

## **CHAPTER III**

# **DEFENCE PROCUREMENT PROCEDURE FOR 'MAKE' CATEGORY**

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#### Background

1. The Defence Production Policy, 2011, issued by Ministry of Defence considers self-reliance in defence manufacturing as a vital strategic and an economic imperative; and places emphasis on utilising the emerging dynamism of the Indian industry by leveraging domestic capabilities for fostering export capabilities in this sector. The policy, inter alia, entails further simplification of procedure under 'Make' category of acquisition, introduced in DPP-2006, in a manner that enables design and development of required defence equipment/system/platform or up-grades thereof; and components, parts, materials and assembly/sub-assembly by Indian industry, R&D organisations, academic institutions or their combination.
2. The 'Make in India' initiative of the Government of India, aims to promote the manufacturing sector and increase the contribution of manufacturing output to 25% of GDP. Defence sector is prominent among the 25 sectors of industry covered under the 'Make in India' initiative. The provision of 'Make' category of capital acquisition is a vital pillar for realising the vision behind the 'Make in India' initiative. Hence it is imperative that the 'Make' procedure should be structured to provide the necessary leverage to make adequate investments, build the required capabilities and match up to the contemporary and futuristic requirements of the Indian Armed Forces.
3. The 'Make' procedure, outlined in this chapter, therefore seeks to address the multiple objectives of self-reliance, wider participation of Indian industry, impetus for MSME sector, sound implementation, transparent execution and timely induction of equipment into Indian Armed Forces.
4. Only Indian vendors including Association of Persons (AoP), as detailed in **Appendix A** to this chapter, are eligible for participation under 'Make' program of acquisition.
5. Successful development under this scheme would result in acquisition, from successful Development Agency/Agencies (DA/DAs), through the 'Buy (Indian-IDDM)' category with indigenous design and development and a minimum of 40% IC, by inviting commercial bid and thereafter following the procedures detailed in Chapter II of DPP.
6. The sub-category under 'Make' category shall be further sub-divided into the following:
  - 6.1 **Make-I (Government Funded)**. Projects under 'Make-I' sub-category will involve Government funding of 90%, released in a phased manner and based on the progress of the scheme, as per terms agreed between MoD and the vendor.
  - 6.2 **Make-II (Industry Funded)**. Projects under 'Make-II' sub-category will involve prototype development of equipment/system/platform or their upgrades or their sub-systems/sub-assembly/assemblies/components with a focus on import substitution, for which no Government funding will be provided for prototype development purposes.

### **Make-Project Management Unit (PMU)**

7. Each SHQ (including Coast Guard) shall establish a permanent Make-Project Management Unit (PMU), within its service. The Make-PMU must be headed by a two star rank officer or equivalent and staffed appropriately with professionals of various ranks/branches and specialisations, depending upon the nature and the number of ongoing/envisaged projects under 'Make' procedure, for the respective SHQs. The Make-PMU Head, under each SHQ will have a tenure of three years and the staff positioned in PMU shall have longer tenures to ensure continuity during execution of projects. Officers of PMU shall be members/member secretaries of the Integrated Project Management Teams (IPMT), which will function under the overall control and directions of the Make-PMU Head, who shall be responsible for ownership of the service level 'Make' projects. The mandates of every Make-PMU are as follows:-

- (a) Closely monitor the implementation of 'Make' projects for the corresponding SHQ.
- (b) Ensure timely development and implementation.
- (c) Assign responsibilities and hold task owners accountable for delivery.
- (d) Identify potential issues that will impact project cost or delivery and resolve them swiftly.

8. Make-PMU may also hire expert practitioners from domains such as finance, legal and technology, from public and private sectors. Expenses for hiring the services of experts/consultants shall be borne by the SHQ concerned.

### **Development and Acquisition Process under 'Make' Category**

9. The acquisition process under Make Category would involve the following functions:-

- (a) Advance Planning and Consultations.
- (b) Feasibility Study.
- (c) Preliminary Services Qualitative Requirements (PSQRs).
- (d) Categorisation and accord of Acceptance of Necessity (AoN) by the competent body.
- (e) Constitution of IPMT.
- (f) Preparation of Project Definition Document (PDD).
- (g) Expression of Interest (EoI).
- (h) Selection of Development Agency (ies) (DAs).
- (j) Detailed Project Report (DPR).
- (k) Approval of CFA and Funding Arrangements.
- (l) Design and Development of Prototype.

- (m) User Trials by SHQ.
- (n) Staff Evaluation.
- (o) Solicitation of Commercial Offers.
- (p) Commercial negotiations by Contract Negotiation Committee CNC).
- (q) Award of Contract.

### **Advance Planning and Consultations**

10. On the basis of Long Term Integrated Perspective Plan (LTIPP) or otherwise, SHQs will identify the potential projects to be undertaken under 'Make' category of acquisition. Besides, the SHQs shall initiate collegiate discussions on such potential projects with various stakeholders such as DRDO, DDP, Indian industry etc., in early stages after approval of LTIPP; this will enable potential R&D Institutions and/or Development Agencies (DAs) to take necessary steps to undertake requisite R&D efforts and/or investments for infrastructure upgradation. The advance timing of these collegiate discussions shall take into account the complexity of the defence equipment/system/platform or upgrades thereof, as the case may be; all relevant factors not limited to quantities and delivery schedules need to be detailed.

11. Based on collegiate decisions detailed in paragraph 10, or in other cases as may be appropriate, SHQ shall forward an indicative list of potential 'Make' projects, together with draft Preliminary Service Qualitative Requirements (PSQRs), to HQ IDS for inclusion in relevant medium term and short term plans, as per the projected induction timeframes and estimated timelines for development of prototype. The aim should be to pre-plan and pre-position 'Make' programs so as to initiate developmental activities sufficiently ahead of the actual requirements of the capabilities.

12. The criteria for sub-categorisation of the 'Make' programs are as follows:-

12.1 **Make-I (Government Funded)**. Projects involving design and development of equipment, systems, major platforms or upgrades thereof; necessitating harnessing of critical technologies and may involve large infrastructure investment for development, integration, test and manufacturing facilities. Usually, projects under Make-I sub-category will involve a development period of not less than three years.

12.1.1 Projects under the Make-I sub-category, with estimated cost of prototype development phase not exceeding ₹ 10 Crores, will be earmarked for MSMEs. However, if at-least two MSMEs do not express interest for a Make-I program of less than ₹ 10 Crores, the same shall be opened up for all, under the condition that interested MSME(s), if any at that stage and meeting the eligibility criteria, will get preference over Non- MSMEs in selection of DAs.

12.2 **Make-II (Industry Funded)**. Projects involving design and development of equipment, minor platforms, systems, sub-systems, components, parts or upgrades thereof; use of readily available commercial, military or dual use mature technologies, which may involve marginal infrastructure investment for development, integration, test and manufacturing facilities. Import substitution will be a key focus of projects under this category.

12.2.1 Projects under the Make-II sub-category, with estimated cost of prototype development phase not exceeding ₹ 3 Crores, will be earmarked for MSMEs. However, if no MSME expresses interest for a Make-II program of less than ₹ 3 Crores, the same may be opened up for all, under the condition that interested MSME(s), if any at that stage and meeting the eligibility criteria, will get preference over Non- MSMEs in selection of DAs.

### **Annual Acquisition Plan (AAP)-Make**

13. A dedicated Annual Acquisition Plan (AAP), on the same lines as explained in Chapter I of this DPP, will be prepared for schemes under 'Make' category. It will be a two year roll on plan and will have two parts: **Part 'A'** would comprise of carry over schemes from the AAP of previous year and schemes where AoN has been accorded during the year; **Part 'B'** would include the cases likely to be initiated for seeking AoN in the next one year. AAP for 'Make' would be prepared, approved and maintained as per provisions in Chapter I of DPP.

14. HQ IDS will compile a list of 'Make-II' sub category projects and host it on the MoD website. Status of the projects in this list should be updated periodically or immediately as and when changes occur.

### **Feasibility Studies**

15. SHQ would be responsible for undertaking feasibility studies of all projects under AAP-'Make.' The aim of this study would be to identify the projects which Indian Industry has the capability to design and develop, within the timeframe required by the respective Services.

16. Feasibility studies will be carried out with involvement of all important stakeholders such as HQ IDS, DRDO, DDP, Advisor (Cost) and MoD (Finance)/IFA as required. Industry associations including MSME associations, OFB & DPSUs may be consulted if considered necessary. SHQ may engage consultants/experts to assist in preparation of feasibility study report. Funding requirements for preparation of feasibility studies shall be borne by SHQ.

17. The Feasibility Study shall include following aspects:-

(a) Long-term interests of MoD for indigenous development of capabilities, both in terms of manufacturing and technologies, within the Indian industry.

(b) A preliminary assessment of enabling technologies to realise the requisite equipment/system/platform/components or their upgrades; and their availability or accessibility to Indian industry.

(c) A preliminary assessment of capability of Indian industry to undertake design and development of the requisite equipment/system/platform or their upgrades; and likely achievable indigenous content at prototype stage as well as production stage.

(d) Estimated time period for development.

(e) A preliminary assessment of capability of Indian industry with respect to quantities envisaged for procurement during the 'Buy (Indian-IDDM)' phase and timelines.

- (f) Estimated Cost of prototype development phase and for subsequent procurement phase under 'Buy (Indian-IDDMM)' category.
- (g) Suggested sub-category under 'Make' procedure.
- (h) Number of DAs to be selected based on the cost of prototype development, quantities required or any other consideration. (Feasibility Study will generally recommend not more than two DAs, however in exceptional case, with due justifications, it can recommend three DAs).
- (j) Exit Criteria.
- (k) Any other aspect considered important.

### **Preliminary Services Qualitative Requirements (PSQRs)**

18. Based on the feasibility study, the SHQ concerned would formulate the PSQRs, specifying essential and desirable parameters. The essential parameters of PSQRs of equipment would be of proven technologies available in Indian/world market. Research to achieve the desirable parameters, if any, may commence along with or after the development of prototype through various mechanisms e.g. instituting chairs/projects in research and academic institutions like IITs, IISC and DRDO etc. These PSQRs shall form part of the Statement of Case (SoC) while seeking AoN for 'Make' projects.

### **Categorisation and Accord of AoN**

19. **Interaction with Industry by SHQ.** SHQ will place relevant information on the MoD and SHQ websites and seek inputs from industry. SHQ will use the inputs from industry to carry out the categorisation and for preparing the SoC.

20. **Statement of Case.** The SHQs will prepare SoC and submit the same to HQ IDS, which would examine aspects of interoperability and commonality of equipment for the services. Feasibility study report and assessment of the Defining Attributes of 'Make' category, along with a list of prospective DA(s), exit criteria and PSQRs will be enclosed with the SoC.

