

PART-III : STANDARD CONDITIONS OF RFP

THE BIDDER IS REQUIRED TO GIVE CONFIRMATION OF THEIR ACCEPTANCE OF THE STANDARD CONDITIONS OF THE REQUEST FOR PROPOSAL MENTIONED BELOW WHICH WILL AUTOMATICALLY BE CONSIDERED AS PART OF THE CONTRACT CONCLUDED WITH THE SUCCESSFUL BIDDER (I.E. SELLER IN THE CONTRACT) AS SELECTED BY THE BUYER. FAILURE TO DO TENDER MAY RESULT IN REJECTION OF THE BID SUBMITTED BY THE BIDDER.

1. **Law.** The Contract shall be considered and made in accordance with the laws of the Republic of India.
2. **Effective Date of the Contract.** The contract shall come into effect on the date of signatures of both the parties on the contract except when some other effective date is mutually agreed to and specifically indicated/ provided in the contract. The deliveries and supplies and performance of the services shall commence from the effective date of the contract.
3. **Litigation/Arbitration.** All disputes or differences arising out of or in connection with the Contract shall be settled by bilateral discussions. Any dispute, disagreement or question arising out of or relating to the Contract or relating to construction or performance, which cannot be settled amicably, may be resolved through arbitration. The standard clause of arbitration is as per Forms DPM-7, DPM-8 and DPM-9 (Available in MoD website and can be provided on request).
4. **Penalty for Use of Undue Influence.** The Seller undertakes that he has not given, offered or promised to give, directly or indirectly, any gift, consideration, reward, commission, fees, brokerage or inducement to any person in service of the Buyer or otherwise in procuring the Contracts or forbearing to do or for having done or for borne to do any act in relation to the obtaining or execution of the present Contract or any other Contract with the Government of India for showing or forbearing to show favour or disfavour to any person in relation to the present Contract or any other Contract with the Government of India. Any breach of the aforesaid undertaking by the Seller or any one employed by him or acting on his behalf (whether with or without the knowledge of the Seller) or the commission of any offence by the Seller or anyone employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act, 1986 or any other Act enacted for the prevention of corruption shall entitle the Buyer to cancel the contract and all or any other contracts with the Seller and recover from the Seller the amount of any loss arising from such cancellation. A decision of the Buyer or his nominee to the effect that a breach of the undertaking had been committed shall be final and binding on the Seller. Giving or offering of any gift, bribe or inducement or any attempt at any such act on behalf of the Seller towards any officer/employee of the Buyer or to any other person in a position to influence any officer/employee of the Buyer for showing any favour in relation to this or any other contract, shall render the Seller to such liability/ penalty as the Buyer may deem proper, including but not limited to termination of the contract, imposition of penal damages, forfeiture of the Bank Guarantee and refund of the amounts paid by the Buyer.
5. **Agents / Agency Commission.** The Seller confirms and declares to the Buyer that the Seller is the original manufacturer of the stores/provider of the services referred to in this Contract and has not engaged any individual or firm, whether Indian or foreign whatsoever, to intercede, facilitate or in any way to recommend to the Government of India or any of its functionaries, whether officially or unofficially, to the award of the contract to the Seller; nor has any amount been paid, promised or intended to be paid to any such individual or firm in respect of any such intercession, facilitation or recommendation. The Seller agrees that if it is established at any time to the satisfaction of the Buyer that the present declaration is in any way incorrect or if at a later stage it is discovered by the Buyer that the Seller has engaged any such individual/firm, and paid or intended to pay any amount, gift, reward, fees, commission or consideration to such person, party, firm or institution, whether before or after the signing of this contract, the Seller will be liable to refund that amount to the Buyer. The Seller will also be debarred from entering into any supply Contract with the Government of India for a minimum period of five years. The Buyer will also have a right to consider cancellation of the Contract either wholly or in part, without any entitlement or compensation to the Seller who shall in such an event be liable to refund all payments made by

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the Buyer in terms of the Contract along with interest at the rate of 2% per annum above LIBOR rate. The Buyer will also have the right to recover any such amount from any contracts concluded earlier with the Government of India.

