

Analysis

Appendix-B to Chapter I – Indigenous Content Aspects

and

Schedule I to Chapter II - Request for Technical and Commercial Proposal

New or Revised Salient Features

Draft Defence Procurement Procedure 2020

Schedule of Webinars on Draft Defence Procurement Procedure 2020		
Date & Time	Topic	Link for Registration
01 April 2020 1130 Hrs	Wednesday Draft DPP 2020 Chapter I - Acquisition Categories, Acquisition Planning and Indigenous Content	Register
Friday 03 April 2020 1130 Hrs	Chapter II - Acquisition Procedures for Categories Under 'Buy', and 'Buy and Make' Schemes	Register
Monday 06 April 2020 1630 Hrs	a) Appendix to Chapter I – Indigenous Content b) Schedule to Chapter II – Guidelines for preparing RFP	Register

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Schedule of Webinars on Draft Defence Procurement Procedure 2020		
Date & Time	Topic	Link for Registration
Wednesday 08 April 2020 1630 Hrs	Appendix to Chapter II – Defence Offset Guidelines	Register
Friday 10 April 2020 1130 Hrs	Chapter III - Procedure for Procurement Under 'Make' and 'Innovation' Categories	Register
Saturday 11 April 2020 1630 Hrs	Chapter III A - Procedure for Acquisition of Systems Designed and Developed by DRDO / DPSU / OFB	Register
Tuesday 14 April 2020 1130 Hrs	Chapter IV - Procedure for Defence Ship Building	Register

Appendix-B to Chapter I – Indigenous Content Aspects

Indigenous Content – Definition

For the purposes of the DPP, Indigenous Content (IC) for equipment or an item shall be arrived at by **excluding from the contract value less taxes and duties of that equipment/item**, the following elements of manufacturing / production / assembly:-

- i. **Direct costs** (including Freight/transportation and insurance) of all materials, components, sub-assemblies, assemblies and products **imported into India**.
- ii. **Direct and Indirect costs** of all services obtained from **non-Indian entities/citizens**.
- iii. All **license fees, royalties, technical fees and other fees/payments** of this nature **paid out of India**, by whatever term/phrase referred to in contracts/agreements made by vendors/sub-vendors.

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Category-wise Indigenous Content stipulated in Draft DPP 2020.

Category	DPP2016	Proposed in DPP 2020
1. Buy (Indian-IDDM)	Min 40%	Min 50%
1. Buy (Indian)	Min 40%	Indigenous design -Min 40%, otherwise -Min 60%
1. Buy & Make (Indian)	Min 50% of Make	Min 50% of Make
1. Buy & Make	-	Buy & Min 50% of Make
1. Buy (Global –Mfr in India)	-	Min 50%
1. Buy (Global)	-	Min 30%for Indian vendors

Stipulation in various Categories defined in Chapter I

Buy (Indian – IDDM)

*”----- with a minimum of 50% Indigenous Content (IC) on cost basis of the **total contract value**”.*

Buy (Indian)

*”----- with a minimum of 50% Indigenous Content (IC) on cost basis of the total contract value; Or products, which may not have been designed and developed indigenously, having 60% IC on cost basis of the **total contract value**.”*

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Buy and Make (Indian)

*“Under this category of procurement, a minimum of 50% IC is required on cost basis of the **Make portion of the contract.**”*

Buy and Make

*“a minimum percentage of 50% IC on cost basis for the **‘Make’ portion of acquisitions** under ‘Buy and Make’ category.”*

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Buy (Global – Manufacture in India)

*“----- with a minimum of 50% Indigenous Content (IC) on cost basis of the **total contract value** which can be achieved in the manufacturing of either the entire equipment or spares/assemblies/sub-assemblies/Maintenance, Repair and Overhaul (MRO) facility for the entire life cycle support of the equipment, through its subsidiary in India.”*

Buy (Global)

*“---- An Indian Vendor participating in this category would be required to meet **minimum 30% IC**, failing which he would be required to discharge offsets as applicable in the case.”*