21. After reviewing the comments of the HQ IDS on aspects of inter-operability, the SHQs/initiating departments, will refer the cases to SCAPCC/SCAPCHC as the case may be. The SCAPCC will refer the SoC for according AoN to SCAPCHC for an estimated cost up to ₹ 150 Crores. For cases beyond ₹ 150 Crores the SHQs/initiating departments will refer cases to the SCAPCHC, which will carry out the task of categorisation, based on the recommendations of SHQs/initiating departments and refer the cases between ₹ 150 Crores to ₹ 300 Crores to the DPB and refer cases beyond ₹ 300 Crores to DAC for accord of AoN. However, incase three DAs are to be selected for the project, approval of DAC will be required irrespective of the estimated project cost.

22. Following would be highlighted by the SHQ in the SoC seeking AoN:-

- (a) Estimated time period.
- (b) Estimated development cost.
- (c) Likely production cost.

- (d) Recommended sub-category under the 'Make' category.
- (e) Recommended level of Indigenous Content (higher than the minimum prescribed for 'Buy (Indian-IDDMM)' category).
- (f) If any vendor has offered to suo-moto take up development under a sub-category lower than the one being recommended.
- (g) Likely DAs.
- (h) Quantity of order to be placed, post the successful development of prototype.
- (j) Tentative time frame of procurement.
- (k) Acceptability of multiple technical solutions and division of ordered quantity among successful DAs.

23. The AoN shall be sought based on the combined estimated cost of prototype development phase and the cost of subsequent procurement under 'Buy (Indian-IDDMM)' as detailed in **Para 5** of this Chapter. The cost of development and the procurement should be indicated separately in the SoC.

#### **Validity of AoN**

24. AoN for 'Make' category projects will be valid for one year. For all sub-categories where EoI is not issued within one year from accord of AoN, SHQ would have to move a case for revalidation of AoN with due justification for not processing the case on time. For cases where the original EoI has been issued within one year from accord of AoN and later retracted for any reason, the AoN would continue to remain valid, as long as the original decision and categorisation (sub-category) remain unchanged and the subsequent EoI is issued within six months from the date of retraction of original EoI.

#### **Constitution of IPMT**

25. Once AoN is accorded for acquisition under 'Make' category, the Department of Defence Production (DDP)/SHQ will constitute an IPMT under Head of Make-PMU or suitable officer belonging to the Make-PMU, who will also act as member secretary of IPMT; IPMT will consist of representatives from SHQ, HQ IDS, DRDO, DDP, DGQA/DGAQA/DGNAI, Advisor (Cost), MoD (Finance)/IFA as required and other experts if considered necessary.

26. The IPMT, through the Make-PMU Head for the service, shall submit six-monthly progress report to the Defence Production Board (DPrB) through Principal Staff Officer (PSO) concerned at SHQ. The DPrB shall provide policy guidance as may be required in 'Make' cases. The **IPMT's responsibilities** shall include the following important functions:-

- (a) Preparation of Project Definition Document (PDD).
- (b) Short listing of Indian companies/organisations for the purpose of issuing EoI.
- (c) Preparing EoI and obtaining approval thereof from the PSO concerned at SHQ and issue of EoI.

- (d) Assessment and Ranking of EoI responses and obtaining approval for selection of DAs from DPrB.
- (e) Receipt and evaluation of DPRs from short-listed DAs.
- (f) Finalisation of DPRs on technical, financial and other aspects.
- (g) Preparation of draft Project Sanction Order ('development contract').
- (h) Obtain CFA approval, through DDP, as per extant delegation of financial powers detailed in **Appendix B** to this Chapter.
- (j) Monitoring and reporting of aspects relating to prototype development including generation of Intellectual Property.
- (k) Any other responsibilities as may be entrusted by the DAC/DPrB/PSO at SHQ.

### **Project Definition Document and Expression of Interest**

27. The IPMT will prepare a Project Definition Document (PDD) as per the sample format given at **Appendix C** to this Chapter. The PDD shall be approved by PSO concerned at the SHQ and shall serve as the principal guidance document for preparation of DPR.

28. Short listing of Indian vendors for issue of EoI shall be done by IPMT from the list of companies/organisations received from SHQs and additional companies/organisations if any, as per response to IPMT's request for 'Make' proposal from Indian Industry hosted on the website of MoD.

29. The details of the vendors shortlisted for participation in the 'Make' projects would be maintained by the SHQs and the same would be placed in the public domain by them. Relevant extracts of PSQRs would be circulated as part of the EoI, issued only to Indian vendors short-listed by IPMT. The EoI shall be approved by the PSO concerned at SHQ and shall contain all information as per sample format at **Appendix D** to this Chapter.

30. All evaluation criteria, sub-criteria etc., including respective weightages accorded to each of them, for assessing responses from EoI recipients (Individual as well as for AoP), shall be finalised and detailed as part of EoI.

31. Indian vendors who are issued an EoI, shall have the choice to respond either in their individual capacity as EoI recipients, or as an AoP (i.e. consortium) of Indian companies/organisations, through an AoP Agreement led by an EoI recipient, as enumerated at **Annexure I to Appendix A**.

### **Selection of Development Agency(ies) (DAs)**

32. The IPMT would undertake an assessment of EoI responses based on approved criteria. An illustrative list of evaluation criteria is contained in sample format at **Appendix E**. It shall be ensured that the evaluation criteria relates only to the test, production, R&D, system integration and technological capabilities in India, including past experience and performance of EoI recipients as may be required. Inspection of vendors premises should be avoided and selection should, to the extent possible, be based on self-certification.



33. In the case of EoI recipient forming AoP i.e. consortium, the assessment, if any, shall be carried out with specific reference only to the roles and responsibilities of individual members under their AoP agreement.

34. The list of Indian vendors or consortium as stated above, ranked as per the evaluation criteria shall be forwarded by the IPMT to DPrB through PSO concerned at SHQ, for selection of vendor as per AoN. The selected vendor shall be referred to as Development Agency (DA).

35. The DAs, shall then be required to submit a DPR, including cost estimates, as per sample format at **Appendix F**, to IPMT for their examination. For this purpose, PSQRs and relevant extracts from the PDD will be shared by the IPMT, with the short-listed DAs. The DPRs shall be prepared by DAs and examined by the IPMT with specific reference to project milestones as described in sub-paragraphs 51.1 to 51.7 of this Chapter.

36. Prior to CFA approval, the IPMT will engage with the selected DA(s) for any modifications/refinements/amendments to DPR, if considered necessary. DA(s) may collaborate with academic and/or research institutions and/or foreign companies/foreign research and academic institutions having required technologies for the development of project. DA(s) would be required to disclose the details of such collaborations in DPR. IPMT will submit the finalised DPR to Secretary (DP), through PSO concerned at SHQ, for approval.

### **Approval of Competent Financial Authority (CFA) and Funding Arrangement**

#### **CFA Approval**

37. The financial sanction for project development under Make-I sub-category, taking the relevant prototype development costs into account, would be obtained by the DDP as per delegation of financial powers detailed in **Appendix B** to this Chapter.

38. For ‘Make-II’ sub-category of development, sanction for prototype development as detailed by selected DAs, with nil financial implications for MoD, would be obtained by the DDP as per delegation of financial powers detailed in **Appendix B** to this Chapter.

#### **Funding**

39. Funds for development projects approved under this procedure shall be borne under the Account Head ‘Make Procedure-Prototype Development Account’ operated by respective SHQs.

#### **Funding for Projects under Make-I Sub-Category**

40. 90% of the prototype development cost will be borne by the MoD and 10% of the prototype development cost will be borne by the selected DA(s), as approved by the DAC/DPB/SCAPCHC and mentioned in the EoI. Guidelines for approval and acceptance of cost-sharing arrangements are available at **Appendix G** to this Chapter.

41. IPMT shall forward a draft Project Sanction Order (“Development Contract”) to DDP for approval. The approved DPR along with **Appendix A, G** and **H** shall form part of the Project Sanction Order. Thereafter, IPMT will issue ‘Project Sanction Order’ to the selected DAs.

42. IPMT at every phase/sub-phase of the project will also assess the project on the relevance of continuing the project with respect to time and cost overruns, operational requirements,

availability of same/similar equipment or technology in the market and accordingly recommend to SHQ for release of funds.

43. For all projects under Make-I sub-category, an advance of 20% of the total prototype development cost, will be paid against a bank guarantee for the equivalent amount. On completion of every stage against the milestones detailed in the DPR, DAs will submit claims for reimbursement to IPMT. While submitting reimbursement claims, the Chief Executive Officer/a suitable nominee along with an authorised auditor will certify the incurred expenditure linked to a particular development stage. Based on the recommendations of IPMT, SHQ will reimburse the development cost within sixty days, which may extend up to another 30 days in exceptional cases. The advance will be adjusted proportionately in subsequent payments as per the payment terms prescribed in DPR and bank guarantees will be proportionately and automatically reduced until full extinction.

44. If Commercial RFP for the equipment, for which prototype has been successfully developed, is not issued within two years from the date of successful completion of prototype development as described in Para 58 of this Chapter, the DA(s) will be entitled for reimbursement of remaining 10% of the prototype development cost. The same shall be written off with the approval of the Competent Authority.

#### **Funding for Projects under Make-II Sub-Category**

45. IPMT shall forward a draft Project Sanction Order ('Development Contract'), with nil financial implications, to DDP for approval as per delegated financial powers. The approved DPR along with **Appendix A, G and H** shall form part of the Project Sanction Order. Thereafter, IPMT will issue Project Sanction Order to the selected DA(s).

46. No reimbursement of development cost for projects under Make-II sub-category, will be made. However, if an RFP for the equipment, for which prototype has been successfully developed, is not issued within two years from the date of successful completion of prototype development as described in paragraph 58 of this Chapter, DA(s) will be entitled for reimbursement of 100% of the development cost as indicated in the DPR. The same shall be written off with the approval of the Competent Authority.

47. Funds will be released to the DA(s), only on obtaining a statement of expenditure certified by an authorised auditor.

#### **Access to Books of Accounts**

48. The DAs shall maintain separate books of accounts with an independent bank account, for the project sanctioned under Make-I and Make-II sub-categories of prototype development; MoD or its authorised representative(s) shall have unfettered rights to access these books of account of DAs.

#### **Cost Overrun**

49. Based on the recommendations of IPMT, cost overruns may be approved by the CFA concerned.

## **Time Overrun**

50. The approval of extension of timelines for any 'Make' project up to 20% of the timelines agreed upon in the approved DPR may be accorded by VCOAS/VCNS/DCAS/DG-ICG/CISC, based on the recommendations of Head-PMU. For extension of time beyond 20%, the matter would be referred to DPrB.