6. **Access to Books of Accounts**. In case it is found to the satisfaction of the Buyer that the Seller has engaged an agent or paid commission or influenced any person to obtain the contract as described in clauses relating to Agents/Agency Commission and penalty for use of undue influence, the Seller, on a specific request of the Buyer, shall provide necessary information/inspection of the relevant financial documents/information.

7. **Non-disclosure of Contract Documents**. Except with the written consent of the Buyer/ Seller, other party shall not disclose the contract or any provision, specification, plan, design, pattern, sample or information thereof to any third party.

8. **Liquidated Damages (LD)**. In the event of the Seller's failure to submit the Bonds, Guarantees and Documents, supply the stores/goods and conduct trials, installation of equipment, training, etc as specified in this contract, the Buyer may, at his discretion, withhold any payment until the completion of the contract. The BUYER may also deduct from the SELLER as agreed, liquidated damages to the sum of 0.5% of the contract price of the delayed/undelivered stores/services mentioned above for every week of delay or part of a week, subject to the maximum value of the Liquidated Damages being not higher than 10% of the value of delayed stores.

9. **Termination of Contract**. The Buyer shall have the right to terminate this Contract in part or in full in any of the following cases:-

- (a) The delivery of the material is delayed for causes not attributable to 'Force Majeure' for more than 4 weeks from the date of Tender.
- (b) The Seller is declared bankrupt or becomes insolvent.
- (c) The delivery of material is delayed due to causes of force majeure by more than 01 Month provided force majeure clause is included in contract.
- (d) As per the decision of the Arbitration vide Para 3 above.

10. **Notices**. Any notice required or permitted by the contract shall be written in the English language and may be delivered personally or may be sent by FAX or registered pre-paid mail/airmail, addressed to the last known address of the party to whom it is sent.

11. **Transfer and Sub-letting**. The Seller has no right to give, bargain, sell, assign or sublet or otherwise dispose of the Contract or any part thereof, as well as to give or to let a third party take benefit or advantage of the present Contract or any part thereof.

12. **Patents and other Industrial Property Rights**. The prices stated in the present Contract shall be deemed to include all amounts payable for the use of patents, copyrights, registered charges, trademarks and payments for any other industrial property rights. The Seller shall indemnify the Buyer against all claims from a third party at any time on account of the infringement of any or all the rights mentioned in the previous paragraphs, whether such claims arise in respect of manufacture or use. The Seller shall be responsible for the completion of the supplies including spares, tools, technical literature and training aggregates irrespective of the fact of infringement of the supplies, irrespective of the fact of infringement of any or all the rights mentioned above.

13. **Amendments**. No provision of present Contract shall be changed or modified in any way (including this provision) either in whole or in part except by an instrument in writing made after the date of this Contract and signed on behalf of both the parties and which expressly states to amend the present Contract.