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It is important to note that all procurements under Design & Development projects and SP Model Projects are finally under through Buy(Indian – IDDM) category. However, minimum threshold IC is stipulated even for prototype stages. **Therefore, the definition of IC applicable for projects under those classes should be consistent with what is given in Chapter I.**

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Formula for Computation of IC as given in Annexure 1 to Appendix B to Chapter I

Computation of Indigenous Content		
1	Base Exchange Rate	D
2	Import in INR based on Base Exchange Rate C is the total value of imports (materials, services etc.)	$E=(C*D)$
3	Contract Value excluding Taxes, Duties & Statutory Levies	F
4	Indigenous Content	$G= F-E$
5	Indigenous Content %	$IC=G*100/F$

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- It is evident from the above that there is certain in-consistency in the manner in which requirement of IC has been phrased at various places in DPP.
- It should be proposed to MOD to address this before promulgating the DPP. The definition given in Appendix-A {Contract Value – Taxes & Duties} should be stated everywhere.
- A new term Base Value of Contract (equal to total value minus taxes & duties) should also be defined. IC requirements should be with respect to this figure.

Reporting Requirements and Computation of IC.

- IC shall be mandatorily reported by Prime Contractor (PC) i.e. the vendor with whom the contract is signed, and key Indigenous Tier 1 (T1) & Tier 2 (T2) suppliers of manufacturing / production / assembly to their higher stages (tiers) as a certified self-declaration.
- The PC shall obtain the details required as per the IC Proforma from all the top Indigenous T1 suppliers by value ensuring that **total of his own cost and value of these top T1 suppliers account for a minimum of 80% by value of the total contract value.**

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- PC will also obtain IC Proforma from Indigenous T2 suppliers of these top T1 suppliers, if one of the below conditions are met in respect of the T2 suppliers:-
 - (i) the contract value of T2 supplier exceeds 10 Crores; or
 - (ii) the contract value of T2 supplier is greater than 5% of the Contract Value of the T1 supplier.
- For Indigenous Supplies from the balance T1 suppliers, the import content shall be aggregated in the IC Proforma at a flat estimated rate of 15% of the total value of supplies.
- Imported components/equipment bought through traders, stockists and/or local agents of foreign suppliers shall be aggregated in the IC proforma, under the head 'Others' at a flat estimated rate of 90% of the purchase value, unless accompanied by import certification.

Certification

- All relevant deliveries made under contract shall be accompanied by a certificate of IC issued by the 'Responsible Designated Official' i.e. the Contract Signing Authority, Authorised Signatory etc., of the PC and certified / licensed Cost Accountant / Chartered Accountant.
- Further, the equipment offered for trial shall be accompanied with a certificate of IC issued by the 'Responsible Designated Official' of the PC and certified/licensed Cost Accountant / Chartered Accountant in case the RFP mandates IC content during trials.

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- Deliveries by the final stage of contract must conform to IC requirements and categorisation relevant to that particular stage. The Performance cum Warranty Bank Guarantee shall not be released before **completing an audit of the IC** in all relevant deliveries by the MoD or its nominated agency/institution/officer(s), if such an audit is notified and initiated by the Contracting authority.

Withholding of Payments and Imposition of Penalties

- In case a particular delivery is deficient in achieving mandatory IC for that stage, **an amount of 5% of the cost of that stage** delivery shall be withheld from payment for that stage.
- However, if the vendor achieves the mandatory IC on a cumulative basis by the next stage of delivery, **the amount so withheld shall be released** to the vendor without interest.

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- All such payments withheld above shall be forfeited upon failure to achieve required IC by the stage of last delivery of the relevant product. **In addition, the Performance-cum-Warranty Bank Guarantee shall also be forfeited upon failure to discharge IC obligations as per contract.**
- In case mandatory IC is not achieved by a vendor and/or if a false certificate is furnished by a vendor/sub-vendor, **the Ministry can initiate any action/proceedings against the erring Indian vendor/sub-vendor and its allied firms under any extant law(s)/rules in force.** This right can be exercised by the Ministry at any point of time.