## **Design and Development of Prototype for Make-I Sub-Category**

51. The design and development stage under 'Make-I' projects is expected to undergo the following phases:-

51.1 **Project Definition Phase.** This phase is a prelude to the Preliminary Design Phase and involves mobilisation of initial start-up resources, including development laboratories etc., as specified in the agreed DPR.

51.2 **Preliminary Design Phase.** During this phase, the design parameters are established for configuration, performance in compliance to user's requirements and trade-off in the design. This also takes into consideration various tests and studies to be conducted.

51.3 **Detailed Design Phase.** This phase includes the detailed design of systems/sub-systems down to all components. Specifications of various equipment, systems and sub-systems that are to be used in the product/equipment/weapon systems would be finalised and all PSQRs frozen and they will be duly ratified as SQRs by respective SEPC/ISEPC. Permissible variance wherever acceptable, may be indicated as a range/percentage of SQR parameters. Engineering design documents, drawings, process planning would be firmed up. These detailed designs followed by critical design review may need to be fine-tuned several times, during the agreed period for this activity in the DPR. Any platform/equipment/interface-details required by the DAs with associated resources would be made available by SHQ concerned, if included and approved at the DPR stage.

51.4 **Fabrication/Development Phase.** Manufacture of sub-assemblies would be carried out based on the final specifications arrived at in the detailed design phase. Limited quantities, as given in the EoI and agreed to in DPR, can be fabricated/developed against the total prototype quantities required for subsequent stages.

51.5 **Test & Analysis Phase.** Concurrent with the design phase, testing of several components, system/sub-system is undertaken. Test and analysis should also include software verification. Design testing through simulation can also be undertaken. The testing may require specialised facilities like conduct of proof firing and extensive firing trials for weapon systems. Provisioning of laboratory and other in-house facilities and special equipment, if any, shall be made on terms and conditions as agreed upon in the approved DPR.

51.6 **Integration Phase.** During this phase, various systems and sub-systems are integrated and the system integration testing is carried out in accordance with the test procedures approved and agreed upon. The integration procedure, the interface details, the performance and assembly of modules/sub systems would be finalised.

51.7 **Performance Evaluation Phase.** After the integration of the various sub-systems, the prototype would be subjected to technical and limited field trials to assess the overall performance of the systems against stated SQRs by the development agencies

and IPMT. Based on the test and analysis conducted by them, there may be a need for change of design to meet essential SQRs. This is a continuous process until the design is finally proven and meets the essential SQRs, subject to agreed time limits as per approved DPR.

52. After the prototype has been developed, the IPMT would carry out user trial readiness review of the prototype before offering it for user trials.

53. Intellectual Property Rights (IPRs) in the 'Make' projects undertaken under provisions of this Chapter shall vest as described in **Appendix H**.

### **User Trials**

54. User trials would be carried out by the SHQ in close consultation with IPMT to validate the performance of the system against the parameters/specifications approved after the development of prototype. 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.

55. The SQRs of the equipment would therefore be a part of the Trial Directives and only the essential parameters as detailed in the SQRs will be tested. The validation of the support system and maintainability trials, integral to and complimenting the trial programme of the defence equipment/upgrades/product/system should be held simultaneously, wherever feasible. Representatives of DRDO, QA agency may also be part of the field evaluation, based on requirement. The user can recommend modification to the system for ease of handling and its maintainability. At this stage, no changes should be suggested which require re-designing of the system/sub-system or technology upgrade. Such suggestions would only be considered and implemented in subsequent phases of development.

56. Based on the inputs of SHQ/IPMT, the DPR will clearly include the list of trials/items/facilities/consumables, which will be provided free of cost during trials. It will also specify the number of times free tests will be carried out. The liability against any collateral damages/third party, to the extent permitted under the Indian Insurance Act, occurring during the course of trials should be covered through insurance cover by the respective DA(s). The cost of such insurance cover may be included in the project under DPR.

### **Staff Evaluation**

57. Based on the User Trials, the SHQ would carry out a Staff Evaluation, which gives out the compliance of the demonstrated performance of the equipment vis-à-vis the SQRs. The Staff Evaluation report will be accepted at the SHQs by the VCOAS/VCNS/DCAS/DG ICG/CISC. On acceptance of the Staff Evaluation report, the SQRs shall form the basis for the 'Buy (Indian-IDDM)' category of acquisition.

58. Once the Staff Evaluation report is accepted and final installment under prototype phase as per DPR has been released, no more funds would be released from 'Make Procedure-Prototype Development Account'.

59. The procedure followed for procurement would thereafter be same as for 'Buy (Indian-IDDM)' category as defined in Para 5 (Chapter III), from the successful DA/DAs, in accordance with Chapter II, except to the extent outlined below. The quantities in the 'Buy (Indian-IDDM)' phase cannot be reduced from the quantities indicated in EoI issued for the prototype development phase.

## **Design and Development of Prototype for ‘Make-II’ Sub-Category**

60. The involvement of IPMT during the design and development stage under Make-II sub-category projects will be limited to the following:-

- (a) Finalisation of SQRs and trial methodology, which shall be incorporated into the DPR.
- (b) Providing clarifications related to functional or operational aspects of the equipment under development, as may be sought by the DAs from time to time, during the design and development of prototype.
- (c) Coordinating user trials with the SHQs, based on the trial methodology, as mentioned in Para 60(a) and arrangements detailed in approved DPR. 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.

61. The procedure of carrying out the Staff Evaluation, approval and acceptance of Staff Evaluation report and the finalisation of SQRs for procurement under ‘Buy (Indian-IDDM)’ category of acquisition, is as detailed in **Para 57** of this Chapter.

## **Solicitation of Commercial Offers**

62. A Request for Proposal (RFP) would be issued to the agencies accepted in the Staff Evaluation report for soliciting their commercial offers and additional technical information/documentation, as may be necessary. In case of development by an AoP, RFP shall be issued to ‘Lead Partner’ who will submit an undertaking to supply the required quantities under Buy (Indian-IDDM) phase with life cycle support for the product.

63. The Pre-Contract Integrity Pact (PCIP), as detailed in **Para 92** of Chapter II, shall apply mutatis mutandis, to ‘Buy (Indian-IDDM)’ phase of ‘Make’ project. The process of commercial negotiations by the CNC (to be constituted as per provisions detailed in Chapter II) would commence thereafter.

## **Commercial Negotiations by Contract Negotiation Committee (CNC)**

64. The CNC will carry out all processes from opening of commercial bids till conclusion of contract.

65. In cases involving large quantities and where multiple technological solutions are acceptable, on approval of DAC/DPB/SCAPCHC, an option may be provided in the EoI during the ‘Make’ phase and subsequently in the RFP for the ‘Buy (Indian-IDDM)’ phase for procurement of specified quantities from other vendors (referred to as L2 herein) who have successfully developed the prototype/product, on the condition that this second vendor accepts the price and terms & conditions quoted by the L1 vendor.

66. In case, multiple technological solutions are not acceptable, the successful L2 vendor will be issued a certificate by the DDP indicating that the product has been successfully trial evaluated, to facilitate L2 vendor to explore other markets and remain in the production of the product.

67. Consequent to approval of the CFA, the procurement contract(s) would be signed by the Acquisition Manager/Director (Procurement) concerned in the Acquisition Wing or by officer authorised by PSO concerned in SHQ for the cases falling within their delegated powers. The draft contract(s) would be prepared as per the Standard Contract Document at Chapter VI of DPP.

### **Upgrades**

68. The next phase of up-gradation of the prototype for development of its Mark II/Mark III variants would be guided by desirable parameters of PSQRs.

### **Project Management, Review and Monitoring**

69. The progress of the 'Make' phase would be monitored by the IPMT under overall guidance of respective PMU as per the defined milestones listed in the DPR, including generation of Intellectual Property. The Government may engage services of independent consultants/experts for assessing the physical and/or financial progress of the Make project. IPMT, through respective PMU will also periodically appraise the progress of the project to PSO concerned at SHQ or to DPrB through PSO concerned at SHQ, as the case may be. Project management, review and monitoring arrangements may be suitably tailored for Make-II sub-category, based on the nature of the project and involvement of IPMT, as outlined in DPR.

70. All contemporary Project Management tools and practices, relevant for Design and Development of Technology intensive projects, shall be employed by IPMT.

### **Foreclosure**

71. In case the project does not proceed according to the predetermined milestones as per **Para 51.1 to 51.7** of this Chapter and as agreed in the DPR and/or if there are undue time and cost overruns, or failure of the prototype(s) on staff evaluation or on account of any other reasons, the 'Make' project may be foreclosed in respect of the DA(s) concerned and proposal for foreclosure will be approved by the authority who had accorded AoN.

72. In such cases, the total expenditure made by the DA(s) on the prototype development till foreclosure would be assessed and if excess funds have been paid to the DA(s), the same shall be recovered; if the expenditure is in excess of the amount paid, the balance shall be paid to the DA(s). The total amount paid to the DA(s) shall be written off with the approval of the competent authority.

### **Disposal of Tangible Assets Created in Make-I Projects**

73. The ownership of all tangible assets and the developed prototypes under the Make-I category shall vest with the MoD. These may be passed on to the DA at depreciated value as per the extant guidelines of the Government of India.

74. In case of foreclosed Make-I sub category of projects, the tangible assets thus created may be disposed of as per the extant Government guidelines. Expenditure incurred on intangible assets as defined in the relevant Indian Accounting Standards will be written off with the approval of competent authority.

## **Disposal of Tangible Assets Created in Make-II Projects**

75. For Make-II sub-category projects, in which 100% development cost is to be reimbursed on account of non-issue of RFP within 24 months from the date of successful development of prototype, the ownership of all tangible assets and the developed prototypes shall vest with the MoD. These may be passed on to the DA at depreciated value as per the extant guidelines of the Government of India.

76. In case of foreclosed Make-II sub category of projects, the tangible assets thus created may be disposed of as per the extant Government guidelines. Expenditure incurred on intangible assets as defined in the relevant Indian Accounting Standards will be written off with the approval of competent authority.

77. All deviations on matters concerned with 'Make' cases not covered under this chapter, as well as all cases of deviations, shall require prior approval of the DPrB, before going to DAC.

78. Typical expected timelines for undertaking 'Make' Projects are contained in **Appendix I**. The table indicating the role & responsibilities of various authorities is at **Appendix J**. All the formats given as Appendices and Annexures to this chapter are illustrative and may be amended/modified, as per the requirements of projects under consideration.

79. Any development process under Make procedure of previous DPPs, may be carried out as per procedures of old case or may be migrated to this new Make procedure, after due consultation with the selected DAs and if it is found to be in the interest of the project.