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14. **Taxes and Duties.** As applicable. The details available in MoD Website at Para 14 of Part III (Standard conditions of RFP)
15. **Delivery and installation of Security Grill Panels.** The Security Grill Panels will be installed within 50 days from the date of supply order at following location:-
- (a) **Army Public School, Bathinda.** Date of completion will be strictly followed. The Principal, APS Bathinda reserves the right not to accept the completed work after the stipulated period and cancel the Tender. No extension will be granted to the firm in the deadlines to completion of the Project. If any delay is expected in execution / completion of the project, it has to be informed to the Principal APS, Bathinda at least 30 days in advance. The Principal, APS, Bathinda, will be sole authority in entertaining any request for extension of deadlines to completion of the project.
16. The rates quoted will remain valid for six months from the date of opening of quotation.
17. **Transportation.** The following Transportation clause will form part of the contract placed on successful Bidder –
- (a) The stores will be delivered at designated location as mentioned in this RFP. Consignee's end. In case work is not completed within stipulated period, the orders may be cancelled without any liability what so ever towards the department. Accepting Officer reserves the right not to accept the supplies after the stipulated delivery period and cancel the Tender for the balance quantity. Rate should be quoted for delivery of stores at Army Public School, Bathinda at the site. The firm will make its own arrangements to pay all taxes including transit insurance/ octroi and other taxes as applicable and the cost of thereof and will be responsible for defect free delivery of stores at destination.
- (b) Technical specification should be read in conjunction with drawing list. In case of any variation between drawings and technical specifications decision of **Principal, APS Bathinda** will be final and binding on the firm. Any additional items required for construction as per design and specifications given in technical specifications and attached sketches will be provided by the supplier.
- (c) In case of any dispute related to quotation or Tender, decision of the Brigadier EME, HQ 10 Corps shall be final and binding.
- (d) The free servicing, warranty on the stores/parts of the items and installations cost shall be considered included in the rates quoted. The supplier shall stand liable for repair/ replacement of panels for the duration as given by the main manufacturer for that item against faulty material and manufacturing defects without any extra cost.
18. **Inspection Authority.** The store will be subjected to an inspection to ascertain that they confirm to the specification as laid down in the Tender. The costs incurred during inspection, if any (only for testing of material), will be borne by the Vendor / Supplier.
19. **Specification.** The Seller guarantees to meet the specifications of the Tender and to incorporate the modifications to the existing design configuration to meet the specific requirement of the Buyer Services as per modifications/requirements recommended after the ATP.
20. **Quality.** The quality of the stores delivered according to the present Tender shall correspond to the technical conditions and standards or specifications enumerated as per QUOTATION and shall also include therein modification to the stores suggested by the Buyer.
21. **Quality Assurance.** After the Tender is finalized, the Seller would be required to provide the Standard Acceptance Test Procedure (ATP) as per Appx att within one month. Buyer reserves the right to modify the ATP. Seller would be required to provide all test facilities at APS, Bathinda for acceptance and inspection by Buyer. The item should be of the latest manufacture, conforming to the current production standard and having 100% defined life at the time of delivery. The gauge

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verification will be done by the buyer at the APS Bathinda on production of bill of material at each installation.

22. **Quality Control.**

(a) Acceptance test procedure.

(b) Accepting officer reserves the right to get any part tested for quality if he feels so. Cost of such testing will be borne by the supplier if required by the buyer.

(c) The supplier will be responsible for quality of items used in fabrication as given in the technical specifications.

23. **Raw Materials.** All raw materials used should be new and as per particular specification given in Technical specifications. Test certificate for all raw materials will be produced by the seller if required by the buyer.

24. Where GST/VAT is charged the suppliers will quote his TIN and endorse the following certificate:-

“The charges levied on account of GST/VAT for the goods supplied are correct and has been paid in full under the provisions of GST/VAT act and rules made there under”. Details of the same will be attached along with the vendor’s bill”.

25. Where excise duty is claimed, the following certificate should be attached to the bill:-

“Certified that the goods on which excise duty has been pre-paid have not been exempted under the excise duty act. The excise duty charged on the basis of what has already been paid. No refund has been obtained in respect of the reimbursement of excise duty made to the seller during three months immediately preceding the date of the claim covered by the relevant bill”.

26. **Bank Guarantee (BG).** The Bidder will be required to furnish a Performance Guarantee by way of Bank Guarantee through a public sector bank or a private sector bank authorized to conduct government business (ICICIBank Ltd., Axis Bank Ltd or HDFC Bank Ltd.) for a sum equal to 10% of the contract value within 30 days of receipt of the confirmed order. Performance Bank Guarantee should be valid up to 60 days beyond the date of warranty. The specimen of PBG is given in Form DPM-15(Available in MoD website and can be provided on request).

27. **Forfeiture of Bank Guarantee (BG).** The BG will be liable to be forfeited if the vendor withdraws or amends or impairs or derogates from the tender in any respect within the validity period of the Tender.

