of vendors were done according to prescribed procedures. The Committee will have to give its ruling, based on a majority decision, within 30 days and the absence of a response will be deemed to be acceptance. The time limit of 30 days shall not be extended on any ground. Technical Managers of the Procurement Division will provide the secretarial support to the TOC and ensure availability of all inputs from DDP /Acquisition Wing, Defence Finance and SHQ to the TOC. The Technical Manager will clarify any queries raised by the TOC. The TOC Report will be submitted to the Defence Secretary for acceptance.

COMMERCIAL NEGOTIATION COMMITTEE (CNC)

38. The process of commercial negotiations will commence, wherever necessary, after the Staff Evaluation Report has been accepted by the Special Secretary/Additional Secretary (Acquisition) and the TOC Report has been accepted by the Defence Secretary, as applicable. The standard composition of the CNC shall be as indicated at Appendix B to this procedure. Any change in the composition of the CNC may be effected with the approval of Special Secretary/Additional Secretary (Acquisition). Where considered necessary, a Service officer or any officer other than from the Acquisition Wing of the MoD may be nominated as Chairman of the CNC with the prior approval of Raksha Mantri. The concerned organisations/agencies should ensure that their representatives in the CNC have adequate background and authority to take a decision without any need to refer back to their organisation/agency. The CNC will carry out all processes from opening of commercial bids till conclusion of contract. The sealed commercial offers of the technically accepted vendors shall be opened by the CNC at a predetermined date and time under intimation to vendors, permitting such vendors or their authorised representatives to be present. The bids of the competing firms shall be read out to all present and signed by all members of the CNC.

39. It would be desirable to negotiate the licence production contract along with the contract for the finished product. In cases where this is not feasible, the purchase contract should include a clause wherein the vendor agrees to negotiate the licence contract at a subsequent date, thus obtaining a commitment from the vendor to part with the TOT.

40. Tender evaluation will involve recording and analysing the merits of each tender. The process will start with preparation of a 'Compliance Statement' incorporating the commercial terms offered in the RFP and that sought by the vendor(s), analysis of the discordance and the impact of the same. A similar statement would be prepared in regard to deviations noticed in the delivery schedules, performance warranty, guarantee provisions, acceptance criteria, Engineering Support Package (ESP) etc. Comprehensive analysis of the commercial offer will form the basis for subsequent decisions.

41. The CNC will prepare a Comparative Statement of Tenders (CST) with a view to evaluate the technically acceptable offers and determine the lowest acceptable offer (L1 Vendor).

42. The CNC may hold internal meetings to finalise the approach to be adopted by them in conducting negotiations with the L1 Vendor and lay down a tentative timetable for the proposed negotiations. Once a preliminary view has been taken by the CNC, it will invite the representatives of the L1 vendor for financial/contractual negotiations. The CNC may require more than one round of negotiations with the L1 vendor. Negotiation would have two basic objectives, namely, achieving a reasonable and economic price, and obtaining the most favourable terms of contract, as near as possible to the standard terms of contracts, for the Ministry of Defence.

43. The L1 vendor has to finalise all contracts, which are forming part of the offset. The main contract shall come into force at the moment the vendor has concluded all the offset contracts with the nominated industries up to the value specified in the RFP. The offset contracts should be concluded not later than within 60 days of entering into the main contract.

44. In cases where India enters into agreements with particular vendors/countries regarding specific contractual clauses, the terms and conditions of such agreements would supersede the corresponding standard clauses of DPP 2005. It may also transpire that India's strategic defence partnerships with certain countries may require procurement of equipment from vendors other than OEMs. Subject to these deviations, the provisions of DPP 2005 would be applicable in such contracts.

APPROVAL OF COMPETENT FINANCIAL AUTHORITY

45. The CNC should document the selection of vendor using a formal written recommendation report addressed to the relevant approval authority. The report must be complete in all respects and comprehensively elaborate the method of evaluation and the rationale for the selection made. All CNC members should sign the recommendation report, in the interests of probity and accountability, as evidence that they concur with the process adopted and the ultimate selection made. Any dissenting view, including the reasons for the same, should be documented.