80. Any clarification or difficulty arising during execution shall be referred to Secretary (Defence Production), who would either take a final decision or refer the case to the DAC for final decision.

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**GUIDELINES FOR SHORT-LISTING OF INDIAN VENDORS FOR ISSUE OF EXPRESSION OF INTEREST (EOI) FOR “MAKE” CASES AND FOR FORMATION OF ASSOCIATION OF PERSONS (i.e. CONSORTIUM)**

**Preamble**

1. These Guidelines contain the criteria to be followed by IPMT for short-listing of Indian Vendors for issue of EoI by IPMT under Chapter III of DPP and also requirements for formation of consortium by such short-listed companies and subsequent execution of the Project. Issue of an EoI shall be restricted only to such eligible entities, in addition to issue of EoIs to OFB if shortlisted by IPMT for the relevant “Make” case.

**Guidelines**

2. These guidelines shall apply in supersession of previous guidelines issued by this Ministry vide O.M. No. No. 9(8)/2005/D(S-III) dated May 09, 2006 and any other previous guidelines on the subject, including guidelines incorporated in DPP-2013.

**Criteria for Short listing of Indian Vendors**

3. Indian entity satisfying all of the following criteria shall be considered as an eligible ‘Indian Vendor’ for issue of EoI by IPMT:-

- (a) Public limited company, private limited company, partnership firms, limited liability partnership, one person company, sole proprietorship registered as per applicable Indian laws. In addition, such entity shall also possess or be in the process of acquiring a license/development of products if the product under project requires license as per DIPP’s licencing policy.
- (b) The entity has to be owned and controlled by resident Indian citizens; entity with excess of 49% foreign investment will not be eligible to take part in Make category of acquisition.
- (c) The entity needs to be registered for minimum five years; three years in the case of MSMEs.
- (d) The entity should have a minimum credit rating equivalent to B++, issued by a recognised Indian credit rating such as CRISIL/ICRA.
- (e) The entity needs to be profitable for at least three out of the last five years; in case of MSME, it needs to be profitable for at least one out of the last three years.
- (f) The entity should have a positive minimum ‘Net Worth’ as specified under Para 4 below.



4. For the purposes of demonstrating positive “Net Worth” as in **Para 3(f)** above, the entity must have the following Net Worth:-

(a) For ‘MAKE’ projects having AoN cost (combined estimated cost of prototype development phase and cost of subsequent procurement)  $> ₹ 5000$  Crore, a minimum ‘Net Worth’ equivalent to 5% of the development cost indicated at the time of AoN, subject to maximum of ₹ 1000 Crore.

(b) For ‘MAKE’ projects having AoN cost (combined estimated cost of prototype development phase and cost of subsequent procurement)  $\leq ₹ 5000$  Crore, a positive ‘Net Worth’ for all companies including MSMEs.

4.1 In case the Net Worth criteria and/or credit rating is considered high or low for the purposes of adequate EoI responses, the Feasibility Study will bring out an alternate specific recommendation for consideration of the DAC/DPB/SCAPCHC at the time of seeking AoN.

**Note:**

(i) *In case of wholly owned subsidiary/subsidiary of a company, the strengths of its parent company shall be taken into account for the criteria referred at **Para 3(d),(e) and (f)** if the parent company provides the ‘Parent Company Guarantee’ as per the format prescribed at **Annexure-I to Appendix A**.*

(ii) *Guidelines for Putting on Hold, Suspension, Debarment and any other penal action on the Entities dealing with Ministry of Defence, as promulgated by Government from time to time, will be applicable on procurement process and bidders.*

5. All aforesaid data relating to eligibility of companies for issue of an EoI shall need to be demonstrated at the close of the financial year preceding the accord of AoN, except the requirement for profitable financial record as specified under Para 3 (e) above, which needs to show profits in at least three years of the last five years preceding the accord of AoN.

**Eligibility to Respond to an EoI as Individual Entity or as Consortium**

6. The EoI can be responded to, at the option of an EoI recipient, by any of the following entities:-

(a) Individual EoI Recipient; or

(b) **Association of Persons (AoP)** i.e Consortium of Indian companies consisting of two or more than two EOI recipients undertaking joint and several liability and an EoI Recipient designated as the lead member through a ‘**Association of Persons (AoP) Agreement**’ as given at **Annexure-II to Appendix-A**. All EoI Recipients as the members of the AoP will sign the contract with MoD. This agreement will be applicable for the entire project including but not limited to Production Phase and Lifecycle/Technology Refresh Contract placed by MoD, if any.

7. Where an AoP/Group of EoI recipients (“Consortium”) comes together to implement the project in accordance with the mechanisms outlined under Para 6 (b) above, there must exist, at the time of responding to EoI, a ‘**Association of Persons (AoP) Agreement**’ to form an AoP i.e. Consortium to execute and implement the complete “Make” project.

**Note:** In case of an individual EoI-recipient responding, the assessment by the IPMT shall in particular, include production capability assessment and capability assessment for developing critical technologies as mentioned in the EoI, even if such production or technology development is under an MoU or a sub-contract by the EoI-Recipient, provided that: (i) such production takes place in India; (ii) IPs in such technologies are available to MoD, ab-initio, as required under **Appendix H**; and (iii) prior approval of DDP shall be required for subsequent change of such AoP partners. In the case of an EoI Response as per **Para 6(b)** above, such assessment by the IPMT shall be made in respect of all the participating companies i.e EoI Recipients]

8. Where the EoI Respondent is an AoP/Consortium, it shall, while responding to the EoI, comply with the following additional requirements:-

- (a) Number of members in a consortium shall not exceed 5 (five).
- (b) The EoI Response should contain requisite information for each member of the AoP/Consortium.
- (c) Members of the AoP/Consortium shall nominate one member as the lead member (the "Lead Member").
- (d) The EoI Response should include a description of the roles and responsibilities of individual members, particularly with reference to production arrangements in India and R&D activities for which IPRs will vest with MoD as per **Appendix H**.
- (e) An individual EoI respondent cannot at the same time be member of an AoP/Consortium responding to the EoI. Further, a member of a particular responding AoP/Consortium cannot be member of any other Consortium responding to the EoI.
- (f) Members of the AoP/Consortium as described in **Para 6 (b)** shall enter into a legally binding Agreement, substantially in the form specified at **Annexure II to Appendix A**, for the purpose of responding to the EoI. The Agreement to be submitted along with the EoI Response, shall, '*inter alia*':-
  - (i) Form the basis for the AoP members to enter into a contract and perform all the obligations of the development agency in terms of the contract, in case a development contract to undertake the "Make" Project is awarded to the Consortium;
  - (ii) Clearly outline the proposed roles and responsibilities, if any, of each member;
  - (iii) Include a statement to the effect that members of the AoP/Consortium shall be liable jointly and severally for all obligations of the development agency in relation to the "Make" Project as required under these Guidelines.

### **Change in Membership of a Consortium**

9. Change in the composition of an AoP/Consortium will not be permitted after the submission of EoI responses until the award of a Development Contract for prototype development.

10. Where the EoI Respondent is an AoP/Consortium, change in the composition of a AoP/Consortium may be permitted by the DPrB after the award of a development contract only where:-

(a) The Lead Member continues to be the Lead Member of the AoP/Consortium and shall not be changed under any circumstances;

(b) The non-lead substitute member(s) shall continue to meet eligibility criteria for membership of an AoP/Consortium; and

(c) The new Member(s) expressly adopt(s) the EoI Response and the development contract already made on behalf of the AoP/Consortium as if it/they were a party to it originally and is/are not a Member of any other Consortium short-listed for the "Make" Project, while undertaking the joint & several or joint liabilities (as applicable) of the member it/they are replacing.

11. Any change in the composition of an AoP/Consortium shall require prior approval of DDP.

12. The approval for such changes shall be at the sole discretion of DDP and must be approved by them in writing for the approval to take effect.

13. The modified AoP/Consortium shall submit a revised 'Association of Persons Agreement'

#### **Miscellaneous Provisions**

14. Any violation of any of the guidelines laid down in this Annexure by any company shall render it liable to initiation of proceedings for suspension and/or banning of business dealings under Note (ii) of Para 4.1 of Appendix A to Chapter III.

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**PARENT COMPANY GUARANTEE FORMAT**

This GUARANTEE (“Guarantee”) is issued on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ by \_\_\_\_\_, a Company organised and existing under the laws of \_\_\_\_\_ having its Registered Office at \_\_\_\_\_ (hereinafter referred to as “Guarantor” and/or “\_\_\_\_\_”), at the request and/or behest of \_\_\_\_\_, a Company organised and existing under the laws of \_\_\_\_\_ having its Registered Office at \_\_\_\_\_ (hereinafter referred to as Wholly Owned Subsidiary/Subsidiary), in favour of “Ministry of Defence, Government of India” (hereinafter referred to as “Beneficiary” or “MoD”).

**WHEREAS**

The Beneficiary floated a RFI/EoI dated \_\_\_\_\_ inviting offers from Vendors for \_\_\_\_\_ (purpose). The Vendor have submitted their quotation dated \_\_\_\_\_ and advised the Beneficiary that the Vendor is the subsidiary of the Guarantor. The Guarantor is ready and willing to give a Parent Company Guarantee (PCG) inter alia for the performance of their Subsidiary to the terms and conditions of the RFI/EoI and on failure to assume the said obligations. We, the Guarantor are hereby recording the terms and conditions governing our obligations under this Guarantee with the intent of being legally bound by the same and hereby agree, covenant and bind ourselves as follows:-

1. The Guarantor hereby irrevocably and unconditionally guarantees to MoD that its wholly owned Subsidiary/Subsidiary will perform its obligations under the terms and conditions of the EoI/RFI, if the contract is being awarded to them in future for \_\_\_\_\_ and agrees to provide further comfort letters/guarantees, if so desired by beneficiary, in terms of the RFI/EoI.
2. The Guarantor unconditionally and irrevocably guarantees to the Beneficiary that it will make available or cause to be made available to the Wholly Owned Subsidiary/Subsidiary all financial, technical and other resources required to ensure that the Wholly Owned Subsidiary/Subsidiary can carry out its obligations as per the RFI/EoI terms and conditions and that the Wholly Owned Subsidiary/Subsidiary at all times fully and effectively discharge its obligations under the terms and conditions of RFI/EoI, including by discharging the obligations within the time and cost so stipulated.
3. The Guarantor hereby agrees that if the Wholly Owned Subsidiary/Subsidiary shall in any respect commit any breach or fails to fulfill any of the terms of the Contract/EoI/RFI or complete it in all respects or if there is a failure to make any supplies or if any material, equipment or machinery under the contract so supplied is not of the required specifications or does not perform as envisaged under the contract, then the Guarantor will forthwith perform the same and fulfill all the obligations required under tender terms & conditions on behalf of their Wholly Owned Subsidiary/Subsidiary, without any extra cost and time implications.
4. The Guarantor further undertakes to indemnify all losses, damages, expenses, claims, costs and proceedings which may be suffered or incurred by Beneficiary due to the failure or breach on the part of its Wholly Owned Subsidiary/Subsidiary.