Omnibus Clause

- In the event of **non-incorporation of the definitions** and/or audit requirements laid down in contracts or agreements vendors with next tier at any stage (tier) of manufacturing / production /assembly, **it shall be presumed that items/services provided by that stage/tier to the next (tier) have no IC for the purposes of the DPP.**
- Similarly, in the event of **non-certification of IC** at any stage (tier) as required herein, **it shall be presumed that items/services provided by that stage/tier to the next stage (tier) have no IC for the purposes of the DPP.**
- In such cases, **the MoD can take any of the steps as defined**, against the PC.

Schedule I to Chapter II Request for Technical and Commercial Proposal

General.

- The Schedule has been re-designed to include a lot of amplifying Notes at appropriate places so that there is consistency in the text of RFPs prepared and issued by the Services. For example,

4. **Special features of RFP.**

Special requirements of RFP like integration with other systems, linking of Trials with completion of delivery, infrastructure augmentation etc. are to be specified to draw the attention of bidders on critical aspects of the RFP.

(For Illustration: The equipment to be supplied is to be interfaced with the CMS of the platform for which interfaces are to be designed by the Bidder. The Interface Protocols will be provided by the Buyer. Interfacing and proving the system will be responsibility of the Bidder.)

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- A summary of the main features of the RFP such as equipment, quantity, categorisation, IC, date of pre-bid, last date for submission of bids, value of IPBG etc. is included at para 3 itself, in a Table.
- Special features of the RFP, if any, are highlighted in para 4.
- RFP document is structured as follows: -
 - ✓ Part I of RFP – General Requirements
 - ✓ Part II of RFP – Technical requirements
 - ✓ Part III of RFP – Commercial Requirements
 - ✓ Part IV of RFP – Bid Evaluation and Acceptance Criteria

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- There is a clear direction at para 9 that, “This RFP is non-transferable.”
- All the technical details, requirements, formats for Certificates, formats Bank Guarantees, guidelines including check-off list etc. are covered in **Appendices “A” to “T”**.
- There is an index to the RFP document

New Features.

- **Disclaimer** { MoD reserves the right to amend or supplement the information, assessment or assumptions contained in this RFP. **The MoD reserves the right to withdraw the RFP or foreclose the procurement case at any stage.** The issuance of this RFP does not imply that the MoD is bound to shortlist a Bidder for the Project. The MoD also reserves the right to disqualify any Bidder should it be so necessary at any stage on grounds of National Security.}

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- **Non-Disclosure** { Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their proposal. ----- MoD may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or MoD or as may be required by law or in connection with any legal process.}

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- **Confidentiality of Information.** { 'Restricted Information' Categories under 'Official Secrets' under Section 5 of the **Official Secrets Act, 1923**. Any contravention to the above-mentioned provisions by any Bidder, sub-contractors, consultants, advisors or the employees of a contractor, will make them liable for penal consequences under the above said legislation.}

Business Eligibility

Undertaking by Bidders. The Bidder will submit an undertaking that they are currently not banned / debarred / suspended from doing business dealings with Government of India / any other government organisation and that there is no enquiry going on by MoD/ any other government agencies against them. In case of ever having been banned / debarred / suspended from doing business dealings with MoD/any other government organization, in the past, the Bidder will furnish details of such ban / debarment alongwith copy of government letter under which this ban / debarment / suspension was lifted / revoked. The Bidder shall also declare that their sub-contractor(s)/supplier(s)/technology partner(s) are not Suspended or Debarred by Ministry of Defence. In case the sub-contractor(s)/supplier(s)/ technology partner(s) of the Bidder are Suspended or Debarred by Ministry of Defence, the Bidder shall indicate the same with justification for participation of such sub-contractor(s)/supplier(s)/ technology partner(s) in the procurement case.