28. A certificate to the affect that non disclosure agreement will be rendered by the vendor within seven days on receipt of Tender:-

“ I hereby solemnly affirm that I will not disseminate the contents of any letter issued to our firm which contains the unit name, location of formation HQ/Unit, equipment details, works sites, strength of the army habitat location and photographs publically or on firm’s website or to any unauthorized person or media etc”.

29. **Warranty.**

(a) The following Warranty will form part of the contract placed on the successful Bidder:-

(i) Vendors will provide free on site comprehensive warranty for a period of 12 months for the equipment and will be applicable from the date of completion of all items Tender. During warranty, the Vendor will repair/ replace without any cost any

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equipment/ part/ accessory, which becomes defective except items of a consumable nature. During the warranty period all warranty benefits received by the Vendor from the OEMs, for any equipment pertaining to third parties will be passed on to the customer. In case the Vendor fails to ensure rectification of faults, penalties will be deducted from the bank guarantee. Items of consumable nature that may not be replaced free on account of defect/ malfunction must be specified clearly in the offer. In case the vendor does not provide this information.

(ii) The Seller warrants that the goods supplied under the Tender conform to technical specifications prescribed and shall perform according to the said technical specifications.

(iii) The Seller warrants for a period of 12 months from the date of acceptance of stores by ATP, that the goods/stores supplied under the Tender and each component used in the manufacture thereof shall be free from all types of defects/failures.

(iv) If within the period of warranty, the goods are reported by the Buyer to have failed to perform as per the specifications, the Seller shall either replace or rectify the same free of charge, within a maximum period of 30 days of notification of such defect received by the Seller, provided that the goods are used and maintained by the Buyer as per instructions contained in the Operating Manual. Warranty of the equipment would be extended by such duration of downtime.

(v) The Seller also warrants that necessary service and repair back up during the warranty period of the equipment shall be provided by the Seller and he will ensure that the downtime is within 10 % of the warranty period (where applicable).

(vi) Seller shall provide the details of complete defects, reasons and remedial actions for defects, when such defects arise.

(vii) If a particular panels fails frequently and/or, the cumulative down time exceeds 25 % of the warranty period, the complete equipment shall be replaced free of the buyer. Warranty of the replaced equipment would start from the date of acceptance after Joint Receipt Inspection by the Buyer/date of installation and commissioning.

30. **Risk & Expense Clause.**

(a) Should the stores or any instalment thereof not be delivered within the time specified in the Tender or if defective delivery is made in respect of the stores or any instalment thereof, the buyer shall after granting the Seller 30 days to cure the breach, be at liberty, without prejudice to the right to recover liquidated damages as a remedy for breach of contract, to declare the contract as cancelled either wholly or to the extent of such default.

(b) Should the stores or any instalment thereof not perform in accordance with the Specifications / parameters provided by the SELLER during the check proof tests to be one in the BUYER's country, the BUYER shall be at liberty, without prejudice to any other remedies for breach of contract, to cancel the contract wholly or to the extent of such default.

(c) In case of a material breach that was not remedied within 30 days, the BUYER shall, having given the right of first refusal to the SELLER be at liberty to purchase, manufacture, or procure from any other source as he things fit other stores of the same or similar description to make good:-

(i) Such default.

(ii) In the event of the contract being wholly determined the balance of the stores remaining to be delivered there under.

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(d) Any excess of the purchase price, cost of manufacturer, or value of any stores procured from any other supplier as the case may be, over the contract price appropriate to such default or balance shall be recoverable from the SELLER.

31. **Rejected Stores/Items.** The rejected stores/ items will be disposed off by the supplier at his own risk and cost at the site where these are rejected.

34. In case of any dispute the decision of Principal, APS Bathinda shall be final and binding.

32. **Penalty.** The work will be made **as per tender schedule given in Tender/ within 45 days.** In case of delay in work as per tender schedule, a penalty of 0.5% of the total tender for every week of delay will be levied.