5. The Guarantor assures and undertakes that during the term of the contract or of any guarantee for performance as per the contract, the Wholly Owned Subsidiary/Subsidiary shall continue to be the \*(name of the company)---/Subsidiary/a wholly owned subsidiary of the Guarantor and the Guarantor's liability shall not be affected due to any incapacity or lack of power or legal personality or change in the status of the Wholly Owned Subsidiary/Subsidiary or the Guarantor.

6. The Guarantor's liabilities under this Guarantee shall not exceed the liability of the Wholly Owned Subsidiary/Subsidiary under the tender terms and conditions but this shall in any manner not affect the Guarantor's own responsibilities and liabilities under the Guarantee.

7. The obligation of the Guarantor shall take effect from the date of this Guarantee and shall remain in full force until all the obligations of the Wholly Owned Subsidiary/Subsidiary have been fully performed and discharged and/or all sums of money payable to Beneficiary have been fully paid under the contract being entered into by Beneficiary with the Wholly Owned Subsidiary/Subsidiary. The Guarantor further undertakes to perform forthwith without insisting on any proof of breach of Contract by its Wholly Owned Subsidiary/Subsidiary and purely relying on Beneficiary's written demand.

8. The liabilities of the Guarantor shall not be discharged, diminished or otherwise affected by:-

(a) Any change in the Articles of Association or Bye-Laws or constitution of the Wholly Owned Subsidiary/Subsidiary or the Guarantor.

(b) Any time, indulgence, waiver or consent given to Wholly Owned Subsidiary/Subsidiary by the Beneficiary.

(c) Any amendment to the Contract or any security or other guarantee or indemnity to which Wholly Owned Subsidiary/Subsidiary has agreed.

(d) The dissolution, amalgamation, reconstruction or reorganisation of Wholly Owned Subsidiary/Subsidiary or Guarantor.

9. **NOTICE**

Any notice, demand, declaration or other communication to be given by the Beneficiary or the Guarantor to the other shall be in writing, in English language and delivered in person or by Courier Services or by Facsimile or by E-Mail to the address given below:-

<b>For Guarantor</b>	
<b>Attention of</b>	
<b>Mailing Address</b>	
<b>Email Address</b>	
<b>Fax No.</b>	
<b>For Beneficiary</b>	
<b>Attention of</b>	
<b>Mailing Address</b>	
<b>Email Address</b>	
<b>Fax No.</b>	

10. **Governing Law And Jurisdiction.** This Guarantee shall be exclusively governed by and construed in accordance with the laws of India without giving effect to the principles of conflict of laws therein. No party shall take a plea that any forum is inconvenient. It may be enforced in terms of the Indian laws.

11. **Dispute Resolution.** Any dispute arising out of or in relation to this Guarantee shall be resolved by arbitration of a sole arbitrator to be appointed as per the rules set out in the RFI/EoI.

12. This Guarantee may be executed in one or more counterparts, all of which shall be read and construed as one document and any fax copy or scanned copy or print of a scanned copy of a signed Guarantee shall be deemed to be an original signature.

13. No modification, alteration or amendment of this Guarantee or any of its terms or provisions shall be valid or legally binding unless the Beneficiary consents to the same in writing.

14. No failure to take any action with respect to a breach of this Guarantee or a default by any other party shall constitute a waiver of the Beneficiary's right to enforce any provision of this Guarantee or to take action with respect to such breach or default or any subsequent breach or default.

15. Waiver of any breach or failure to comply with any provisions of this Guarantee shall not be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other breach of or failure to comply with any other provision of this Guarantee, unless any such waiver has been consented to by the concerned party in writing.

16. This document has been executed by a duly authorised signatory on behalf of the Guarantor having the requisite power to do so.

**IN WITNESS WHEREOF** the Guarantor has duly executed this Guarantee as at the date first above written.

**For and on behalf of Guarantor,**

\_\_\_\_\_  
(Signature)

**Witness**  
**Signature :**  
**Name :**  
**Designation :**  
**Date :**

\*\*\*\*

**ILLUSTRATIVE: 'ASSOCIATION OF PERSONS AGREEMENT'**

THIS ASSOCIATION OF PERSONS (AOP) AGREEMENT is entered into on this the    day of  
20.....

**AMONGST**

1. {..... Limited, a company incorporated under the Companies Act} and having its registered office at ..... (hereinafter referred to as the "First Part" which expression shall, unless repugnant to the context include its successors and permitted assigns)

**AND**

2. {..... Limited, a company incorporated under the Companies Act} and having its registered office at ..... (hereinafter referred to as the "Second Part" which expression shall, unless repugnant to the context include its successors and permitted assigns)

**AND**

3. {..... Limited, a company incorporated under the Companies Act and having its registered office at ..... (hereinafter referred to as the "Third Part" which expression shall, unless repugnant to the context include its successors and permitted assigns)}

**AND**

4. {..... Limited, a company incorporated under the Companies Act and having its registered office at ..... (hereinafter referred to as the "Fourth Part" which expression shall, unless repugnant to the context include its successors and permitted assigns)}

The above mentioned parties of the FIRST, SECOND, {THIRD and FOURTH} PART are collectively referred to as the "Parties" and each is individually referred to as a "Party".

**WHEREAS,**

(a) The Ministry of Defence, Government of India (hereinafter referred to as the "Buyer" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited responses (the "responses") to its Expression of Interest No..... dated..... (the "EoI") for short-listing of bidders for development of- ..... Project (the "Project").

(b) The Parties are interested in jointly bidding for the Project as an Association of Persons ("AoP") in accordance with the terms and conditions of the EoI document and other documents in respect of the Project and

(c) It is a necessary condition under the EoI document that the members of the AoP shall enter into an Association of Persons Agreement and furnish a copy thereof with the Response.

**NOW IT IS HEREBY AGREED as follows:**

1. **Definitions and Interpretations**

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the EoI.

2. **Association of Persons/Consortium**

(a) The Parties do hereby irrevocably constitute an **Association of Persons/consortium** (the "**Consortium**") for the purposes of jointly participating in the bidding process for the Make Project and executing and implementing the complete "Make" project upto the completion of the Production Phase or any subsequent Lifecycle Support or technology Refresh/Upgrade Contract that MoD places on the Lead Member of AoP before completion of the Warranty Period, whichever is later.

(b) The Parties hereby undertake to participate in the "Make" Project only through this AoP Agreement and not individually and/or through any other AoP/consortium constituted for this Project, either directly or indirectly or through any of their Associates.

3. **Covenants**

The Parties hereby undertake that in the event the AoP is declared the selected Development Agency and awarded the project, the parties shall enter into a Contract with the Buyer for performing all its obligations as the Development Agency in terms of the contract for the Project.

4. **Role of the Parties**

The Parties hereby undertake to perform the roles and responsibilities as described below: -

(a) Party of the First Part shall be the Lead member of the Consortium for and on behalf of the Consortium during the bidding process and until the Appointed Date under the Contract.

(b) Party of the Second Part shall be responsible for .....

(c) Party of the Third Part shall be responsible for .....

(d) Party of the Fourth Part shall be responsible for.....

5. **Joint and Several Liabilities**

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the EoI and subsequently in accordance with the development contract, if and when awarded.



## 6. **Lead Member**

Without prejudice to the joint and several liabilities of the parties, each party agrees that it shall communicate with the MoD in matters of the EoI and the Development and Production Contract, as applicable through the Lead Member and the Buyer shall be entitled to communicate with such Lead Member as the representative of all the members. Each party agrees and acknowledges that:-

(a) The Lead Member shall take prior written consent by all participating AOP members before sending any communication regarding a decision (including without limitation, any waiver or consent), action or omission, before communicating the same to MoD. The AoP Members shall send their responses to the Lead Member and ensure that stipulated timelines of MoD are met with by the Lead Member; and

(b) Any decision (including without limitation, any waiver or consent), action, omission communicated by the Lead Member on any matters related to the Contract shall be deemed to have been on its behalf and shall be binding on it. The Buyer shall be entitled to rely upon any such action, decision or communication from the Lead Member; and

(c) Any notice, communication, information or documents to be provided to the Development Agency shall be delivered to the authorised representative of the Development Agency (as designated pursuant to the Contract) and any such notice, communication, information or documents shall be delivered to all the Parties by the Lead Member.

## 7. **AoP Bank Account/Payments**

The Parties will open a separate single bank account (“**AoP Account**”) for payments to be received from the Buyer in the name of the AoP which account shall be operated jointly by all the AoP members. Each of the Parties shall raise separate invoices on Buyer, which will be presented to the Buyer by the Lead Member under a Covering Letter. The Buyer shall make the payment(s) into the designated AoP account and the Buyer shall not in any manner be responsible or liable for the inter se allocation of payments, works etc. among the Parties. Disbursal of the amount lying in the AoP account to each of the Parties shall be made directly to such Party, from the AoP Account. Each Party shall be responsible for ensuring the Invoice and the accompanying documentation is complete and accurate.

## 8. **Representation of the Parties**

8.1 Each Party represents to the other Parties as of the date of this Agreement that:

(a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation in India and has all requisite power and authority to enter into this Agreement;

(b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the

Consortium Member is annexed to this Agreement and will not, to the best of its knowledge:-

- (i) Require any consent or approval not already obtained;
- (ii) Violate any Applicable Law presently in effect and having applicability to it;
- (iii) Violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
- (iv) Violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
- (v) Create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as in all matters before the Buyer, signing and execution of all contracts and undertakings consequent to acceptance of the Consortium's proposal and generally dealing with the Buyer in all matters in connection with or relating or arising out of the Project.

#### 9. **Termination**

This Agreement shall be effective from the date hereof and shall continue in full force and effect until completion of the Make project and in accordance with the contract, in case the Project is awarded to the Consortium. However, in case the Consortium is either not pre-qualified for the Project or does not get selected for the award of the Project, the Agreement will stand terminated or upon return of the Bid Security, if any, by the Buyer to the Bidder, as the case may be. Upon completion of the Development Contract, this Agreement may be terminated by the Parties upon written mutual consent, if the AOP fails to win Contract from MoD, during the implementation of the 'Buy (Indian-IDD) Project'.