46. For DRDO schemes, the task of the CNC would be limited to firming up the scope, identifying milestones and the likely cash outgo based on costs estimated by Additional Financial Advisor (Addl FA) DRDO.

47. The report of the CNC should include:

- (a) A brief background to the requirement.
- (b) Composition of the CNC.
- (c) An explanation of the commercial evaluation process, selection criteria and commercial evaluation matrices, if used.
- (d) Brief description of different phases of the commercial negotiation process.
- (e) A summary of the recommendations.

48. The CNC Report along with the summary of recommendations would be processed by the Director/Acquisition Manager at their level, as applicable, for obtaining expenditure clearance and CFA approval.

STANDARD CONTRACT DOCUMENT

49. The standard contract document at Schedule IV indicates the general conditions of contract that would be the guideline for all acquisitions.

POST-CONTRACT MONITORING

50. While responsibility for contract administration and management would be that of the SHQ concerned, post-contract monitoring would be conducted by the Acquisition Wing. Depending on the degree of complexity of a project, the reviews will be carried out as elucidated below:

- (a) Simple Projects. Projects involving one time off the shelf buys, without any design and development, shall be reviewed by the Acquisition Manager/equivalent service officer in the SHQ.

(b) Complex Projects. Projects which require design, development and testing in consultation with the users, with likely TOT, and have enlarged scope in terms of basic complexities, depth of design and development, and consideration of a large number of participants would be reviewed by a steering committee headed by Special Secretary/Additional Secretary (Acq) in the MoD or Principal Staff Officer at SHQ, with members from MoD, MoD (Fin), DRDO, DDP and SHQ. In such cases, the Acquisition Wing will submit quarterly Contract Implementation Reports (CIR), to the DPB.

(c) Monitoring of Offset Contracts. The DPSU/OFB nominated by the DAC will monitor the execution of various offset contracts. A periodic report containing all necessary information will be submitted to the monitoring section of the MoD in this regard. Any slippages in the execution of offset contracts would be brought to the notice of MoD, which will take appropriate action. In case the vendor fails to meet his offset obligations in a particular year, he will attract penalties. The vendor shall be liable to pay compensation of 5% of annual unfulfilled portion of the value of the offset, which will be deducted from the amount due in the main contract. The unfulfilled offset value will be carried forward to the subsequent year.

EQUIPMENT INDUCTION CELLS (EICS)

51. EICs will be raised for major projects on a case-to-case basis in SHQ at the discretion of SHQ. The EICs will deal with the induction of major equipment and help in planning the requirement of facilities essential for the serviceability and maintainability aspect of acquisition. The EICs will help the Defence Procurement Board to move towards the Life Cycle Cost Concept.

SUBSEQUENT PROCUREMENT OF ALREADY CONTRACTED EQUIPMENT

52. In cases where there is an additional requirement of equipment/systems with an estimated value of more than Rs 20 Crores, and for which orders/contracts had already been placed in the past after following due process, the case will be put up to DPB, based on the recommendations of SHQs, who may order either fresh field evaluation or obtain technical and commercial offers or only commercial offers depending on the merits of the case. Similar decision in respect of additional requirements having an estimated value up to Rs 20 Crores may be taken by the Acquisition Wing. For equipment already inducted into service, it may be necessary to go back to the OEMs for procurement of additional equipment/major-assemblies/sub-assemblies/Special Maintenance Tools (SMT)/Special Test Equipment (STE)/maintenance/integration of Buyer Furnished Equipment (BFE), as no other supplier would be in a position to meet this requirement. All such acquisitions would not be construed as single vendor cases requiring waiver. It must, however, be ensured that when spares, etc. are procured from OEMs of sub-assemblies, the assurances/ warranties extended by the OEM for the main equipment retain their validity.



