

**SMALL ARMS FACTORY, KANPUR
SAF GSTIN -09AAAGS0001A1Z5**

Tender Enquiry no. _____ dated DD/MM/YYYY
Last date and time for Bid submission is DD/MM/YYYY _____ Time 14:45 PM
opening date DD/MM/YYYY _____ & Time 15:00PM

Mode of tender : Manual Tender / Tender through e-procurement
Tender Type : SDOTE/OTE
Bid Type : Two bid

M/s. _____

Dear Sir ,

This tender enquiry is governed by following terms and conditions, vendors are required to go through these terms & conditions before submitting offer -

TENDER ENQUIRY TERMS & CONDITIONS FOR PROCUREMENT OF STORES

1. The Tender Enquiry (TE)/RFP is issued without any financial commitment. The Buyer reserves the right to amend or modify any part of the TE at any stage. Such amendments/ modifications to the TE, if any, shall be duly notified similarly as the TE. Buyer reserves the right to withdraw the TE at any stage, should it so become necessary.
2. Effective Date of the Contract: Unless the consequent Contract specifically defines a different effective date-of-the-contract, the effective date-of-the-contract shall be the date on which the Parties to the Contract have affixed their respective signatures on the Contract or the date of Supply Order. The Contract shall come into effect on the effective date and remain valid until the completion of the obligations of the Parties under the Contract. The deliveries, supplies and performance of the services under the Contract shall commence from the effective date-of-the-contract.
3. The TE is divided into the following five Parts:
 - (a) Part I - Contains general information and instructions for the Bidders about the TE
 - (b) Part II - Contains essential details of the stores/ items/services required, which will form part of the consequent Contract with the successful Bidder.
 - (c) Part III - Contains standard conditions of TE, which will form part of the consequent Contract with the successful Bidder.
 - (d) Part IV - Contains special conditions applicable to this TE and which will also form part of the consequent Contract with the successful Bidder.
 - (e) Part V - Contains evaluation criteria and format for price bids.
4. All procurements valuing above the specified threshold limit (presently Rs. 2 lakhs & above) is normally procured through e-procurement. However, in certain situations, the Buyer may consider it necessary to resort to the conventional manual system even if the procurement is above the specified threshold limit with the approval of competent authority as per OFBPM 2018. Procurements below the specified threshold limit may be through the conventional manual system. The web address of the e-procurement portal is <https://www.ofbeproc.gov.in>.
5. Prospective Suppliers are supposed to enroll themselves through the e-procurement portal. The system is accessible through the internet by (i) Digital Signature Certificates (ii) user login ID & password. Tender Management activities through the e-procurement system includes:

- a) Online enrolment by vendors
 - b) Publication of Tenders and amendments/ modifications, if any, thereafter
 - c) Bid submission by the Bidders
 - d) Seeking and publication of clarifications, including clarifications resulting out of pre-bid meeting, if scheduled
 - e) Opening of bids (both technical and commercial bids)
 - f) Technical evaluations of the Bids and automatic generation of Comparative Statement of Technical Bids
 - g) Commercial evaluations of the technically qualified Bids and automatic generation of Comparative Statement of Commercial Bids.
6. The e-procurement portal has a centralized Help Desk facility with toll free number, online customer complaint facilities and full-fledged operational manuals. The portal also contains the manual for e-procurement as well as the OFBPM 2018. These operational & procedure manuals provide requisite information on using the portal as well as an insight into the procurement procedure followed by the Ordnance Factory Organization.
 7. Tender fees shall not be applicable for tenders processed through e-procurement. However, in procurements made through the conventional manual system a nominal Tender fee is applicable in advertised (Open/ Global) tenders. Micro and Small Enterprises (MSEs) having UAM number (to be submitted by MSEs) as defined in MSE Procurement Policy issued by Department of MSME are exempted for tender fee. The requisite Tender fees in the prescribed form needs to be submitted either along with the application for Tender documents or along with the Bid. Non submission of requisite Tender fee in the prescribed form may result in rejection of the Bid. There is no provision for providing Tender fees subsequent to the Tender opening. In cases where the drawings, specifications, etc., are priced, the same shall be so stated in the TE, which is applicable for both systems of procurement.
 8. The usage of the term 'Bid' in the TE, unless repugnant to the context, refers to the Bids (including the documents, financial instruments, etc., required to be submitted) in the e-procurement as well as the conventional manual system.
 9. The usage of the term 'Seller' in the TE, unless repugnant to the context, refers to the successful Bidder (s) in the TE on whom the consequent Supply Order/ Contract has been placed.
 10. The usage of the term 'Contract' in the TE, unless repugnant to the context, refers to the consequent Supply Order/ Contract.
 11. All dates and times specified in this TE are in date/month/year and 24 Hrs formats, respectively.

PART I - GENERAL INFORMATION AND INSTRUCTION FOR BIDDERS

- 1.1 The Sr. GM/GM, Small Arms Factory, Kanpur (referred to as Buyer) through this TE No. _____ dated _____ issued SDOTE/OTE, invites Bids on two Bid basis for supply of - as mentioned below -
Item description _____, item code _____ (Title of the TE).
- 1.2 The pre-qualification/ eligibility criteria, if any has been prescribed by the Buyer, shall be indicated under this paragraph as sub-paragraphs (a), (b), ... (n), if none has been indicated under this paragraph, the TE shall be open to any bidder desirous of participating in the tender.
 - a)
 - b), etc.
- 1.3 If due to any exigency, the due date for Tender opening is declared as closed / holiday-

- (a) In case tender has been processed through e-procurement website, tender opening shall be held on the next working day.
- (b) Normally manual tender is used to open on two days in a week, i.e. Tuesday and Friday. Such manual tender shall be opened on coming next working Tuesday / Friday as the case may be

1.4 Following details are given to facilitate vendors in submission of bids for manual mode -

- (a) The last date and time for Bid submission is _____ Time 14:45 PM
- (b) Postal address for sending the Bids: Small Arms Factory, Kalpi Road Kanpur 208009
- (c) Location of the Tender Box is Small Arms Factory Main Gate , marked as Small Arms Factory TENDER BOX
- (d) Tender shall be opened on (date) at (time)
- (e) Place of opening of Bids is Small Arms Factory TENDER BOX, Tender opening room
- (f) Name/ designation of the contact personnel:
 1. Shri J P Yadav Jt M/PV
 2. Shri R K Singh WM/MMI
 3. Shri Nitin Jeph WM/MMD
- (g) Telephone number(s) of the contact personnel 0512 - 2295042 to 46 + Extn no.
- (h) Official e-mail ID (s) of contact personnel: saf.ofb@nic.in
- (i) Fax number (s): 0512 -2296229

1.5 Validity of the bid should be 180 days from the date of opening of tender.

1.6 Submission of Earnest Money Deposit (EMD) is an essential requirement to be fulfilled. Bids not accompanied by the EMD specified in the TE shall be treated as invalid Bids. In the instant TE Bidders are required to submit along with their Bids, EMD for an amount equal to **Rs** in the prescribed form (refer to Part III of the TE). The EMD shall be in favour of "The General Manager, Small Arms Factory, Kanpur.

1.7 In e-procurement, the Bidders shall upload along with their Bid, the scanned copies of the instrument of their EMD and forward the original EMD instrument by post in a separately sealed envelope clearly mentioning the 'EMD for TE No ' and due date of opening of **bid** ' on the envelope. However, if the physical original instrument is not received by the Buyer prior to the specified Tender opening date & time, the Bid being incomplete on Tender opening, shall be treated as invalid/ late tender and rejected.

1.8 Bidders requiring clarifications on the contents of the TE may request the Buyer in writing or through e-Procurement System (so as to reach the Buyer not later than fourteen days prior to the date of Tender opening) bringing out unambiguously the specific clarifications needed. Copies of the clarifications requested by the Bidder and the clarifications provided by the Buyer shall be sent to all prospective Bidders who have been issued TE.

1.9 Manual Bidders should forward their Bids in the format provided along with TE & also submit furnishing details like GST number, Bank details with NEFT account details, complete postal & e-mail address, telephone & fax numbers, etc., of their office on their original memo letter. In e-procurement bids shall be submitted through e-procurement portal.