#### 10. **Miscellaneous.**

- (a) This Agreement shall be governed by the laws of India.
- (b) In the event of a dispute, the Parties shall attempt to amicably resolve the same, failing which the dispute shall be referred to arbitration which shall be resolved in accordance with the Arbitration & Conciliation Act, 1996. The venue for dispute resolution shall be New Delhi, India. The arbitration proceedings shall be conducted in English language. The arbitration award shall be final and binding upon the Parties.

(c) The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Buyer.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED For and on behalf of Lead Member

by:

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED For and on behalf of SECOND PART

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED For and on behalf of THIRD PART

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED For and on behalf of FOURTH PART

(Signature)

(Name)

(Designation)

(Address)

In the presence of: 1.

2.

\*\*\*\*

**Appendix B to Chapter III**  
(Refers to Para 26(h), 37 and 38 of  
Chapter III)

**DELEGATED FINANCIAL POWERS OF CFA FOR 'MAKE' CATEGORY**

<b><u>Description</u></b>	<b><u>CFA</u></b>
Project Cost for Prototype Development Phase upto ₹ 50 Crores	Secretary (DP)
Project Cost for Prototype Development Phase above ₹ 50 Crores and upto ₹ 100 Crores	RM
Project Cost for Prototype Development Phase above ₹ 100 Crores and upto ₹ 200 Crores	RM & FM
Project Cost for Prototype Development Phase above ₹ 200 Crores	CCS

\*\*\*\*

**PROJECT DEFINITION DOCUMENT (PDD): AN ILLUSTRATIVE FORMAT**

The PDD would be prepared by the IPMT. It should contain the following:

1. Brief description of the project.
2. Categorisation.
3. PSQRs.
4. System requirements and functionalities.
5. Major components of the proposed system.
6. Operational requirements.
7. Maintenance and operational philosophy.
8. Testing.
9. Documentation.
10. Life cycle management.
11. Feasibility study details.
12. Phases of implementation.
13. Shortcomings of existing system and capabilities sought in system/product.
14. Broad project implementation aspects:-
  - (a) IPMT constitution.
  - (b) Issue of EoI.
  - (c) Assessment of DA(s).
  - (d) Short-listing of DA(s).
  - (e) Selection of DA(s) for prototype development.
  - (f) Submission of DPR by DA(s).
  - (g) Preliminary cost negotiation to oversee that the projected costs are not too much in variance.
  - (h) CFA approval.
  - (i) Design & development of prototype.
  - (j) Critical activities and milestones.
  - (k) Testing and analysis.
  - (l) Integration.
  - (m) Performance evaluation.
  - (n) User trials.
  - (o) CNC.

- (p) IPR holding authority.
- (q) AHSP details.
- 15. Milestones.
- 16. Technology demonstrators, if any.
- 17. BFE required for development/Testing.
- 18. Exit Criteria/Risk management.
- 19. Safety and security aspects.
- 20. Phase wise induction schedule.
- 21. Time frames for execution of the project.
- 22. AoN approval.

\*\*\*\*

**Appendix D to Chapter III**  
(Refers to Para 29 of Chapter III)

**EXPRESSION OF INTEREST (EoI): AN ILLUSTRATIVE FORMAT**

1. General information including number of systems required for the prototype development phase and Buy (Indian-IDD) phase, Life span, estimated financial aspects, capabilities sought, components of the system, security features, IPR aspects, payment aspects with linkage to milestones, grounds on which EoI respondent can be disqualified, seeking information pertaining to black listing by any Indian government agency including blacklisting of domestic/foreign technology partner if any and product audit by nominated agencies of government etc.
2. Technical requirements of the project with proposed specifications and expected tolerance limits of various parameters.
3. Critical technology areas.
4. Guidelines for formation of Association of Persons (AoP) i.e. consortium.
5. Assessment parameters.
6. Eligibility Criteria, if any.
7. Details on evaluation criteria of assessment parameters with weightages.
8. Details to be sought from EoI respondents:-
  - (a) Outline features of the proposal.
  - (b) Recommended stages/phases of development with priorities and time schedules.
  - (c) Milestones that can be demonstrated to facilitate project monitoring.
  - (d) Estimated Capital expenditure.
  - (e) Roles, responsibilities and expertise details of consortium members, if any.
  - (f) Role of foreign technology provider, if any.
  - (g) Requirement of specialised testing assistance where facilities are available only with DRDO/DGQA/DGAQA/DGNAI.
  - (h) Estimates numbers for prototype development and for Mark-I procurement under “Buy (Indian-IDD)” phase.
  - (j) Cost-sharing Aspects.
  - (k) Undertaking to furnish the cost of the final product during evaluation stage itself, once the final configuration of the end product under development is frozen.

9. Documents to be submitted by EoI respondents :-

- (a) Information Proforma (Indian vendors) as per **Annexure-I to Appendix-D.**
- (b) Documents as per **Annexure-II to Appendix-D.**
- (c) Response to assessment parameters as per **Annexure-III to Appendix-D.**
- (d) Copy of MoUs with consortium partners, if applicable.
- (e) Risk Management plan by Lead partner.

8. The EoI respondent shall submit three copies of response to the EoI, clearly marking one copy as 'Original copy' and the remaining two as 'Copy No 2 & 3'. The DA shall also submit a soft copy of the response to EoI in a CD/DVD.

**Note:** *In cases such as those involving large quantities and where multiple technological solutions are acceptable, on approval of DAC/DPB/SCAPCHC, an option may be provided in the EoI during the "Prototype Development Phase" for possible procurement of specified quantities from a qualified responsive L2 bidder in the 'Buy (Indian-IDDM)' phase of Make project, on the condition that this second vendor accepts the price and terms & conditions quoted by the L1 vendor.*

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**INFORMATION PROFORMA: AN ILLUSTRATIVE LIST OF ELEMENTS**

1. Name of the Company.
2. Name of CEO with Designation.
3. Address of the Registered Office.
4. Address of the Factory/Factories.
5. Company Website(s).
6. Date of Incorporation.
7. Brief History of the Company.
8. Category of Industry (Large Scale/Medium Scale/Small Scale).
9. Nature of Company (Public Limited/Private Limited).
10. Nature of Business (Please give broad product range against each):-
  - (a) Manufacturer.
  - (b) Trader.
  - (c) Sole Selling or Authorised Agent.
  - (d) Dealer.
  - (e) Assembler.
  - (f) Processor.
  - (g) Re packer.
  - (h) Service Provider.
11. Details of Current Products:-
  - (a) Type/Description.
  - (b) Licensed/Installed Capacity.
  - (c) Annual Production for Preceding 3 Years.
12. Details of Bought Out Items:-
  - (a) Main Equipment.
  - (b) Component/Assembly/Sub Assembly/Processes.
  - (c) Name and Address of the Sub-Contractor.
13. Sources of Raw Materials:-
  - (a) Imported/Indigenous.
  - (b) Brief Description.

- (c) Estimated CIF Value.
  - (d) Percentage FE Content in Final Product.
14. Details of Foreign Collaborations:-
- (a) Product.
  - (b) Name and Address of Collaborator.
  - (c) Year of Collaboration.
  - (d) Current Status of the Collaboration (whether expired or current).
15. Technology Received from Abroad and Assimilated.
16. Technology Transfer MoUs Signed/Under Negotiation.
17. Products Already Supplied:-
- (a) To Indian Army/Air Force/Navy.
  - (b) PSUs.
  - (c) DRDO and its Laboratories.
  - (d) Ordnance Factories.
  - (e) Any other Defence Organisation.
  - (f) To other Principal Customers.
18. Details of Registration Certification held (along with product details):-
- (a) DGQA.
  - (b) DGAQA/DGNAI.
  - (c) CEMILAC.
  - (d) DGS&D.
  - (e) Other Defence Departments.
  - (f) Other Government Department.
19. Details of ISO Certification.
20. Details of Pollution Control Certificate.
21. Details of Permanent Man Power (with the details of qualifications):-
- (a) Technical.
  - (b) Administrative.
22. Total Area of Factory:-
- (a) Covered (sq. mtrs).
  - (b) Uncovered (sq. mtrs).
  - (c) Bonded Space Available (sq. mtrs).

23. Electric Power:-
- (a) Sanctioned.
  - (b) Installed.
  - (c) Standby.
24. Details of Important Facilities:-
- (a) Production (including Heat Treatment, Dies, jigs and Fixtures).
  - (b) CAD, CAM, ROBOTS and Other Advanced Technology Tools.
  - (c) Environmental Test Facilities.
  - (d) Tool Room, Metrology and Test Equipment and Facilities.
  - (e) Type of Instrument.
  - (f) Make and Model.
  - (g) Date of Purchase.
  - (h) Frequency of Calibration.
25. Details of Developmental Facilities:-
- (a) R&D Facilities Available.
  - (b) Number of Technical Manpower.
  - (c) Inspection and Quality Control of Raw Material, Components and Finished Products.
  - (d) Assistance from Central Agency/Agencies for Testing/Calibration.
  - (e) Laboratory and Drawing Office Facility.
  - (f) Percentage of Total Turn-Over Spent on R&D during the Last Three Years.
26. Area of Interest for Future Expansion/Diversification (please provide adequate details).
27. Future Plan (if any) in respect of Expansion Programme, Installation of Additional Machines/Test Facilities.
28. Turn-Over during the last three Financial Years.
29. Present Net Worth of the Company.
30. Any other Relevant Information.
31. Contact Details of the Executive Nominated to co-ordinate with the Assessment Team (please provide telephone, mobile and e-mail address).

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**DOCUMENTS/INFORMATION TO BE SUBMITTED AS PART OF**  
**RESPONSES TO EoI : AN ILLUSTRATIVE LIST**

1. Latest Certificate of Incorporation by the Registrar of Companies (RoC).
2. Latest Memorandum of Association and Articles of Association of the Company.
3. Details of the Directors, Managing Director and Manager of the Company.
4. The complete address of the registered office of the company.
5. Documents submitted to the RoC for last five consecutive years:-
  - (a) Annual Return with attachments.
  - (b) Balance sheet with attachments.
  - (c) Profit and Loss account with attachments.
  - (d) Compliance certificate with attachments.
  - (e) Auditor's Report.
  - (f) Director's Report.
6. Auditor certified data of company for last 5 years, to cover:-
  - (a) Foreign holding in the company including Foreign institutional investments, Foreign venture capitalist investments, foreign Direct Investments and Shares held by Foreigners.
  - (b) Tangible Assets of the company including production and R&D facilities.
  - (c) Annual Turnover.
  - (d) R&D expenditure by the company in general and with respect to support proposed for project.
  - (e) Cash Flow Statement to show cash profit earned (Cash Income minus expenditure) by the company.
  - (f) Debt to Equity Ratio, Ownership pattern and shares holding pattern of the company.