53. If repeat order is to be placed for equipment/system for which TOT has been obtained earlier by a DPSU/OF, the procedure at Para 52 will not apply. Such repeat orders will not be treated as a 'single tender' cases and only commercial RFP will be issued. It will, however, be checked prior to placing further orders that the technology absorption levels agreed to while concluding TOT contract have been achieved.

54. If equipment proposed to be procured has already been procured by a sister service after following due process then such cases would be treated as repeat order. For such cases, provisions of para 52 will apply.

SINGLE TENDER SITUATION

55. If certain state-of-the-art equipment being manufactured by only one vendor is to be procured to get qualitative edge over our adversary then such case should be debated by the DAC after proper technology scan is carried out by HQ IDS in consultation with the DRDO.

56. 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 tender 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.

INTER-GOVERNMENT AGREEMENT (IGA)

57. In certain cases a state-of-the-art equipment may be available with only one country. Such equipment may be of proven technology and may have been seen by our armed forces while participating in joint international exercises. Procurement of such equipment may be necessitated due to urgent operational requirements. Such procurements will be done based on an Inter-Governmental Agreement after clearance from CFA.

58. In cases of large value acquisition and especially those requiring product support over a long period of time, it may be advisable to enter into a separate Inter-Government Agreement (IGA) (if not already covered under an umbrella agreement covering all cases) with the Government of the country from which the equipment is proposed to be procured after the requisite inter-ministerial consultation. Such an IGA is expected to safeguard the interests of the Government of India and should also provide for assistance of the foreign government in case the contract(s) runs into an unforeseen problem.

PROCEDURE FOR PROCUREMENT ON STRATEGIC CONSIDERATIONS

59. In certain acquisition cases, imperatives of strategic partnerships or major diplomatic, political, economic, technological or military benefits deriving from a particular procurement may be the principal factor determining the choice of a specific platform or equipment on a single vendor



basis. These considerations may also dictate the selection of particular equipment offered by a vendor not necessarily the lowest bidder (LI). Decisions on all such acquisitions would be taken by the Cabinet Committee on Security (CCS) on the recommendations of the DPB.

PROCESSING OF PROCUREMENT CASES

60. In order to cut down the delays in procurement of equipment and ensure that the procurement system is more responsive to the needs of the Armed Forces, the following steps need to be taken:

- (a) Broad timeframe for completion of different procurement activities given at Appendix C should be adhered to. Major deviations from this timeframe should be brought to the notice of the DPB, for necessary corrective measures.
- (b) Once the statement of case is forwarded by SHQ to MoD, consolidated observations/clarifications sought up to and including the level of JS/Acquisition Manager in the MoD and MoD (Fin) should be clarified in an across the table discussion, and minutes of the same recorded on file. All efforts should be directed towards avoiding multi-layered examination of proposals in MoD (Acquisition Wing), and decisions should be taken by Acquisition Manager/Finance Manager/Technical Manager in a collegiate manner.
- (c) A defence procurement network, electronically connecting all agencies involved in defence procurement, to build up a data base and information system, should be set up.

DEVIATIONS FROM DPP-2005

61. Any deviation from the prescribed procedure will be put up to Raksha Mantri through DPB for approval.

REVIEW

62. Reviews of the procurement procedure would be undertaken by the DPB after every two years.

CONCLUSION

63. This procedure would be in supersession of the Defence Procurement Procedure - 2002 (Version Jun 2003) issued under Ministry of Defence ID No. 82/Dir (Acq)/ 02, dated 30 Jun 2003. DPP 2005 will come into effect from 01 Jul 2005. There are, however, cases, which would be under various stages of processing in accordance with provisions of DPP 2002 (version Jun 2003) at the time of commencement of DPP 2005. The processing of these cases done under the provisions of DPP 2002 (version Jun 2003) will be deemed to be valid. However, further processing of such cases with effect from 01 Jul 2005 will be done as per DPP 2005.