1.10 When Bids are called on Single Bid basis the technical and financial/ commercial bids shall be submitted in the same bid or Bids are called for on Two Bids basis, the Bids shall comprise of two parts, namely (i) Technical Bid, and (ii) Financial/ Commercial Bid. In manual bidding, the Technical Bid and the Financial/ Commercial Bid should be sealed by the Bidder in separate covers duly super-scribed to indicate the appropriate Bid. Both these sealed covers are to be put in a bigger cover, which should also be sealed and super-scribed as prescribed below (a) Title of the TE (b) TE No. and date

- (c) Tender opening date.” Lack of these superscription may result in the Bid being declared invalid.
- 1.11 Bids, for supply of the item (s) listed in Part II of the TE, shall be submitted through the e-procurement portal or in sealed cover in case of procurements on conventional manual system. In conventional manual system, the sealed cover of the Bids should neatly and legibly be super-scribed with the details of (a) Title of the TE (b) TE No. and date (c) Tender opening date. Lack of these superscription may result in the Bid being declared invalid.
(Already taken in 1.9)
A bid shall remain valid for 180 days in case of two bids system (SDOTE/OTE) from the date of the opening of the tender.
- 1.12 In conventional manual system, Bidder may modify or withdraw his bid after submission provided a written notice of modification or withdrawal is received by the Buyer prior to the deadline prescribed for Bid submission. The withdrawal notice may be sent by fax provided it is followed by a signed confirmation copy to be sent by post and such signed confirmation reaches the purchaser not later than the Bid submission deadline. In case of e-procurement, a bidder can change, withdraw or cancel earlier submitted offer before the bid submission closing date and time. In case tender specifications or price bid format is revised the submitted bids will become null and void & the vender need to re-submit the bids. TE closing date & time, opening date & time will also change. Information for the same will be sent to vendor through e-mail.
- 1.13 Bids cannot be modified after the Bid submission deadline. Similarly, after the Bid submission deadline, Bids cannot be withdrawn till expiry of the Bid validity.
- 1.14 In conventional manual system, only Bids that are found in the specified Tender Box shall be opened. Bids, if any, dropped in a wrong Tender Box shall be treated as invalid Bids.
- 1.15 In conventional manual system, Bidders may depute their representatives, duly authorized in writing, to attend the opening of Bids on the due date and time. Rates and other important commercial/ technical clauses quoted by all Bidders will be read out in the presence of the representatives of all the Bidders. This event will not be postponed due to the absence of the representative of any Bidder. In case of e-procurement, the tenders shall be opened online and bidders, who participated in the TE can view the spot CST also online through OFB e-procurement portal.
- 1.16 Two-bid system, only the Technical Bids will be opened on the specified Tender opening date and time. Financial Bids of only those firms will be opened, whose Technical Bids are found technically compliant/ suitable on Technical Evaluation by the Buyer.(Date of opening of the Financial Bids shall be separately intimated after evaluation of the Technical Bids.)
- 1.17 During evaluation of Bids, the Buyer may, if so required, ask the Bidder (s) for clarification on the Bid submitted. The request for such clarification shall be in writing (or through e-Procurement System). The clarification furnished by the Bidder should not result in any change in prices or substance of the Bid nor will the same be permitted. No post-bid clarification at the initiative of the Bidder will be entertained.
- 1.18 In procurements where it is necessary to physically verify the facilities & capacities of the Bidder, the Buyer may depute Capacity Verification Teams for carrying out such physical verification of facilities & capacities as per OFB Standard Operating Procedure (SOP) for Capacity Verification and Vendor Registration as available on the Ordnance Factory Board website and e-procurement portal. However, for the items valuing up to Rs. 2.5 Lakh the said SOP will not be mandatory.
- 1.19 Canvassing in any form by the Bidder, unsolicited letter and post-bid amendment / modifications/ corrections shall attract summary rejection of the Bid with forfeiture of EMD.

- 1.20 Bidder should comply with all the Parts of this TE and confirm acceptance of all the clauses of Part II, Part III, Part IV and Part V of the TE, which shall automatically be part of the consequent contract with the successful Bidder(s) (i.e. Seller in the consequent contract). Failure to confirm acceptance to the clauses mentioned under Part II, Part III, Part IV and Part V of the TE may result in rejection of the Bid submitted by the Bidder. Conditional Bids shall be treated as invalid and rejected. In the manual system, the bidder should sign on each page of the tender document.
- 1.21 The Buyer reserves the right to reject/cancel/scrap the Tender Enquiry or in rare cases change the quantity of tendered item(s) without notifying any reason whatsoever.
- 1.22 In case of any dispute, the decision of the Buyer shall be final and binding on all participants in the tender.
- 1.23 In e-Procurement cases, Bidders have to submit their bids through OFB e-Procurement portal only. Bids submitted by any other mode shall be treated as invalid.

PART II - ESSENTIAL DETAILS OF STORES REQUIRED BY THE BUYER

- 2.0 Essential details of the Stores/ Services required
- (a) Nomenclature of the store /services : - (if applicable)
- (b) Technical Specifications, (Specification of the Store/Description of the Service
Descriptive Nomenclature,
Drawing no., item code,
complete specification Where drawing number has been given, store should be supplied strictly as per drawing.:
- (c) Schedule of Requirements, Staggered deliveries (if applicable) -
Rate of supply required @ unit per/month after month from the placement of S.O.
- (d) Delivery Period, Mode/terms of delivery -
Delivery Period for supply of items would bemonths from the effective date of contract.
Store will be delivered at consignee end on DAP basis, DAP - Destination at place.
- (e) Consignee details/Destination details, etc.
The General Manager, Small Arms Factory, Kanpur- 208009.
- (f) Technical documentation required:
- i) Supplier must submit test certificates in original (Issued by NABL Accredited Laboratories) for all the parameters Stated/Covered in the relevant Drg. and specifications.
- ii) Along with each supply, Supplier is required to submit test certificates (s) in original & photocopy (issued by NABL accredited laboratories) for all the parameters stated / covered in the relevant drawing / specification and pre-dispatch report.
- iii) For finished components & blanks drawing denotes the dimension report is mandatory for all such components.
- 2.1 For strategic reasons the quantity tendered in this TE may be distributed as per the distribution ratio (refer Part III).

For job works where material is provided by SAF.

- 2.2 In cases where the Buyer issues material to the Supplier under the consequent Contract, the issued material will be duly secured by obtaining a Bank Guarantee, from a bank authorized to carry out government business, of value equal to the 110% of the value of the issued material and validity till delivery of supplies accepted by the Buyer.

2.3 Inspection Details -

- (a) Inspection Authority in the consequent Contract shall be “The Sr.GM/GM, Small Arms Factory Kanpur 208009”
- (b) The mode of Inspection applicable in the consequent Contract shall be “Buyer Inspection” (Buyers Inspection/ Joint Inspection/ Self-certification).
- (c) The Inspection applicable in the consequent Contract shall be “The inspection will be on receipt of material/stores at SAF, Kanpur.” (Pre-dispatch Inspection/ Joint Receipt Inspection / Buyers Receipt Inspection).
- (d) “The Sr. GM/GM, Small Arms Factory Kanpur or his authorized representative(s) shall be the Inspection Officer.
- (e) The firm should furnish the test report of chemical and physical parameters of raw materials used for manufacture of components, fabricated stores & list of, tools and gauges along with chalan. The instruments used for carrying out test as above shall have national traceability and evidence of the same will be furnished in the certificate.
[Already taken above point - 2.7 (e) It is clause but here it refers to supply of documents]

Mode of delivery given above at Point 2 (d & e)

* By hand/post/courier @ FOR SAF, Kanpur.

* In case the item are to be collected for Rly. Stn./Bus Stn. Etc. the charges applicable could be deducted along with demurrage coverage if any.

* SAF, Kanpur would not be any way responded for lost or damage of goods @ Rly. Stn./Bus Stn.

2.13. Special instructions on consignee details & other special conditions pertaining to shipment, transportation, etc., if any applicable under this TE, shall be as indicated hereunder.

- a) Consignee details:
- b) Packing instructions:
- c) Shipment/Transportation instructions:
- d) Other Special instructions, if any:

Item should be well packed preserved to avoid any damage during transport.

2.4 Time being the essence of the contract, Bidders should note that the consequent Contract can be cancelled unilaterally by the Buyer in case deliveries are not received within the contracted delivery period. In this regard the **provisions of the Risk & Expense clause in Part III** may be perused.

2.5 Extension of contracted delivery period due to reasons attributable to the Seller/supplier of the consequent Contract shall be at the sole discretion of the Buyer, with applicability of Liquidated Damages (LD) clause as mentioned in Part III.