7. Income Tax Return filed for last five years and latest valid Income Tax Clearance Certificate (ITCC) with details of turnover.
8. Credit Rating Certificate.
9. ISO certification document.
10. Patent/IPR certificates (if any).
11. Details of international standards acquired like CMM software certification, with validity and certification agency.
12. Copy of Association of Persons (AoP) Agreement for:-
  - (a) Consortium to implement project --- (if applicable).
  - (b) ToT, IPRs and other Support from Foreign Technology Provider/Partners.
  - (c) For Design, Development and Manufacture of certain Sub Systems for the project required to be developed and manufactured as per Guidelines of Cipher Policy Committee (CPC) Govt. of India.
13. The company should possess or be in the process of acquiring a license/development of products if the product under project requires license as per DIPP's licencing policy.
14. Certificate from Nationalised Indian Bank regarding Company's creditworthiness.
15. Details of company organisation, Management Structure, Capabilities, Infrastructure and Key personnel involved for executing the project.
16. Details of any earlier partnership with DRDO/PSU/DPSU with regards to Terrestrial Defence Project.
17. Certificate regarding clause wise acceptance of all terms and conditions given in the EoI, for the complete lifetime of the project.
18. Undertaking to furnish the cost of final product after the Integration Phase.
19. Technical specifications of the equipment proposed to be used in the project.
20. The company/organisation to certify regarding correctness of reply (ies) to this EoI.

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**Annexure III to Appendix D**  
(Refers to Para 9(c) of Appendix D)

**RESPONSES TO EoI: AN ILLUSTRATIVE LIST OF EoI ELEMENTS**

*(Responses—Factual Position—against All Criteria and Sub-Criteria forming part of Appendix ‘F’ should be mentioned by the respondents)*

1. Name of the vendor.
2. Assessment parameter:

Commercial/R&D/Indigenous Content/Technical capability:

Sl. No.	Criteria and Sub-Criteria	Vendor Submissions				Remarks, if any
		Lead Bidder	Partner 1	Partner 2	Partner 3	

**Station:**

**Signature**

**Company Seal**

**Date :**

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**ILLUSTRATIVE EVALUATION CRITERIA & SUB-CRITERIA**

Since the aim of EoI evaluation is to assess the capability of the vendors to undertake the project, evaluation up to Tier-III level may be planned. The following illustrative evaluation criteria shall be considered for the purposes of the capability assessment:-

- (a) **Commercial Criteria.**
  - (i) Nature of the Company.
  - (ii) Credit rating.
  - (iii) Turnover.
  - (iv) Capital assets.
  - (v) Net profit.
- (b) **R&D Criteria.**
  - (i) R&D expenditure as % of turnover on Strategic/Defence systems.
  - (ii) R&D Infrastructure existing, in progress and planned in the next three years.
  - (iii) Total No of patents translated into product in the subject Field and total No proposed to be utilised for the project.
- (c) **Indigenisation Criteria.**
  - (i) Indigenous design capability.
  - (ii) Indigenous manufacturing capability.
  - (iii) Indigenous content in percentage of total cost.
  - (iv) Infrastructure availability to absorb ToT.
  - (v) ToT with Indian partners.
  - (vi) ToT with Foreign partners.
  - (vii) %age of proprietary items.
  - (viii) Components manufactured indigenously.
  - (ix) Components designed indigenously manufactured Abroad.
  - (x) Components procured from abroad along with origin of country.
- (d) **Technical Capability Criteria.**
  - (i) Execution of similar projects for military users in India and abroad.
  - (ii) Execution of similar projects for other users in India and abroad.
  - (iii) Execution of projects pertaining to critical technology area.

- (iv) Adherence to timelines, slippages, cost overruns, post delivery support.
- (v) Approach to meet user functionalities.
- (vi) Proposed system configuration.
- (vii) Approach to address integration and inter-operability issues.
- (viii) Proposed methodology for life cycle support including product upgrade.

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**DETAILED PROJECT REPORT (DPR): AN ILLUSTRATIVE**  
**LIST OF DPR ELEMENTS**

1. The IPMT would order preparation of Detailed Project Report and provide following inputs to the nominated DA(s):-

- (a) Provisional Service Qualitative Requirements (PSQRs).
- (b) Time frames and critical activities.
- (c) Milestones.
- (d) Evaluation process and acceptance criteria.
- (e) List of trials/items/facilities/consumables that will be provided free of cost and also specify 'number of times' such free trials will be allowed.
- (f) Commercial Negotiation aspects.
- (g) Project Monitoring Methodology.

2. The DPR would stipulate the scope of the work in terms of the following:-

- (a) PSQRs.
- (b) Overview of the project.
- (c) Scope of the project.
- (d) Infrastructure requirements.
- (e) Operational requirements.
- (f) Integration requirements.
- (g) Estimated Bill of Material/Phase-Wise Cost Break-up.
- (h) Estimated timelines for various phases of prototype development and total time frame for implementation of the project.
- (i) Critical activities and milestones.
- (j) Estimated expenditure for various phases of prototype development inclusive of all taxes & duties to be incurred by DA and estimated total capital expenditure.
- (k) Detailed risk analysis and risk management plan.
- (l) Funding for development of prototype and to carry out research activities.
- (m) Role of technology provider, if any.

- (n) Upfront disclosure of details of foreign collaboration, if any.
- (o) Requirement of proof firing and other specialised testing assistance where facilities are available only with DRDO/DGQA/DGAQA/DGNAL.
- (p) Evaluation process and acceptance criteria.
- (q) Sharing of development cost.
- (r) Insurance premium for insurance cover against collateral/third party damages.
- (s) Requirement of minimum order quantity to be place on the successful developer.
- (t) Any other detail as required such as Project Management Plan, QA Plan, detailed project validation of simulators if used, configuration management plan (CMP), Verification and Validation Plan etc.

3. The IPMT would analyse the DPR and submit the same along with its recommendations, especially with reference to exit criterion, to the DDP for approval, after due approval of concerned PSO at SHQ.

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**GUIDELINES FOR APPROVAL AND ACCEPTANCE OF  
COST-SHARING ARRANGEMENTS**

**Procedures**

1. The cost estimates shall be prepared by the finally shortlisted DA(s) and shall be submitted to the IPMT within the required date and time as part of the DPR.
2. The DA(s) shall prepare the cost estimates in accordance with the general principles outlined in this Appendix and shall record a certificate to that effect as part of the documentation submitted.
3. These cost estimates shall be examined by the IPMT as part of the DPR. The IPMT shall hold consultations with the DA as required and shall submit its final recommendations to the DDP for approval. Depending upon individual requirements of DA(s) in terms of development of technology and indigenous content, the IPMT could consider and recommend a cost variation up to 25% amongst the DPRs submitted by the two DA(s), as compared to the lower of the two.
4. The approved cost estimates shall then be communicated by the IPMT to the DA(s) as part of the Project Sanction Order (development contract); and shall form the basis for design and development of prototype and claiming of costs by the DA(s).
5. Claims for reimbursement of MoD share shall be made by the DA(s) upon completion of different phases at **Para 51.1 to 51.7** of Chapter-III, DPP-2016, as finalised in the DPR. The cost to be reimbursed shall be restricted to actual cost.

**General Principles**

6. Indian Accounting Standard 7 (AS7) shall be followed for accounting procedure.
7. The following criteria shall be used by the Ministry of Defence for determining whether, what and upto what extent the costs incurred by DA shall be paid out of public funds:-
  - (a) Costs Allowability;
  - (b) Cost Allocability;
  - (c) Cost Reasonableness; and
  - (d) Terms of the Contract.
8. The DA shall not charge any unallowable costs; and shall segregate the same from any proposal, billing, indirect cost pool or claim submitted to the Ministry. The following costs are specifically considered unallowable for the purpose of these guidelines:-
  - (a) Bad Debts;
  - (b) Interest;

- (c) Land;
- (d) Permanent Building;
- (e) Entertainment;
- (f) Contributions or donations;
- (g) Fines, legal expenses and penalties;
- (h) Advocacy and business development;
- (j) Losses on other contracts;
- (i) Alcoholic beverages; and
- (j) Business organisation costs such as costs of incorporation, re-organisation and merger.

9. A cost shall not be presumed to be allowable merely because the DA actually incurred the costs, unless meets the test of relevancy, financial prudence, reasonability and relationship.

### **Allocability of the Cost**

10. A cost is allocable if it is assignable or chargeable to one or more cost objectives on the basis of relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a Government contract if it: (a) is incurred specifically for the contract; (b) benefits both the contract and other work and can be distributed to them in reasonable proportion to the benefits received; and (c) is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown. In any case, indirect costs shall not exceed 10% of the total approved cost for prototype development.

11. A cost is reasonable if it would have been incurred by prudent entity in the conduct of competitive business. To be reasonable, the cost must be: (i) generally recognised as an ordinary or necessary cost of business; (ii) follow sound business practices; (iii) comply with Central, State, local laws; and (iv) be consistent with the Development Agency's established business practices. The determination of reasonableness of a particular cost shall depend on all relevant facts and circumstances concerning the costs; and the decision of the Ministry of Defence in this regard shall be final.

### **Miscellaneous**

12. The Development Agency shall submit a break-up of cost estimates for each stage outlined in **sub-Para 51.1 to 51.7** of Chapter III. These stages shall also form specific potential exit points for the Ministry of Defence without any further liability, if the Ministry of Defence is of the considered opinion that requisite and timely progress has not been made by the DA for successful completion of that phase.

13. The Ministry of Defence shall not, under any circumstances, entertain or consider any revisions, submissions or arguments for inclusion of un-allowable costs as specified in these Guidelines.

