DEFENCE PROCUREMENT MANUAL - 2009

Lecture - 3

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DPM - 2009

- Fundamental Principles: Efficiency, Economy, Transparency, Equitable Treatment of Suppliers, Promote Competition
- Registration: Technical and Financial Capability
- Mil Spec(s) NS COTS
- NIT: Description and Spec(s) of the goods and qty required
- Period and Term of delivery
- Cost of bidding Documents
- Place and deadline for receipt of Tender
- Place and time/date for opening of Tender
- EMD
- LTE: >25 Lakh: Urgency, not in public interest, sources are definitely known

SINGLE TENDER ENQUIRY

- Emergency/Urgency, a particular source only
- Operational requirement
- To OEMs only
- PAC tendering: Certificate
- Amendment to RFI
- Two Bid system: QR Compliance TEC, TPC
- Association of IFA in TEC
- Revised Commercial /bid
- Price Reasonableness
- Lack of competition - <2, cartel formation
- Retendering: Price quoted unreasonable high, sudden slump in prices
- Withdrawal of offer by L_1: Retendering (CVC)

SINGLE TENDER ENQUIRY

- Cartel formation: Report to registration of companies, CIC, NSIC, FICCI

Pre Bid Conference

- Debriefing
- Types of Contract: Purchase order, rate contract, AMC, consultations contract, FC/ development contract

Works contract

- General principles
- Terms to be precise
- Standard form of contract
- No variation in terms without consent of CFA
- Indefinite liability
- Financial status
- Provision of safeguard good properly

DPM PROVISIONS

- Product Reservation and Price Preference
- Khadi (KVIC), SMEs (358 Items)
- Purchase Reference to Pharma CPSEs
- ERV: Only for Defence PSUs, DP > I Year
- Base Exchange Rate, Debit Advice
- Documents for Claiming Payment- S.0/Contact, CFA Sanction, TEC Report, CST, TPC Proceedings, PAC Certification, VAT/SC, CST, PAM, CRV, Inspection not BGB, Warranty Certificate, ED Exemption

Liquidated Damages

- Actual/demonstrable monetary loss: Supplier responsible- .5% per week, 10% Maximum
- Supplier responsible for a part: L/D for which suppliers responsible
- Delay beyond control of supplier: L/D to be waived
- Loss can’t be certified: L/D waiver
- Token L/D: 10% of .5% (Minor loss)
- Consequential Damage: Turnkey Sensitive Programs
- Damage Vs Penalty

Apportionment, RATE CONTACT

- Apportionment of Qty – L_1 fully loaded
- Others at L_1's rate for balance qty
- RC for Common use items regularly required in bulk by users
- Prices are likely to be stable
- Economy of scale, cuts down processing time
- With registered firms
- Price negotiation
- Parallel RC, price differential up to 5%
- Fall clause
- 95% payment against dispatch document
- 5% on taken on Charge

REPEAT ORDER, OPTION CLAUSE

- Items delivered successfully
- Original order not placed to cover urgent demand
- No downward trend, certified
- Within 6 months for date of completion of supply
- Maximum 5%, if the contract does not include the option clause
- Original order was lowest after price negotiation
- If there is option clause, total quality < 50%
- Option clause during the currency of the contract
- No downward trend
- Care to be taken in multi vendor contract

DESIGN, DEVELOPMENT & CONTRACTS

- When OEM is closing down or closed
- TOT has been taken
- Import prices are exorbitant
- Pre bid conference
- Cost plus contracts
- Source development
- Orders on two sources at slightly varying rates (10%): Pinaka Launcher
- Free flow items after one successful supply

Terms of Contract

- Amendment to Contract
- Advance: ≤15%, Relaxation Defence secrecy
- Stage payment
- PVC
- ERV
- Performance Security: ICICI, Axis, HDFC (Private Banks), SBI, 10% of contract value
- Bill Payment: Document Contract Bill, Invoice, Supply Order, CRVs, Inspection Note, Statutory Duties, BGB for Advance, PBG, Exemption Certification, Extension to DP
- L/D: Clause can’t exceed sum stipulated, Reasonable sum, pre-estimated

SINGLE TENDER ENQUIRY

- Data base: Prowess Package of CMIE, LME, WEO, Economic Advisor, Industry (eaindustry.nic.in)
- Benchmarking before Negotiation
- Design and Development Contract
- Source Development
- Cost Plus Contract
- Post Contract Management