PART III - STANDARD CONDITIONS OF THE T.E

3.1 Scope of Supply - Technical Description/Requirement/Quality requirement etc.: The stores supplied shall be of the best quality and workmanship, shall be in strict conformity with all the drawings and specifications furnished with the Purchase Orders and shall address the Technical description in all respects. Where tenders are called for in accordance with ‘particulars’, the seller’s tender to supply in accordance with such ‘particulars’ shall be deemed to be an admission on his part that he has fully acquainted himself with the details thereof and no claim on his part which may arise on account of non-examination or insufficient examination of the ‘particulars’ will in any circumstances be considered. The items not specifically listed but required for completeness of stores / system deemed to be included. All supplies should be accompanied by sellers works inspections/ test certificates duly certifying, the Stores are in strict conformity with the drawings/specifications. The final acceptance will be subject to inspection and approval

at Buyer's premises. Once the material are rejected and communicated to the Seller, no request shall be entertained for re-inspection or acceptance of the stores. However, Buyer reserves the right to re-inspect the stores and consider acceptance at his discretion.

- 3.2 Price: The rates offered shall be 'Firm & Fixed' with full and detailed breakup of various applicable cost elements like Basic Price, packing charges, freight/ transport, forwarding charges, handling charges, landing & clearing charges, installation & commissioning, training, technical assistance, etc.; and duly indicating all the applicable Taxes & Duties along with the relevant taxation rate and value for each of the applicable Tax/ Duty, till the execution of the total quantity on the order. To facilitate assessment of reasonability of price quoted, the Bidder shall indicate split-up details of the cost elements of the Basic price. No increase shall be permissible on any account after finalization of the order / till delivery of total quantity of the order. Price quoted should on F.O.R. SAF Kanpur, for delivery at Buyer premises inclusive of all charges including transit insurance. In case the bid does not denote with cost breakup & taxes it would be treated as basic rate for comparison & as all inclusive rate for payment of bills.
- 3.3 Packing Conditions: The stores should be properly packed for tropical storage and for transport by rail, road, sea or air so as to ensure and to protect them against loss, damage, corrosion in transit on arrival at their destination. The packing and marking of packages shall be done by and at the expense of the seller. Each package shall contain a Packing Note quoting Purchase Order number and date showing its contents in detail. Each package shall be properly marked with Purchase Order No., Consignee's name & address, gross weight, package-handling instructions etc. The package shall have adequate provision for handling during transit and at destination. The packing, shipping, storage and processing of the delivery must comply with the prevailing legislation and regulations concerning safety, the environment and working conditions. In case of Imports, items packed with raw/ solid wood packing material should be treated as per ISPM-15 (fumigation) and accompanied by Phytosanitary/ Fumigation certificate. If safety information sheets exist for a delivery or the packaging, the seller must always supply these sheets direct (at the same time). The packing shall allow for easy removal and checking of goods on receipt and comply with carrier's conditions of packing or established trade practices. If any consignment needs special handling instruction, the same shall be clearly marked with standard symbols / instructions. Hazardous material should be notified as such and their packing, transportation and other protection must conform to relevant regulations.
- 3.4 Inspection and Technical documents requirements:
- (a) The supply made against respective orders will be subject to Buyer inspection at his premises. The Seller shall be responsible for items supplied till the same have been inspected and accepted by Buyer. In case the goods / services are rejected at the time of inspection at Buyer Place or the rejections are noticed at the time of further processing the Seller will be informed of these rejections. On receipt of this information the Seller shall immediately arrange to collect the rejected items at his cost and risk and arrange for the replacement of goods within the shortest possible time. Under no circumstances the Seller shall compel the Buyer to rework the rejected goods. The rejected material will lie in Buyer factory premises at the risk and cost of the Seller, pending receipt of disposal instruction from them. If so desired by the Seller, the rejected materials, for which no payment made by Buyer may be packed and returned to the Seller for arranging replacement /rectification on 'freight to pay' basis at his cost and risk and the dispatch documents will be forwarded to the Seller directly by Buyer to enable him to arrange insurance and take delivery of the same. Wherever payment is already made by Buyer to the Seller,

the rejected material will be returned to the Seller against refund of the amount already paid by Buyer / submission of BG for the value of rejected goods. The packing, freight charges etc., on replacement of returned materials shall be borne by the Seller irrespective of the terms in the purchase order, since such charges were already incurred and borne by Buyer on the original consignment, which got rejected and returned to the Seller. In case the rejected materials are not required to be replaced, freight, insurance charges etc., incurred by Buyer on the original consignment shall be recovered from the Seller's bills.

(b) **Ground Rent:** If the material supplied by the vendors is rejected at the factory premises, the vendor is required to lift the rejected material within 30 days of issue of rejection I-Note. Factories have right to recover a charge for the storage space at @1% of the cost of material un-cleared, per week or part thereof, with maximum ceiling of 10% of value of the items. After lapse of 10 weeks, if it is found that firm has not taken any action for lifting of items, the goods may be confiscated and disposed off as per disposal procedure in vogue after sending a notice and giving 30 working days time to the firm. Ground rent shall be calculated from the date of expiry of the period of removal of item. No ground rent should be charged from Central/State Govt/Central PSUs. When the firm fails to pay the applicable ground rent within the prescribed period, factory is entitled to recover the ground rent due and all incidental expenses from EMD/PSD/pending bills with any ordnance factory if any.

(c) Buyer or his authorized representative shall be entitled at all reasonable times during execution to inspect, examine and test at the Seller's premises the material and workmanship of all stores to be supplied under the Contract, and if the part of the stores are being manufactured at other premises the Seller shall obtain Buyer's or his authorized representative's concurrence to inspect, examine and test as if the said stores are being manufactured at the Seller's premises. Such inspection, examination and testing, if made shall not release the Seller from any obligation under the Contract. If the defects are not remedied within a reasonable /stipulated time, the purchaser may proceed to rectify the defects at the seller's risk & cost but without prejudice to any other rights which the buyer may have against the Seller in respect of their failure to remedy such defects. The cost of inspection staff/ third party specified by the Buyer shall be borne by Buyer, unless otherwise specifically agreed. When the Contract provides for tests on the premises of the Seller or any of his Subcontractor/s, Seller shall be responsible to provide assistance such as, labour, materials, electricity, fuels, stores, apparatus, instruments as may be required and as may be reasonably demanded to carry out such tests efficiently. Cost of any type test or such other special tests shall be borne by the Buyer only if specifically agreed. The Seller shall give the authorized representative of the Buyer reasonable prior notice in writing of the date on and the place at which any stores will be ready for inspection/ testing as provided in the Contract.

3.5 Acceptance of Goods: Material on arrival at Buyer's premises will be inspected by QA/Inspection Department as per appropriate Quality Assurance Plan and their decision in the matter will be final. The test certificate and relevant supporting documents should be sent along with the consignment.

3.6 Payment Terms : The standard payment terms shall be 100% payment against Seller's bill by Account transfer through NEFT/RTGS only for accepted materials within 30 days from the date of receipt of material or submission of bills/documents, whichever is later.

3.7 Warranty:

(a) All the Stores supplied shall be warranted against any defect in material, Workmanship, defective design, materials and non-conformance to intended

performance, manufacturing defects, or dimension etc., for a period of Twelve (12) calendar months from the date they are actually put to use or Twelve (12) calendar months from the date of receipt and acceptance of supply in Buyer's place / buyer's designated place, whichever is earlier and the seller shall remedy such defects at his/her own cost or replace free of charge such stores when called upon to do so.

- (b) The seller cannot absolve their responsibility for warranty of material even though it is inspected & approved by Inspection authority.
- (c) In the event of Seller's failure to attend the Warranty defects within a reasonable period of time, the Performance Bank Guarantee will be encashed by the Buyer. The Buyer's decision shall be final and binding on Seller in this regard.
- (d) All packing, forwarding, insurance and delivery charges arising against this would be borne by the Seller. The guarantee period would be extended by equivalent period for which the material is not available for the repaired parts, which were repaired & replaced during the Warranty period. The Warranty is subject to proper preservation, maintenance, storage, handling and usage of equipment by Buyer & Buyer's customer and does not covers repairs carried out without the prior consent of the seller / seller rep.
- (e) Warranty calls needs to be attended within 72 hours in case of local supplier within local city / one week period in case supplied pertains to other than local city. Warranty of the stores will be extended by residual period.