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**INTELLECTUAL PROPERTY RIGHTS OF  
GOVERNMENT IN “MAKE” PROJECTS**

**Guiding Principles**

1. The Government shall retain only a license in the Intellectual Property being generated under contract; and the contractor retains title or ownership and all other rights in intellectual property that are not granted to the Government, subject to conditions prescribed herein.
2. During the development of prototype, if any technology/product is developed, which the Government considers to be sensitive or classified and needs to be restricted for use in other purposes or for export, the Government through IPMT or any other expert or body may identify such technology/product and shall retain the full ownership of IPRs in respect of such technology/product.
3. All technology licensing is divided up between two mutually exclusive categories of deliverables: (a) Technical Data (TD)<sup>1</sup>; and (b) Computer Software (CS)<sup>2</sup>. The Government shall also have certain rights to subject inventions and patents generated under the “Make” contract.
4. The EoI shall contain details of (a) the delivery requirements, storage formats and storage medium; and (b) the associated data rights, in all technologies required to be developed or delivered under the “Make” contract. Officials connected with award of “Make” projects shall ensure that all such delivery requirements are clearly stated in the EoI and the “Make” contract signed, if any, including delivery and form in which source code is required as a contract deliverable.
5. The Government’s standard license rights in (a) subject inventions and associated data; and (b) all other data generated under the “Make” contract, including technical data and computer software whether associated with such subject inventions or otherwise, shall be “Government-Purpose Rights” (GPR). In respect of subject inventions, the Government shall hold a non-exclusive, non-transferable, irrevocable, paid up (royalty-free) license to practise, or have practiced for on its behalf, the subject invention throughout the world.
6. These guiding principles shall apply at both the prime and subcontract levels; i.e., the prime DA(s) shall incorporate the rights of the Government as prescribed in this Annexure in all

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<sup>1</sup>“Technical data” means recoded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

<sup>2</sup> (a)“Computer software” means computer programs, source code, source code listings, object code listings, design details algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated or recompiled. Computer software does not include computer data bases or computer software documentation. (b) “Computer program” means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations. (c) “Computer software documentation” means owner’s manuals, user’s manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software. (d) “Computer data base” means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

their subsequent sub-contracts and agreements insofar as technology development under “Make” projects is concerned.

### **Government Rights**

7. The Government shall have “Government-Purpose Rights” and “Unlimited Rights” as explained below:-

8. For all subject inventions<sup>3</sup> under the “Make” Contract, including technical data and computer software associated with such subject inventions, the Government shall hold “Government-Purpose Rights” (GPRs), in that it shall hold a non-exclusive, non-transferable, irrevocable, paid up (royalty-free) license to practice, or have practiced for on its behalf, the subject invention throughout the world. These GPRs shall automatically convert to “Unlimited Rights” as defined under this section upon the expiry of ten years.

9. For the purpose of all technical data and computer software, whether related to subject inventions or otherwise, GPRs shall imply the right to use such technical data and computer software within the Government without restriction and the right to authorise any other entity for any government purpose including re-procurement. More specifically, “Government-Purpose Rights” includes the rights to:-

- (a) Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and
- (b) Release or disclose technical data outside the Government and authorise persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for Government purposes.
- (c) Form, Fit and Function data and Manuals or instructional and training materials for installation, operation, or routine maintenance and repair;
- (d) Computer software documentation required to be delivered under the “Make” contract;
- (e) Corrections or changes to computer software or computer software documentation furnished to the contractor by the Government;
- (f) Computer software or computer software documentation that is otherwise publicly available or has been released or disclosed by the contractor or subcontractor without restrictions on further use, release or disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

10. For the purposes of these guidelines, “Government Purpose” means an activity in which the Government of India is a party, including cooperative agreements with international or multi-national defence organisations, or sales or transfers by the Government of India to foreign Government or international organisations. Government purposes include competitive

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<sup>3</sup>“Subject Invention” implies any invention of the contractor conceived or first actually reduced to practice in the performance of work under a Government Contract. “Invention” implies any invention or discovery that is or may be patentable or otherwise protectable under the Patent Laws in force in India.

procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorise others to do so.

11. In addition to standard GPRs, Government rights in computer software to be delivered under contract shall also include the right to:-

- (a) Use of a computer program with government computer(s);
- (b) Transfer to another Government computer;
- (c) Make copies of computer software for safekeeping; backup or modification purposes;
- (d) Modify computer software;
- (e) Disclose to service contractors;
- (f) Permit service contractors to use computer software to diagnose/correct deficiencies, or to modify to respond to urgent or tactical situations; and
- (g) Disclose to contractors or any other third-parties for proposes of emergency repair and overhaul.

### **March-In Rights**

12. The Government shall have “March-In” rights for all items covered under its “Government-Purpose Rights”. “March-In” Rights shall include the right to work the patent, either by itself, or by another entity on behalf of the Government, in case the contractor fails to work the patent on its own within a specified and reasonable period of time.

13. Under its march-in rights, the Government can require the contractor to grant, or may itself grant license for, inter alia, the following reasons:-

- (a) The contractor fails to work the patent towards practical application within a reasonable time; or
- (b) Where health and safety requirements so require the Government to act in public interest; or
- (c) For National Security Reasons; or
- (d) To meet requirements for public use not reasonably satisfied by the contractor; or
- (e) For failure of the contractor to substantially manufacture the products embodying the subject invention in India; or
- (f) For failure of the contractor to comply with any of the requirements laid down under these guidelines.

## **Miscellaneous**

14. The contractor is required to have a timely and efficient disclosure system in place for reporting of intellectual property generation under the “Make” contract to the Ministry of Defence. Failure to disclose in timely manner, or failure on part of the contractor to invoke his/her default right of ownership, shall imply that all IPRs shall ab-initio vest in the Government of India. The contractor may elect to retain title of any invention made in the performance of work under a contract. If the contractor does not elect to retain title, the title shall ab-initio vest in the Government as stated above and the contractor shall only be entitled to a license on such terms and conditions that the Government may deem it fit. Such license to the contractor shall usually be (a) revocable, non-exclusive and royalty-free; (b) extend to its domestic subsidiaries and affiliates; and (c) include the right to sublicense; but (d) shall not be transferable without prior approval of the Government.

15. The contractor shall also be required to submit periodic reports above commercialization and manufacturing activities undertaken for products embodying the subject invention under “Make” contracts.

16. The Government’s IPRs shall flow down from the prime contractor to all sub-contractors at all tiers; that is, every sub-contractor will have the same obligations vis-à-vis the Government as applicable to the prime contractor under the main procurement contract. To this end, the sub-contractors shall have limited contractual privity with the Government solely for the purposes of their IPR obligations to the Government.

17. The ownership of any rights by the contractor does not include an absolute right to transfer of any software, product or documentation; and such transfer, including export thereof, shall continue to be governed by and be subject to the Export Policy, Export Guidelines and all applicable laws, rules, regulations, orders and instructions of the Government of India. All such transfers and exports shall require prior and explicit approval of the Ministry of Defence.

18. Where the DA is not a consortium, ownership rights in intellectual property being generated under the “Make” contract shall vest with the Government upon dissolution of such DA. Where the DA is a consortium, the ownership rights in the IP generated under the “Make” contract, upon dissolution of the consortium, shall vest amongst the partners as per their agreement on the subject contained in the joint partnership agreement of the consortium, without government rights as licensee being adversely affected in any manner.

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**Appendix I to Chapter III**  
(Refers to Para 78 of Chapter III)

**ESTIMATED TIMELINES FOR “MAKE” PROJECTS**

<b>MAKE Phases</b>	<b>Timeline in Weeks from AoN</b>
<b>Phase I</b>	
Formation of IPMT and shortlisting of potential EoI recipients (parallel activities)	6
Issue of EoI	12
Pre-EoI Submission Meeting with EoI Recipients	4
EoI Response Submission	12
EoI Response Evaluation	16
Shortlisting of Development Agencies (DA(s))	12
Detailed Project Report Receipt and Finalisation	16
CFA Approval	8
Placement of Prototype Development Contract on DA(s)	6
<b>Total Timeline for Phase I</b>	<b>92</b>
<b>Phase II (Refer Para 51 of Chapter III)</b>	
Prototype Development & Evaluation	As per DPR
<b>Total Timeline for Phase I &amp;II</b>	<b>92 + as per DPR</b>

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**TABLE OF MAJOR RESPONSIBILITIES/AUTHORITIES-‘MAKE’**

<b><u>SHQ</u></b>	
1.	Identification of Potential MAKE projects based on LTIPP.
2.	Collegiate discussions with stakeholders for identifying Make projects.
3.	Carry out Feasibility study.
4.	Preparation of PSQR and SoC and process for AoN by DAC/DPB/SCAPCHC.
5.	Approval of PDD and EoI.
6.	Prepare list of potential companies.
7.	Constitution of PMU for Make projects.
8.	Preparation of Trial Directives and constitution of trial team.
9.	Preparation of Staff Evaluation report.
10.	Payment to DA(s).
11.	Provide any platform/equipment/interface to DA(s) if so approved in DPR.
12.	Validation of trials for Make-I procedure and carry out trial evaluation for cases under Make- II procedure.
13.	Approval of extension of timelines for any ‘Make’ project up to 20%.
<b><u>HQ IDS</u></b>	
1.	Compile the list of Potential Make-II projects and host on MoD website.
2.	Take approval of two year Annual Acquisition Plan for Make Projects from DPB.
3.	Examine the SoCs from aspects of interoperability and commonality of equipment for the services.
<b><u>IPMT</u></b>	
1.	Preparation of PDD & EoI.
2.	Shortlisting of Indian Vendors.
3.	Issue of EoI.
4.	Evaluation & Ranking of EoI responses.
5.	Evaluation of DPRs and engage with DA(s) for any modification of DPR.
6.	Submission of DPRs to Secy(DP) for approval.
7.	Preparation of draft Project Sanction Order for approval of DDP.
8.	Issue of Project Sanction Order.
9.	Submit six monthly progress report to DPrB.
10.	Recommendation for release of funds.
11.	User trial readiness review.

<b><u>DDP</u></b>
<ol style="list-style-type: none"> <li>1. Constitution of IPMT.</li> <li>2. Approval of DPR.</li> <li>3. Obtain financial sanction for project development phase as per delegation of financial powers.</li> <li>4. Approval of draft project sanction order.</li> <li>5. Issuance of a certificate to successful L2 Vendor indicating that the product has been successfully trial evaluated.</li> <li>6. Approval for change in composition of consortium.</li> </ol>
<b><u>Acquisition Wing</u></b>
<ol style="list-style-type: none"> <li>1. CNC for Buy(Indian-IDDM) phase</li> <li>2. Signing of Procurement Contract under Buy(Indian-IDDM) phase</li> <li>3. Post Contract Management.</li> </ol>
<b><u>DPrB</u></b>
<ol style="list-style-type: none"> <li>1. Selection of DA(s).</li> <li>2. Monitor progress of 'Make' project.</li> <li>3. Decision on time extension beyond 20%.</li> <li>4. Recommend foreclosure of project, if required, to AoN According authority.</li> <li>5. Policy guidance required on MAKE cases.</li> <li>6. Recommendation for any deviations in MAKE Procedure, for approval of DAC.</li> </ol>
<b><u>DAC</u></b>
<ol style="list-style-type: none"> <li>1. Accord of AoN for 'Make' Projects for Cases above ₹ 300 Crore and for all cases where three DAs are to be shortlisted.</li> <li>2. Approval of Foreclosure of project on recommendations of DPrB.</li> <li>3. Approval of any deviation on recommendation of DPrB.</li> </ol>

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