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- **Pre-Qualification Criteria** for multi-vendor cases in Buy (Indian-IDDM), Buy (Indian) and Buy & Make (Indian) cases is included in RFP.
- **Preservation.** A new clause for preservation of supplies for the stipulated time period is included. This may include standards for packaging.
- **Obsolescence Management.** An actionable obsolescence management plan is to be proposed by the Bidder, the terms of which would be negotiated during CNC. The mutually agreed solution would form an integral part of the contract.

New Technical Features

- **Project Report (where applicable).**

For cases involving large scale integration with other systems or civil infrastructure or ToT, requirement of preliminary/detailed Project Report may be included in RFP as given below.

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- **Preliminary Project Report (PPR).** A PPR must be submitted along with the Technical Offer. The PPR should indicate the methodology adopted by the Bidder to execute the program and meet the delivery schedule laid down in the RFP. The PPR should broadly cover the following aspects:-
 - (i) Project overview.
 - (ii) Definitions of key milestones based on indicative list of milestones and broad range of timelines.
 - (iii) Broad plan for execution of the Project as per delivery schedule.
 - (iv) Lifetime product support plan.
 - (v) Plan for meeting the Indigenous Content (IC) stipulated in the RFP.
 - (vi) Project organization structure as applicable.
 - (vii) In case of ToTs for licensed production and MToT, Indian sub-contractor for ToT and/or manufacturing and the methodology for setting up manufacturing infrastructure.

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- **Detailed Project Report (DPR).**

Post contract, the L1 Bidder will submit a DPR covering the key aspects highlighted in the PPR and detailed project implementation plan for 'Make' portion with the proposed Indian Production Agency for 'Buy and Make' cases and proposed ToT partner for Buy and Make (Indian) cases by dates indicated at Delivery Schedule and Stages of Payment.

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- **Quality Assurance Plan and Acceptance Test Procedure.**
 - ✓ Bidder is to submit Draft ATP along with the Technical bid or at least one month before commencement of FET.
 - ✓ Based on the draft ATP, QAP will be finalised by the Buyer's QA agency with Bidder during technical trials (QA & Environmental Trials).
 - ✓ In cases where no FET are to be conducted, ATP will be finalised at the CNC stage. ATP will lay down the tests to be carried out during PDI and JRI.
 - ✓ QAP including the ATP shall be included in the contract at the time of finalisation with successful bidder.

- **Product Support.**

- ✓ Maintenance Philosophy
- ✓ In-resources – Infrastructure, Skilled personnel
 - Spares (As per range & scale or As per Manufacturer's recommendations {MRLS, Adequacy Clause, Buy Back Clause}), Test Jigs, Fixtures, Training
 - Long Term Support Agreements
- ✓ Long Term Maintenance Contracts (CMC, AMC)
- ✓ Performance Based Logistics

New Commercial Features

- **Advance Bank Guarantees.** There is an option to furnish separate Bank Guarantee for each lot / batch / deliverable(s) to affect pro-rata reduction of APBG.
- **Exchange Rate Variation.** Exchange Rate variation shall be applicable for Rupee contracts with Indian Vendors, based on RFPs issued under all categories of capital acquisitions. However, ERV clause shall not be applicable to contracts in following conditions:-
 - (i) The delivery period is less than one year; or
 - (ii) The rate of exchange variation is within the band of +/- 2.5%.
- Though there is a mention in the conference slides that **Bank Guarantees (BGs) will be based on Contract Value less taxes and duties**, this provision seems to have got omitted in the body of Schedule to Chapter II.

- **Life Cycle Costing.**

There was fair bit of talk about bringing in features such as “Life Cycle Costing” for evaluation of bids.

However, one could not find any specific mention or guidelines on that concept.

- **Indigenous Materials - ?**
- **Indigenous Software - ?**
- **Aero-Engines & FAB - ?**

Analysis

Appendix-B to Chapter I – Indigenous Content Aspects

and

Schedule I to Chapter II - Request for Technical and Commercial Proposal