3.8 Option Clause:

- (a) The Buyer reserves the right to place orders for additional quantity up to a maximum of 25% of the originally contracted quantity at the same rate and terms of contract within the original Delivery Period (DP) as well as Re-fixed / Extended DP subject to :
 - (i) there being a requirement for the item,
 - (ii) incorporation of Option clause in the contract,
 - (iii) there being no downward trend in price (consent of supplier is not necessary) or if there is a downward trend, the supplier agreeing to reduce the price for the enhanced quantity duly matching with the fall in prices, and
 - (iv) if no fruitful result will accrue by floating fresh TE or when the store is urgently required for meeting production targets.
- (b) The Option clause can be exercised (if necessary more than once) provided the cumulative of the Option clause quantities exercised does not exceed the option clause quantity provided in the contract.
- (c) In multi vendor situation, to provide a level playing field to all the vendors, any bid received without compliance to Option clause, may be considered as unresponsive by concerned TPC.
- (d) Option clause may be operated normally on completion of 90% quantity of original supply order (or lesser qty as decided by concerned TPC / if applicable)

3.9 Taxes & Duties -

- (a) GST: Rate of GST or any other Tax chargeable should be clearly indicated in the offer/ bid as inclusive in the price quoted or extra. If not indicated, Buyer will assume that the rates quoted are inclusive of taxes.
- (b) Wherever Excise Duty is applicable and payable, the same shall be reimbursed at actual against production of qualified Excise Duty gate pass in original as a proof for having paid the duty on the particular consignment. The Seller should ensure that the Gate Pass accompanies each consignment that are sent to us. In addition a photocopy of Gate Pass, in advance along with Invoice to be sent to Purchase Department in case of payment through Bank. If the terms of payment is other than the above, the photo copy of the Gate Pass with the bills etc., shall be sent to concerned Accounts

Department. The Excise Duty Gate Pass number and date shall be incorporated in the Invoice, Delivery Challan and all other dispatch documents.

- (c) Seller is entitled for increase in statutory taxes, duties & levies within original DP and extended DP. However, there is decrease in statutory taxes, duties & levies, the same must be passed on to the Buyer.
- (d) Foreign Bidders: All taxes, duties, levies and charges which are to be paid for the delivery of goods in their respective countries, shall be paid by the foreign bidders.
- (e) Customs Duty:
- i) In case of imported stores offered against forward delivery, the Bidders shall quote prices exclusive of customs duty, duly specifying separately the CIF Price and the customs duty payable. The Bidder shall also indicate the rate of customs duty applicable along with Indian Customs Tariff Number. Customs duty actually paid shall be reimbursed on production of necessary documents i.e. (1) copy of Bill of Entry, (2) copy of Bill of Lading, (3) foreign Principals invoice. However, if the Bidder imports the stores in question against his own commercial quota Import license, he will also be required to submit in addition to the triplicate copy of bills of entry, etc., a certificate from his Internal Auditor on the bill, to the effect that the following items/ quantity in the bill of entry are related to the stores imported against the Buyers Contract Number dated
 - ii) Subsequent to the reimbursement of customs duty if the Seller obtains any refund of customs duty, such refund shall immediately be remitted, in full, to the Buyer. In case of failure to do so, the Buyer shall be fully empowered to deduct a sum equivalent to the amount of customs refunded, without any further reference to the Seller, from any of their outstanding bills against the contract or any other pending Government contract and no disputes on this account shall be raised by the Seller.
 - iii) Subsequent to the reimbursement of customs duty, the Seller shall submit to the concerned Paying Authority a certificate to the effect that he has not obtained any customs duty refund. In addition, Seller shall also submit to the Paying Authority a certificate, immediately after lapse of the period specified in the Customs Act by which application for refund are to be filed with the Customs Authorities, stating that he has not applied for refund of the customs duty.

3.10 Liquidated Damages (LD): The time for and the date of delivery of the stores stipulated in the Purchase Order shall be deemed to be the essence of the contract, and delivery must be completed not later than the dates specified therein. Should the Seller fail to deliver the material to our premises or any consignment thereof within the period prescribed for such delivery, Buyer shall be entitled to recover from the Seller agreed liquidated damages, and not by way of penalty a sum of 0.5% per week of delay or part thereof, subject to a maximum of 10% as our claim towards liquidated damages on the undelivered part of the order. The LD will be charged on the basic cost excluding taxes and duties. Imposition, recovery or settlement of this LD shall not affect Buyer's right to performance, compensation and termination of the agreement.

3.11 Earnest Money Deposit:

- a) EMD for a value of Rs.(if applicable) to be submitted in the form of Account Payee Demand Draft / Fixed Deposit Receipt / Banker's Cheque / Bank Guarantee (in prescribed format) from any of the Commercial banks / payment online.
EMD should be valid for **45 days** beyond the validity of the bid i.e. 180+45 days (for single bid).

Bank details are as follows:

A/c name-	GM SAF Public Fund A/c
A/c No.	03840200000150
Bank Name-	UCO Bank

Branch Name- Armapur Estate, Kanpur-208009

IFSC code- UCBA0000384

MICR code- 208028007

- b) Offers not accompanied with requisite amount of EMD or EMD not submitted in the specified form in original shall be summarily rejected.
- c) EMD will not carry any interest for the period it is retained with Buyer. EMD will be forfeited if a Seller withdraws, amends, impairs and/or derogates within validity period.
- d) EMD is to be submitted by the bidders except Micro and Small Enterprises (MSEs) having UAM number as defined in MSE Procurement Policy 2012 issued by Department of Micro, Small and Medium Enterprises (MSME) or are registered with the Central Purchase Organisation or the concerned Ministry or Department (including OFs) or Start-ups as recognised by Department of Industrial Policy and Promotion (DIPP), irrespective of the store for which they are registered. EMD is also not required from Central PSUs. Bidders/Sellers exempted from submission of EMD must submit certified copy of Govt of India authority for such exemption in lieu of EMD.
- e) EMD of the technically rejected bidder shall be returned immediately after technical evaluation. EMD of balance unsuccessful bidders will be returned to them at the earliest after expiry of the final bid validity and latest on or before the 30th day after award of contract/ finalization of the tender. The EMD of the successful bidder would be returned, without any interest whatsoever, after the receipt of PSD from them as called for in the consequent Contract.
- f) In case of two bid system EMD in original form should be enclosed along with the technical bid. Technical bid without EMD in original will be rejected.
- g) EMD shall be submitted in favour of "The Sr.GM/GM, Small Arms Factory Kanpur 208009" (Sr.GM/GM/HOD).

3.12 Performance Security Deposit (PSD):

- (a) The Seller (successful bidder awarded contract) shall deposit 5% of the total value of this order /contract value including taxes & duties as Performance Security Deposit which amounts to Rs. _____ by way of Account Payee Demand Draft / Banker's Cheque/Fixed Deposit Receipt from a Commercial Bank of India / Bank Guarantee in the prescribed format (enclosed) from a Commercial Bank of India (for Indigenous Sellers)/Bank of International repute for which counter guarantee is given by Indian Bank.
Indemnity Bonds may be accepted as PSD from Central PSUs.
- (b) PSD is not necessary for contracts valuing up to Rs. 10 lakhs. To be decide by TPC, if applicable.
- (c) The PSD/Performance Bank Guarantee should be valid for additional period of 60 days beyond the delivery date of completion of all contractual obligations including Warranty period (if any). In the event of the Contractual delivery period being extended by the Buyer, the Seller shall be responsible to ensure that the validity of the Performance Guarantee is also simultaneously extended/re-validated so that it is valid for additional period of 60 days beyond the new delivery date of completion of all contractual obligation including warranty period (if any). In case the supplier fails to extend the PSD before 15 days of date of expiry of PSD. The PSD will be encashed & the same would be intimated.
- (d) In the event of non-performance of the item and if Seller fail to attend the defects within reasonable period of time, the PSD will be forfeited /the Performance Bank Guarantee will be encashed. In case any claims or any other contract obligations are outstanding, the Seller shall extend the Performance Bank Guarantee as requested by the Buyer till such time as the Seller settles all claims and completes all contract

obligations. The Performance Bank Guarantee shall also be liable for encashment/forfeited if conditions regarding adherence to delivery schedule and other provisions of the contract are not fulfilled by the Seller. The Buyer decision shall be final and binding in this regard.

- (e) Performance Security Deposit is initially to be given by the supplier for original supply order quantity without option clause quantity. PSD (without interest except FDR) for the original supply order quantity may be returned after 60 days of fulfillment of all contractual obligations of the original supply order quantity including warranty period (if any). In case of encashed PSD BG the same may be referred based on claim in the format of Bill.