33. **Principal, APS Bathinda** will be the Accepting Officer for the tender. In case of any contingency due to force-majeure, the request for extension in work period will be made as per the time stipulated for the performance of an obligation under the present contract is extended correspondingly for the period of time of action of these circumstances and their consequences. However, it will be purely the discretion of **Chairman, APS Bathinda** in granting the extension.

34. **Standard Conditions of Quotation.** The Bidder is required to give confirmation of their acceptance of the Standard Conditions of the Request for Proposal mentioned below which will automatically be considered as part of the Contract concluded with the successful Bidder (i.e. Seller in the Contract) as selected by the Buyer. Failure to do so may result in rejection of the Bid submitted by the Bidder.

(a) **Law.** The Tender shall be governed by and interpreted in accordance with the laws of the Republic of India.

35. **Payment Terms:** The payment will be made as per the following terms, on production of the requisite documents:-

(a) 100% payment on fixation of panels and acceptance by the user ATP board.

(b) Payment shall be made after inspection and acceptance of stores has been completed.

(c) Bills will be subject to audit by associated finance.

(d) Firms will not be issued form 'D'.

(e) **"PAYMENTS WILL BE MADE THROUGH ELECTRONIC FUND TRANSFER (RTGS/NEFT) AND CHEQUE. PLEASE OPEN BANK ACCOUNTS IN SBI TO AVOID INCONVENIENCE".**

(f) Advance Payments. No advance payment (s) will be made.

36. The department reserves the right to recover any outstanding amount/dues from the supplier's fund available with this unit office or any other department, if so informed.

37. **Litigation and Arbitration.** No litigation or arbitration under any circumstances at any stage shall be applicable. The decision of the Brigadier EME, HQ 10 Corps shall be final and binding on all matters.

38. No insurance charge will be paid by the department. Principal accepts no responsibility and no liability for the stores in transit or for the rejected stores lying inside consignee's premises for whatsoever reason.

39. The Principal, APS Bathinda reserves the right to inspect the stores to a second inspection by any authority nominated by him or to inspect the stores himself, and may reject them if not

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found conforming to the laid down specifications, within in a period of six months from the date of acceptance by the normal inspecting authority mentioned above, even if the stores have been accepted, passed and paid for. The supplier shall replace such stores with the stores of correct specifications within a period of one month on receipt of due notice in writing by the Principal at his (Supplier) cost.

40. **Paying Authority.** The bills of the complete items should be prepared in favour of Principal, APS Bathinda as per IAFA-68, duly revenue stamp affixed in triplicate and should be forwarded to APS Bathinda. The payment of bills will be made on submission of the following documents by the Seller to the Authority issuing Tender along with the bill:-

- (a) Ink-signed copy of contingent bill / Seller's bill.
- (b) Ink-signed copy of Commercial invoice / Seller's bill.
- (c) CRVs in duplicate to be co-ordinated with user.
- (d) Opening Board of stores.
- (e) Claim for statutory and other levies to be supported with requisite documents / proof of payment such as Excise duty challan, Customs duty clearance certificate, Octroi receipt, proof of payment for EPF/ESIC contribution with nominal roll of beneficiaries, etc as Applicable.
- (e) Exemption certificate for Excise duty / Customs duty, if applicable.
- (f) Bank guarantee for advance, if any.
- (g) Guarantee / Warranty certificate.
- (j) Performance Bank guarantee / Indemnity bond where applicable.
- (k) Details for electronic payment viz Account holder's name, Bank name, Branch Name and address, Account type, Account number, IFSC code, MICR code (if these details are not incorporated in Tender/contract).
- (l) Any other document / certificate that may be provided for in the Tender /Contract.
- (m) Xerox copy of PBG.

(Note:- From the above list, the documents that may be required depending upon the peculiarities of the procurement being undertaken, may be included in RFP)

41. **Important.** This document cannot be used for taking any type of loan from financial institutions.

42. Rate list of company and purchase vouchers for any items incorporated will be produced on demand.

43. Tech specification of the item of supply is enclosed. Other design criteria are as given in technical specification.

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