OTHER CONTRACT TERMS

- Repeat order
- Operation clause: 50%
- R&E clause
- Full clause
- By Back offer
- Import: Registration by Supplier
- Global Tender Enquiry
- Pre despatch inspection- (PDI and JRI)
- L/C payments: 6 month of signing of contract
- Export license
- Validity of L/C
- Irrevocable L/C
- Arbitration

VENDER RATING SYSTEM

- HAL= $\frac{\text{No of total accepted}}{\text{Total lot accepted}} \times 0.45 + \frac{\text{DPA allowed DP}}{\text{Actual Time taken}} \times 0.35$
  $+ \frac{L_1}{\text{Price Offer by Vender}} \times -2$
- VPJ = Price 50, Quality 25, Delivery 20, Services 5
- VRQ= $(Q_a + 0.7\ Q_W)/Q_b$, Where Q_a =

Qty accepted, Q_w accepted reworked, Q_b = Qty ordered, 0.7= 1 fany material work rework

Case Studies

- Terms To Be Precise: Hired Transport Contract. Variation in Cost Of Operation to be Paid
- Negotiation In STE: UAV, Super Computer
- Imposition Of LD: Saraswati Cables
- Encashment Of BGB: AMR
- Apportionment of Qty: Clothing
- R& Expenses: Meat Contract at Ahmedabad
- Price Differential: BPJ
- Repeat Order & Option
- PAC: Special Quality Steel
- PEC: SU 30 Contract

WORLD BANK BIDDING DOCUMENTS: GOODS

- Patent Rights – Indemnify purchase against third party claim of infringement of patent
- Instruction- Right to inspect and test goods without extra cost
- Transportation- FOB, CIF, or CIP
- Warranty- No defect arising for design, material or workmanship
- Valid for 12 months under notice; repair or replace within reasonable speed
- Assignment- Permission of purchaser
- Sub Contract- Liability with supplier
- L/D- As specified in SCC, 0.5% per week, max 10%
- Force majeure: War or revolution, fine, floods, epidemics, freight, Embargo, Quarantine Restriction
- Arbitration: UNCITRAL Arbitration Rules, ICC, London Court of International Arbitration

WORLD BANK GUIDELINES FOR P&M

- Operating and Maintenance cost
- Price of recommended spare part not to be considered
- Award criteria: Substantially responsive and lowest Evaluated bid
- Corrupt Practice: offering, giving, receiving or soliciting
- Fraudulent practice: Misrepresentative of facts to influence a procurement process
- Completion of guarantee
- Applicable rate of L/D: 0.5%, 10% maximum
- Applicable bonus for early completion
- Settlement of Disputes
- UNCITRAL (76), ICC Rules, London Court of Arbitration, Arbitration Institute of Stockholder Chamber of Commerce

WORLD BANK GUIDELINES FOR P&M

- Pre Bid Meeting
- Amendment to bidding Doc(s) before bidding of submission,
- Extend deadline
- Preliminary examination of bidding: Discrepancy between word and figures, words will prevail
- Substantially responsive bid: Confirm to all terms and conditions and specification of the bidding doc(s) without material deviation, objection, conditionality or reservation
- Technical Evaluation: Not meeting Minimum Acceptable standard of completeness to be rejected
- Achievement of performance criteria
- Long term availability of mandatory and recommended spare parts
- Commercial evaluation; price of deviations
- Cost of DP extension beyond minimum deliver period

PRICE ADJUSTMENT FORMULA

- $\Delta P = P_0 \, (a + b \, L_1/L_0 + C \, M_1/M_0) - P_0$

Where a= fixed element, representing profit and over headed (5-15%)

- Base date- 30 days prior to deadline for submission of bids
- Dates of adjustment - - weeks prior to shipment
- No price adjustment beyond original DP
- Max-adjustment (≤10%)
- No price adjustment for advance paid

COMMITTEE TO REVIEW DPP (2016) DPM (2009)

- From Asset Acquisition to Life Cycle Support
- Strengthen Make in India Initiative
- Remove Procedural Bottleneck and Hasten Defence Acquisition
- Develop Robust Defence Industrial Base
- Performance Based Logistics
- Promote Indian Start ups and R&D