Regarding Option Clause, PSD amount may be worked out based on Option Clause quantity. PSD for Option Clause quantity may be returned after 60 days of fulfillment of all contractual obligations of the Option Clause quantity including warranty period (if any).

- (f) PSD will be submitted in favour of 'The Principal Controller of Accounts (Fys) Kolkata.' The Seller should send original copy of PSD to Factory /Unit concerned first with a copy to PCA(Fys) Kolkata. After verification/confirmation of genuineness by the relevant Bank, a copy of the same can be forwarded by Factory to PCA(Fys) Kolkata.

3.13 Spares Management: Seller should provide Product/spare Support for full lifetime of the product. SELLER:

- (a) Shall advise on the requirement of spares and stock to be maintained as and when required by the BUYER.
- (b) Supply spares on demand. Should any of the spares or equipment be earmarked for discontinuance of production, give notification to BUYER one year before the production is discontinued, to allow for a life time purchase.
- (c) Shall assist the BUYER in establishing alternate source of supplies

3.14 Withholding tax :

- (a) Seller is required to indicate the PAN/TAN No. issued by Indian Income Tax Authorities and Permanent Establishment Certificate, If Applicable.

3.15 Risk Purchase :

- (a) If the equipment / article / service or any portion thereof be not delivered / performed by the scheduled delivery date / period, any stoppage or discontinuation of ordered supply / awarded contract without written consent by Buyer or not meeting the required quality standards, the Buyer shall be at liberty, without prejudice to the right of the Buyer to recover Liquidated Damages / penalty as provided for in these conditions or to any other remedy for breach of contract, to terminate the contract either wholly or to the extent of such default.
- (b) The Buyer shall also be at liberty to purchase, manufacture or supply from stock as it deems fit, other articles of the same or similar description to make good such default and or in the event of the contract being terminated, the balance of the articles remaining to be delivered there under at the risk & cost of Seller.

3.16 Termination Clause : Buyer reserves the right to cancel the order with 15 days notice without any financial liability in the event of any of the following:

- (a) When the item offered by the Seller repeatedly fails in the inspection and/or the Seller is not in position to either rectify the defects or offer items conforming to the contracted quality standards.
- (b) When the Seller fails to honour any part of the contract including failure to deliver the contracted stores / render services in time.

- (c) Adulterated supplies as determined according to Prevention of Food Adulteration Act, 1954 and Rules, 1995 as amended from time to time.
 - (d) Supplies inferior to the specified quality.
 - (e) Unbranded/deceptively branded / spurious supplies against branded items in the Purchase Order.
 - (f) Time expired supplies.
 - (g) When the Seller is found to have made any false or fraudulent declaration or statement to get the contract or he is found to be indulging in unethical or unfair trade practices.
 - (h) Based on the decision of Arbitration Tribunal.
 - (i) The seller is declared bankrupt or become insolvent.
- 3.17 Insolvency : If the Seller enters into liquidation, whether compulsory or voluntary (otherwise than or amalgamation or reconstruction with another party taking over all his rights as well as commitments) or becomes insolvent or Suffers a receiver of the whole or part of this asset to be appointed,
- a) shall forthwith notify the same to Buyer and the Buyer shall have the right without prejudice to his other rights or remedies to terminate the unexecuted part of this Contract.
 - b) In such an event, the Buyer shall become entitled forthwith to get the refund within 30 days of all the advance payments received by the Seller and expenditure incurred as a part of its obligations under this contract.
- 3.18 Appropriation : Whenever under this contract any sum of money is due or recoverable from Seller or payable by the Seller, Buyer shall be entitled to recover such sum by appropriating in part or whole by deducting any sum then due or which at any time thereafter may become due to the Seller in this or any other contract entered by Buyer as a whole its Divisions and Branch Offices etc., held by him/her alone or in partnership with others. Should this sum be not sufficient to cover the full amount recoverable, the Seller shall pay to Buyer on demand the remaining balance due within 30 days of such written notice. The remaining balance due, if any, will be recovered through due process of law in case seller becomes defaulter.
- 3.19 Applicable Laws/Jurisdiction: All questions, disputes or differences arising out of or in connection with the contract, if concluded shall be subject to the exclusive jurisdiction of the Court within the local limits (Kanpur Nagar) whose jurisdiction the place from which the Acceptance of Tender is issued, is situated. This contract shall be governed by and subject to and interpreted and construed in accordance with the Laws of the Republic of India, as may be in force from time to time.
- 3.20 Arbitration:
- a) Any dispute or difference whatsoever arising between the parties out of relating to the construction, meaning, scope, operation or effect of this contract or the validity or the breach thereof shall be settled by bilateral discussions.
 - b) Any dispute or difference whatsoever arising between the parties out of or relating to the construction, meaning, scope, operation or effect of this contract or the validity or the breach thereof, which cannot be settled amicably within sixty (60) days or such longer period as may be mutually agreed upon, from the date on which either party informs the other in writing by a notice that such dispute, disagreement or question exists, shall be settled by arbitration.
 - c) The Arbitration Proceedings shall be conducted in India under the Indian Arbitration and Conciliation Act, 1996 (amended time to time) and the award of such Arbitration shall be enforceable in Indian Court only. The law applicable to an arbitration shall be Indian law. In case of Foreign Seller, Indian law of Foreign law to be decided by contracting parties is applicable.

- d) For Indigenous Seller: The arbitration tribunal shall be consisting of sole arbitrator. The sole arbitrator shall be nominated by the parties within ninety(90) days of the receipt of the notice mentioned above through mutual discussions and referred to Director General Ordnance Factories, Government of India, Ordnance factory Board, 10 -A, S.K.Bose Road, Kolkata 700001 for appointment of the Sole Arbitrator with the mutual consent of the parties. The Arbitrator so appointed shall be a Government Servant /Ex Government Servant (with mutual consent) who had not dealt with matters to which this agreement relates and in course of his duties had not expressed views on all or any of the matter in disputes or differences. Failing which the arbitrator shall be nominated under the provision of Indian Arbitration and Conciliation Act, 1996 (amended time to time) at the request of either party or by dispute resolution institutions like Indian Council of Arbitration or ICADR, but said nomination would after consultation with both the parties. The Award of arbitration shall be final and binding on the parties to this contract.
- e) Each party shall bear its own cost of preparing and presenting its case. The cost of arbitration including the fees and expenses of the arbitrator shall be shared equally by the SELLER and the BUYER, unless otherwise awarded by the Arbitration Tribunal. In the event of a vacancy caused in the office of the arbitrator, the parties which nominated such arbitrator shall be entitled to nominate another in his place and the arbitration proceedings shall continue from the stage they were left by the retiring arbitrator.
- f) The parties shall continue to perform their respective obligations under this contract during the pendency of the arbitration proceedings except in so far as such obligations are the subject matter of the said arbitrator proceedings.
- g) The language(s) of the arbitration shall be English.
- h) "Except as may be required by law, neither a party nor its representatives may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of (all /both) parties."
- i) In case of technical disputes involving confidential matters, the issue shall be referred to a high level technical authority for each party, appointed for this purpose.

For CPSUs/DPSUs

In the event of any dispute or difference relating to the interpretation and application of the provisions of the contract, such dispute or difference shall be referred by either party for Arbitration to the sole Arbitrator in the Department of Public Enterprises to be nominated by the Secretary to the Government of India in-Charge of the Department of Public Enterprises.

The Arbitration and Conciliation Act, 1996 (amended time to time) shall not be applicable to the disputes, provided, however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to be Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary/ Additional Secretary, when so authorized by the Law Secretary, whose decision shall bind the Parties finally and conclusively. The Parties to the dispute will share equally the cost of arbitration as intimated by the Arbitrator. If the Department of Public Enterprises fails to settle the dispute, the same will be referred to the Committee constituted by the Cabinet Secretariat.

- 3.21 Indemnity against Patent rights: The Seller shall at all times protect, indemnify and save/ keep harmless the Buyer, its successors, assigns any claim made by a third party against all liability, including costs, expenses, claims, suits or proceedings at law, in equity or otherwise, arising out of, or in connection with, any actual or alleged patent infringement (including process patents, if any), or violation of any license with respect of the stores covered by the order.

