

**Office of the CGDA, West Block - V, R.K.Puram, New Delhi - 66
Pr. IFA Wing**

Instruction No. 11 of 2007

No.PIFA/Gen Corr/IFA SC/Vol.II

Dated 6th July 2007

To

All PCsDA/CsDA/IFAs

Sub : Tendering Process - Negotiation with L-1

Consolidated instructions on the above subject have been issued by the Central Vigilance Commission (CVC) vide No. 005/CRD/12 dated 3.3.2007. [Circulated vide this office No. AN-XIII/13006/2/Vol.XX dated 5th April 2007].

2. Attention is also invited to MOD(Fin) UO No. 1720/DPM/2004/Addl. FA(M) dated 16th March 2007 (copy enclosed).

3. Consequent upon issue of the CVC instructions mentioned above, references have been received in this HQ from IFAs wherein it has been intimated that there is lack of clarity and/or divergence of views between the executive and the IFAs regarding holding of negotiations with L-1 bidder. It has been mentioned by some of the IFAs that in the light of CVC's instructions dated 3.3.2007, the executive feel that negotiations be done away with in all cases.

4. In this regard, it is mentioned that the CVC instructions have not put a blanket ban on post-tender negotiation with L-1 bidder. In certain exceptional situations, which include procurement of proprietary items, items with limited sources of supply and items where there is suspicion of a cartel formation, negotiations with L-1 bidder continue to be permissible. The justification and details of such negotiations should however be duly recorded and documented without loss of time and convincing reasons must be recorded by the authority recommending the negotiation. Competent authority should exercise due diligence while accepting a tender or ordering negotiations or calling for a retender, and a

definite time frame should be indicated so that the time taken for according requisite approvals for the award of tenders does not exceed one month from the date of submission of recommendations. In cases where the proposal is to be approved at higher levels, a maximum of 15 days should be assigned for clearance at each level. It should be ensured that tenders are invariably finalized within their validity period.

5. Accordingly, keeping in view, the CVC instructions dated 3.3.2007, MOD(Fin) UO dated 16.3.2007 and the DPM 2006 provisions, the following is clarified:

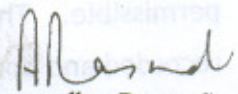
(i) Negotiations through a CNC/PNC should be conducted in case of single tender situations including PAC cases.

(ii) Negotiations may also have to be conducted in multi-vendor cases where the offered price is considered high with reference to the assessed reasonable price taking into account interalia, the competition observed from the response of the trade to the enquiry. In each case, the CNC/PNC should record its recommendations regarding the reasonableness of the price offered by the L-1 bidder and the need for negotiation or otherwise with detailed justification. Based on the recommendations of the CNC/PNC, negotiation may be undertaken with the concurrence of IFA and approval of CFA. In cases where decision is taken to go for retendering, but the requirements are urgent, negotiation may be undertaken with the L-1 bidder(s) for the supply of a bare minimum quantity in accordance with para 3 of CVC instructions *ibid*.

(iii) The safeguards prescribed in the CVC instructions regarding documentation of the justification for and details of negotiations, timely award of contract, apportionment of quantities, etc. should be scrupulously adhered to.

6. It is requested that the above clarification may be brought to the notice of the executive authorities for further dissemination to units and formations.

Pr. IFA has seen.


(Anuradha Prasad)
Jt. CGDA (IFA)

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MINISTRY OF DEFENCE (FINANCE)

Subject :- Tendering Process – negotiations with L-1

Kindly attention is invited to CVC's Circular No.4/3/07 dated 3rd March, 2007 on the subject cited above (copy enclosed) wherein the following clarifications have been given by CVC :-

- (a) No post-tender negotiations to be held with L1 except in exceptional situations. Such exceptional situations would be for PAC items, items with limited supply i.e. limited tender enquiry and items where there is suspicion of cartel formation.
 - (b) If the decision is to go for re-tendering due to unreasonableness of quoted rates, negotiations is permitted with L1 bidder for bare minimum quantity, should there be an urgency of requirement. However, the balance quantity is to be re-tendered.
 - (c) Negotiations should not lead to interminable delay and entire process of award of tender should not exceed more than a month from submission of recommendations & tender should be invariably finalized within the validity period.
 - (d) In case the organization decides in advance to have more than one source of supply due to critical / vital nature of the items, it would be necessary to pre-disclose the ratio of splitting the supply in the RFP itself.
 - (e) Counter offer to L2, L3..... should be at L1's rate in case of splitting of quantity and this shall not be deemed to be a negotiation.
2. The guidelines for negotiation with L1 have been incorporated in DPM 2006 (Para 13.5.1) and DPP 2006 (Para 51). The comprehensive guidelines of CVC which also brings out the principles of apportionment, timely award of contract, should be followed scrupulously.

3. This issues with the approval of Secretary (Defence Finance).

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CGEA, Principal IFA, All Joint Secretary, Additional FAs / Finance Managers, IFAs, Director (Finance) / DFAs

Min. of Def (Fin) U.O. No.1720/DPM/2004/Addl.FA(M) dated 16.03.2007

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