- 3.22 Bribes: 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 Contract or any other Contract with the Government for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other Contract with the Government. 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 offers 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, 1988 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.
- 3.23 Sub-contracting/Sub-letting with the permission of the Buyer : Seller shall not be entitled without buyer's prior written consent to Sub-contract/Sublet to a third party all or part of the benefits or obligations of the Contract (even by way of change of ownership or control), except as expressly permitted in this Contract if any, to sub-contract any of its rights and interest under this Contract.
- 3.24 Fall Clause: The price quoted shall be in no event exceed the lowest price at which you sell the stores or offer to sell stores of identical description to any person(s) / organization including the purchases by any department of the Govt. of India, the State Govt. or any statutory undertaking of the Govt. of India / State Govt., as the case may be during the period till the completion of the performance of the order placed and during currency of the order. If at any time during the said period, the Seller reduces the sales price, sells or offers to sell such stores to any person/ organization including the Buyer or any department of Central Govt. or any Dept. of State Govt., or any statutory undertaking of the Central or State Govt., as the case may be at a price lower than the price chargeable under the contract, he shall forthwith notify such reduction/sale or offer to sale to the Buyer and the price payable under the contract for the stores supplied after the date of coming into force of such reduction or sale or offer to sale shall stand correspondingly reduced with due allowance for quantities and intervening time period.
- 3.25 Immunity to the Government of India: It is expressly understood and agreed by and between Seller & buyer that buyer is entering into this contact solely on its own behalf and not on behalf any other person or entity. In particular, it is expressly understood and agreed that Government of India is not a party to this contract and has no liabilities, obligations or right hereunder. It is expressly understood and agreed that buyer is an independent legal entity with power and authority to enter into contracts solely on its own behalf under the applicable laws of India and general principles contract law. Seller expressly agreed acknowledges and understand that buyer is not an agent, representative or delegate to the Government of India. It is further agreed and understood that Government of India is not and shall not be liable for any acts, omissions, commissions, breaches or other wrongs arising out of the contract. Accordingly, Seller hereby expressly

waives releases and foregoes any and all actions, including counterclaims, impleader claims or counter claims against the Government of India arising out of this contract and covenants as to any manner, claim cause or action or this whatsoever arising out of or under this contract.

3.26 Intellectual Property Rights:

- (a) If any Patent design, trademark, copyright or any other intellectual property rights apply to the delivery or accompanying documentation, Buyer shall be entitled to the legal use thereof free of charge by means of a non-exclusive, worldwide, perpetual license. All intellectual property rights that arise due to the execution of the delivery by the Seller and by its employees or third parties involved by the Seller for performance of the agreement belong to Buyer.
- (b) The Seller shall be obligated to do everything necessary to obtain or establish the above mentioned rights. The Seller guarantees that the delivery does not infringe on any of the intellectual property rights of third parties. The Seller shall also be obligated to do everything necessary to obtain or establish the alternate acceptable arrangement pending resolution of any (alleged) claims by third parties. The Seller shall indemnify the Buyer against any (alleged) claims by third parties in this regard and shall reimburse Buyer for any damages suffered as a result thereof.

3.27 Amendment & Waiver : Any amendment to Purchase Orders / Contracts would be enforceable only if made in writing and duly signed by authorized representatives of the parties hereto. Failure of either Party at any time to enforce any of the provisions of this Contract shall not per se constitute a waiver by that Party of any such provisions nor in any way affect the validity of the Contract or any part hereof.

3.28 Classified / Confidentiality: The conditions are as follows:-

- (a) This Contract and its annexure(s) shall be treated as confidential by the Parties and their officers and employees.
- (b) Unless otherwise specified herein, neither Party or any of their affiliated companies shall make any news release, public announcement, advertisement, denial or confirmation, disclose of some or any part of this Contract or transactions contemplated under this Agreement to any third party without the prior consent of the other Party.
- (c) The Party Disclosing information is termed as Disclosing Party and the Party receiving information is termed as Receiving Party, Each Party undertakes:
 - i) to keep the other Party's Confidential Information confidential using the same degree of care as the receiving Party uses to protect its own Proprietary Information against public disclosure but in no case any less degree than reasonable care; and
 - ii) not to make any disclosure of the other Party's Confidential Information to any third party and to use the same only for the Purpose; and
 - iii) not to make any copies of the other Party's Confidential Information, or translation or transfer of the same to other documents or media nor to disseminate the same within its own organization save as is strictly necessary for the Purpose; and
 - iv) not to assign the rights and obligations of the Parties without their prior written consent thereto.
- (d) Provided, however, that the foregoing restrictions and obligations shall not apply to any information which it can be shown:
 - i) is already or hereafter becomes published otherwise than through the fault or negligence of the receiving Party; or
 - ii) is lawfully obtained by the recipient from a third party having rights to disclose to the receiving Party, without restrictions as to use or disclosure, or

- iii) is already known to the receiving Party at the date of receipt of the information pursuant to this Agreement, or
- iv) is independently developed by the receiving Party.
- v) is required to be disclosed under any law, judicial order or Government order or regulation provided receiving Party gives disclosing Party timely notice, where possible, of the contemplated disclosure so as to give the disclosing Party an opportunity to intervene to preserve the confidentiality of the information. Or such disclosure is limited to those persons to whom the Receiving Party is legally compelled to disclose the information to; and
- (e) The technical information provided by SELLER under this Contract shall be treated as confidential by the BUYER and shall be used by BUYER only for purpose intended and shall not be disclosed to any third party.
- (f) The provisions of this clause shall survive and remain in force notwithstanding the termination or expiry of this Contract.
- (g) The BUYER shall limit access of technical documentation being provided under this Contract only to such of its employees involved in relevant operations concerning the equipment on a need to know basis.
- (h) Non-adherence to this Clause by the Seller shall be treated, amongst others, as a material breach of this Contract.

3.29 Agents / Agency Clause : The seller confirms and declares to the buyer that the seller is the original manufacturer or authorized distributor / stockiest of original manufacturer or Govt. Sponsored / Designated Export Agencies (applicable in case of countries where domestic laws do not permit direct export by OEMS) of the stores referred to in this offer / contract / Purchase order and has not engaged any individual or firm, whether Indian or Foreign whatsoever, to intercede, facilitate or in any way to recommend to Buyer or any of its functionaries, whether officially or unofficially, to the award of the contract / purchase order 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 / purchase order, the Seller will be liable to refund that amount to the Buyer. The Seller will also be debarred from participating in any RFQ / Tender for new projects / program with Buyer for a minimum period of five years. The Buyer will also have a right to consider cancellation of the Contract / Purchase order either wholly or in part, without any entitlement or compensation to the Seller who shall in such event be liable to refund all payments made by the Buyer in terms of the Contract / Purchase order along with interest at the rate of 2% per annum above LIBOR (London Inter Bank Offer Rate) (for foreign vendors) and Base Rate of SBI (State Bank of India) plus 2% (for Indian vendors). The Buyer will also have the right to recover any such amount from any contracts / Purchase order concluded earlier with Buyer.

3.30 Force Majeure:

- (a) If at any time during the execution of the supply order, the performance in whole or in part by either Buyer or and by the Seller(s) is / are delayed by any reason of force majeure situations such as acts of civil war, civil commotion, sabotage, hostilities, war, fires, explosions, epidemics, natural calamities like floods, earthquakes, volcanoes, storms, acts of God & laws of respective governments or any other causes beyond the control of either parties, hereinafter referred to as "events", provided notice of the occurrence of such event/s is / are communicated by either party, to

the other party within 21 days from the date of occurrence thereof, neither party shall by reason such events be entitled to terminate the contract nor shall either party have any claim for damages against the other in respect of such non performance and or delay in performance of the contract / order. Executions on either side shall be resumed as soon as practicable after such event has come to an end or ceased to exist and the decision of Buyer as to whether activities can resume or not, shall be conclusive and final. Occurrence of the events to be certified by Chamber of Commerce / Indian High Commission or Embassies / Government in that Country.

- (b) The performance in whole or in part under the captioned tender / contract is prevented or delayed by reason of any such event for a period exceeding sixty days either party may at its option terminate the contract / further processing of the tender. The relative obligations of both the parties remain suspended during the actual period of force majeure.
- (c) The Buyer may extend the delivery schedule as mutually agreed, on receipt of written communication from the Seller regarding occurrence of 'Force Majeure' conditions, but not exceeding six months from the scheduled delivery date. If the 'Force Majeure' conditions extend beyond this period, the Buyer shall have the right to cancel the order without any financial implication to the Buyer or on terms mutually agreed to.

3.31 Exit Criteria: The contract/order may be terminated under the following circumstances:

- (a) In the event of unsatisfactory performance by the Seller during the contract period, or any of the information provided by the Seller is found to be untrue, or Seller is found to have attempted to influence any person involved with the contract through unethical means, the contract shall be terminated with 15 days advance notice without any financial implication to Buyer. Notwithstanding, the foregoing, in cases where it is found that a Seller is engaged in unethical practices, the same shall be barred from participating in the future contracts for a period of two (2) years.
- (b) If there is change in Buyer requirement, contract shall be terminated with 15 days advance notice. The liability of Buyer in this case will be agreed mutually. In the event of termination of contract by either party the Seller shall ensure following:-
 - i) IPR's are transferred to Buyer to enable Buyer to proceed on the work with other Seller. Seller also will render all assistance till the other Seller fully take over the balance work.
 - ii) Transfer title and deliver all or any part thereof of the supplies, materials, work-in progress, finished Products, Tooling, drawings and data produced or acquired by Seller specifically for the Product being terminated.
 - iii) Supply of products and its components/spares at least for a period of one (1) years from the date of such termination.
- (c) The Seller is declared bankrupt or becomes insolvent.
- (d) The delivery of material is delayed due to causes of Force Majeure by more than (60 days).
- (e) Based on the decision of the Arbitration Tribunal.

3.32 Cartel Formation:

- (a) Cartel formation or quoting of pool rates or quoting in collusion is against the basic principle of competitive bidding and shall attract penal and punitive measures; including suspension/banning of such Bidders for a specific period as per Procedure for Penal Action in OFs/Units of OFB under the Guidelines of the Ministry of Defence for Penalties in Business Dealings with Entities in vogue, apart from reporting to the Competition Commission of India, other Regulatory Authorities, Chambers / Association of Commerce, etc.
- (b) Firms are expected to quote for full quantity or part thereof but not less than 50% of tendered quantity. Offers for quantity less than 50% of tendered quantity will be

considered unresponsive and liable to be rejected if CARTEL Formation is suspected. The management(CFA), reserves the right to order any quantity on one or more firms.

- (c) Whenever all or most of the approved firms quote equal rates in CARTEL, the purchaser reserves the right to place order on any one or more firms with exclusion of the rest. The selection of firms for placement of order would be based on a pre-determined ranking of the firms.
 - (d) The purchaser reserves the right to place order on two or three firms: in such cases tender quantity will be distributed between Rank 1(R1) and Rank 2(R2) firms in the ratio of 60:40 or among R1, R2 and Rank 3(R3) firms in the ratios 50:30:20 respectively.
 - (e) The purchaser reserves the right to delete the registered firms who quote in CARTEL from list of approved/registered sources or to debar them for competing for a period to be decided by the purchaser.
 - (f) The name of the newly registered firm which enters into CARTEL on getting registered will be summarily deleted from the list of registered suppliers.
 - (g) New firms will have to submit an undertaking that they will not be part of a cartel with other vendors and will quote competitive rates in the tenders; otherwise would face expulsion from the list of vendor.
- 3.33 Access to Books of Accounts: In case it is found to the satisfaction of the Buyer that the Bidder 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 Bidder, on a specific request of the Buyer, shall provide necessary information /inspection of the relevant financial documents / information.
- 3.34 Non-disclosure: Except with the written consent of the Buyer/Bidder, the other Party shall not disclose the TE or consequent Contract or any provision, specification, plan, design, pattern, sample or information thereof to any third party.
- 3.35 Procurement policy vide Public Procurement Policy for MSEs Order, 2012 and further amendment time to time shall be apply in this tender enquiry provided that vendor specifically ask for the benefits and submits relevant document / copy of proof of udyog aadhar number alongwith tender enquiry as per provision of said order.
- 3.36 The contractor shall be bound to execute the earlier order (s) if any placed on them for the same item before commencing supplies against this contract if rate of earlier order (s) are same or less, otherwise rate of this contract will get reduced to that order rate for the supplies made against the contract.
- 3.37 The firm should quote rate per unit inclusive of testing charges as per drawing requirement, and development charges if any.
- 3.38 Tender Enquiry documents should be returned to this Factory immediately for our records even if you are not interested or unable to quote rate for the items required duly signed & stamped.
- 3.39 Rejection Allowance: In case of trade assistance orders where Factory material is issued to firms for conversion, firms are required to clearly indicate rejection allowance if any in percentage (%). In case same is not indicated it will be treated as NIL. Cost towards rejection allowance will be taken into account while evaluating the offers.
- 3.40 Unregistered seller under GST Act must furnish the applicable GST TAX percentage in submitted Bid and give the declaration that They are not registered under GST and will not charge GST TAX in the invoice while GST Tax will be paid by the Buyer through RCM, however whenever they get registered under GST, in compliance of GST Act , during the period of contract seller is required to intimate the Buyer along with the GST registration (GSTIN) certificate and seller may issue invoice afterwards with GST TAX component and Buyer may pay GST TAX as per GST Act compliance.

- 3.41 If supplied material found rejected during the Inspection/Testing/Assembly in that case Buyer shall issue the credit note to the seller to revert the already availed Input Tax credit, if any, in compliance of GST ACT.

PART IV - SPECIAL CONDITIONS OF TE

- 4.1 Notices: Any notice required or permitted by the consequent Contract shall be written in English language and may be delivered personally or sent by FAX or registered /speed post/e-mail, addressed to the last known address of the Party to whom it is sent.
- 4.2 Special conditions for Source Development Open Tenders:
- a) Established sources for an item will not be eligible to participate in the SDOTE for that item. The status whether a firm is established or not shall be reckoned as on the last date of the previous month in which vendor selection TPC is held.
 - b) Freak Rates: Any quote that is less than 70% of simple average of the basic rate (LTE and successfully executed SDOTE/OTE) at which orders (excluding import orders) have been placed over the preceding three years (reckoned from the date of tender opening) shall be deemed as freak rate and rejected.
 - c) To have more firms developing an item and thereby improve the probability of developing new sources, in SDOTE the L-2 firm may be given 40% of the tendered quantity on accepting the L-1 rates, provided this was indicated in the tender.
 - d) Vendors become established source for a particular item after securing order by participation in a SDOTE for the item and successfully delivering at least 60% of ordered quantity against the supply order, and the same being accepted on conformity to the qualitative requirements. However, supplies against subsequent LTE orders shall be accepted subject to completion of the supplies under the SDOTE. Established vendors for aggregates, assemblies and sub-assemblies shall be considered as established vendors for components and sub-assemblies that go into making of the aggregate, assembly and sub-assembly.
 - e) The firm having one SDOTE supply order is also not allowed to participate in other SDOTE for same item, floated by same or any other Factory. An Undertaking in this regard must be submitted by firms.
 - f) If a firm on which source development order has been placed, is unable to develop the item within the specified time frame, existing provision of OFB DFP should be followed for DP extension / re-fixation.
 - g) In the retender, the firm that was unable to develop the particular item even with the extended timeframe that resulted in the retender shall not be allowed to participate.
 - h) System Integrators may also be considered for participation having facility/capabilities of integration with testing facilities. These firms may not have manufacturing facilities but have agreement (self-declared by vendors) for supplying of components/assemblies /sub-assemblies. The warranty of the integrated product shall be given by the integrator.
- 4.3 Mode of Payment:
Indigenous Bidders: It will be mandatory for the Bidders to indicate their bank account numbers and other relevant e-payment details to enable payments through ECS/ NEFT mechanism instead of payment through cheques, wherever feasible. A copy of the model mandate form prescribed by RBI to be submitted by Bidders for receiving payments through ECS is enclosed as annexure.

- 4.4 Paying Authority: The organization of the Principal Controller/ Controller of Finance & Accounts concerned or their subordinate offices or any paying authority authorized to make payment for such procurements will be the Paying Authority. The name, address and contact details of the Paying Authority are:
Office of the controller of Finance & Accounts,
Local Account office , Small Arms Factory,
Kalpi Road Kanpur 208009
- 4.5 Document to be submitted for Effecting Payments: The Seller submits the requisite documents to the Paying Authority to enable effecting the payment.
- (a) Indigenous Sellers: Payment of bills will be made on submission of the following documents by the Seller to the Paying Authority along with the bill:
- i) Ink-signed copy of Sellers Bill / Commercial Invoice/ Contingent Bill
 - ii) Inspection Note (and User Acceptance, if applicable)
 - iii) Copies of Supply Order / Contract along with all amendments to the Supply Order / Contract.
 - iv) If DP was extended, copy of the amendment (s) to the Supply Order/ Contract duly indicating whether the extension was granted with or without LD.
 - v) Claim for statutory and other levies to be supported with requisite documents/ proof of payment, like GST Invoice, Excise Duty Challan (wherever applicable), Customs Duty Clearance Certificate, proof of payment for EPF/ ESIC contribution with nominal roll of beneficiaries, etc., as applicable.
 - vi) Exemption Certificate, if applicable.
 - vii) UAM number of MSEs for availing benefits of Procurement Policies for MSEs Order 2012
 - viii) Bank Guarantee for advance, if any, paid
 - ix) Performance Bank Guarantee/ Indemnity bond (only for PSUs), as applicable
 - x) Guarantee / Warranty certificate
 - xi) Name and address, Account type, Account number, IFSC code, MICR code (if these details are not incorporated in supply order/contract)
 - xii) Any other document / certificate that may be provided for in the consequent Supply Order/ Contract
- 4.6 Quantity Tolerance: Excess/ short supplies may be accepted by the Buyer, subject to the value of such excess/ short supplies not exceeding five percent of the original value of the contract.
Quantity tolerance :.....(if applicable)
- 4.7 Capacity Constraints of L1: Firms are expected to quote for full quantity or part thereof but not less than 50% of tendered quantity. The management(CFA), reserves the right to order any quantity on one or more firms. If the L1 Bidder has not quoted for the entire tendered quantity, then the supply order shall be placed for the balance quantity on L2 provided the L2 accepts the L1 rates. If the L2 is not agreeable to the L1 rate or if the L1 and L2 Bidders together cannot meet the tendered requirement, then the order for the balance quantity shall be placed on the next ranking supplier (L3) at the L1 rates provided L3 accepts the L1 rates. If the situation so warrants, this process shall be repeated in the order of the ranking (i.e. L1, L2, L3... so on) till the entire tendered quantity is covered or no Bidder is left. (to be decided by TPC, if applicable).
- 4.8 Distribution of Quantity for Strategic Reasons: As a strategic requirement the Buyer may need multiple sources, in such cases the Buyer may conclude orders on more than one firm in the order of ranking on financial evaluation (in the distribution ratio clearly specified in the TE Part II). The ratios of splitting may be either (a) 60:40 if two sources are necessary (provided at least three sources were issued tenders and have also quoted). Or (b) 50:30:20 if three sources are necessary (provided at least

four sources were issued tenders and have also quoted). The distribution shall be done between L1 and L2 (on the L2 accepting the L1 rates) or between L1, L2 and L3 (on the L2 and L3 accepting the L1 rates) depending on whether 60:40 or 50:30:20 is specified as the distribution ratio. If the L2 or L3 Bidder (s) does not accept the counter-offered L1 rate then such undistributed quantity shall revert back to the L1 Bidder. If the distribution ratio is not specified hereunder then the supply order shall be concluded only on the L1 Bidder.

The purchaser reserves the right to place order on two or three firms: in such cases tender quantity will be distributed between Rank 1 (R1) and Rank 2 (R2) firms in the Ratio 60:40 or among R1, R2 and Rank 3 (R3) firms in the Ratio 50:30:20 respectively.

- 4.9 Acceptable Year of Manufacture: Unless stated other-wise in the TE, the goods supplied shall be of current manufacture. Quality / Life certificate will need to be enclosed by the Seller along with the Bill.
- 4.10 Quality: The quality of the stores offered shall strictly comply with the technical parameters contained in the Technical Specifications & its related standards and shall be new & of current manufacture.
- 4.10 Terms & Conditions of tender enquiry:
- 4.10.1 Preference to make in India (applicable for order more than 5 Lakhs) Public Procurement (Preference to Make in India), Order 2017 vide Order No. P-45021/2/2017-PP(BE-II) dated 28.05.2018, As part of the policy of the Government of India to encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment. The orders would be issued as per the guidelines issues in Public Procurement (Preference to Make in India), Order 2017 vide Order No. P-45021/2/2017-PP(BE-II) dated 28.05.2018 amended from time to time.
- 4.10.2 All firms are asked to declare their local content as per the following instructions:
- a) For cases with procurement value less than 10crores, the suppliers need to provide self certification that the item offered meets the minimum local content, as per the format
 - i) Name of the firm:
 - ii) Address of the firm:
 - iii) Tax & registration details of firm:
 - iv) The percentage local content (with related documents of value addition in India like: invoice of raw materials, labor charges & electricity consumed in production in India, etc)
 - v) The details of locations where local value addition is made:
 - b) For procurement cases more than 10 crores the local suppliers shall submit a certificate from a statutory auditor/cost auditor/ cost accountant/ chartered accountant clearly indicating the percentage of local content.
 - c) False declarations will be treated as breach of code of Integrity under Rule 175(1)(i)(h) of GFR for which a bidder or its successor can be debarred for up to 2 years as per Rule 151(iii) of GFR.
 - d) A supplier who has been debarred by any procuring entity for violation of this order shall not be eligible for preference under this order.
 - e) All complaints made under this order should be done to:

General Manager Small Arms Factory, Kalpi Road, Kanpur - 208009 (U.P), Email: saf.ofb@nic.in Phone : 0512-2295042 to 46.	and	Shri Atul Gupta DDG/MM/Ordnance Factory Board, Ayudh Bhawan 10-A, S. K. Bose Road, Kolkata - 700001 (W.B), Email: atulgupta.ofb@ofb.gov.in Phone: 033-22130278
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4.11 Conflict of Interest Clause:

All firms have to give an undertaking that “The firm or its group associate is not participating in the < (Details of the RFP issued by Service HQrs with tender No. Date, details of the items; details of the procurement agency)>.” At any stage during the period of contract, if the aforesaid undertaking is found to be false Factory shall take one or more of the following actions wherever required:

- a) To immediately call off the pre-contract negotiations without assigning any reason or giving any compensation to the bidder. However the proceedings with the other bidders would continue.
- b) The EMD/PSD/Performance Bond shall stand forfeited either fully or partially as decided by the Factory and Factory is not required to assign any reasons thereof.
- c) To immediately cancel the contract if already assigned without giving any compensation to the bidder.
- d) To recover all sums already paid by the factory and in case of an Indian bidder with the interest thereon at 2 % higher than the prevailing Prime lending Rate of SBI (or base rate of SBI in the absence of PLR), while in case of a bidder from a country other than India with interest thereon at 2% higher than the LIBOR. If any outstanding payment is due to the bidder from the factory in connection with any other contract for any other defence stores such outstanding payment could also be utilized to recover the aforesaid sum of interest.
- e) To encash the advance bank guarantee and performance bank warranty bond, if furnished by the bidder, in order to recover the payments, already made to by bidder by the factory along with interest.
- f) To cancel all or any other contracts with the bidder.
- g) To ban the bidder from entering into any bid from the OFB organization and/or MOD and/or other ministries department of Government of India for a minimum period of 5 years and not more than 10 years at the discretion of the Factory as per procedure/guidelines in vogue.

PART V - EVALUATION CRITERIA & PRICE BID FORMAT

5.1 Evaluation Criteria: The broad guidelines for evaluation of Bids are as follows:

- a) Only Bids that fulfill all the eligibility & qualifying requirements of the TE, both technically and commercially, shall be considered for evaluation.
- b) The Lowest Bid (L1) will be decided, from out of the Technically & Commercially compliant Bids, based on the lowest price quoted.

Consideration of Taxes & Duties in evaluation process shall be as follows:

Bidder will be determined by excluding levies, taxes and duties levied by Central/State/Local Government such as SGST/CGST/IGST etc. on final product, as quoted by bidders.

- c) If there is any discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price will prevail and the total price will be corrected accordingly. If there is a discrepancy between words and figures, the amount in words will prevail for calculation of price.
- d) The Lowest Acceptable Bid will be considered for placement of contract/ Supply Order, after complete clarifications and price negotiations, if so necessary. The Buyer also reserves the right to award contracts to different Bidders for being lowest in particular items. The Buyer further reserves the right to apportion the quantity, if it is convinced that Lowest Bidder will not be able to supply the full tendered quantity in stipulated time.
- e) The evaluating bids are subject to MSE order 2012 & Public procurement to make in India order 2017

5.2 Price Bid Format: The Price Bid Format is enclosed as annexure.

Bidders are required to quote as per the format duly providing complete details.