

**Eligibility Criteria for Indian Private firms
as Production Agency (PA)**

The Defence Procurement Procedure 2016, under Chapter II, describes the procurement procedure for categories under 'Buy', and 'Buy and Make' schemes. 'Buy & Make' category refers to an initial procurement of equipment in Fully Formed (FF) state from a foreign vendor, in quantities as considered necessary, followed by indigenous production through an Indian Production Agency (PA), in a phased manner involving Transfer of Technology (ToT) of critical technologies as per specified range, depth and scope, to the Production Agency.

2. While detailing the process of grant of Acceptance of Necessity, Para 19 of the Chapter II states the following - Cases in which ToT is being sought, the appropriate Production Agency (PA) would be approved by the AoN according authority based on the recommendations of the SCAPCHC/DPB/relevant lower categorization body. The PA could be selected from any of the public/private firms including a joint venture company based on the inputs from DDP and, if required, from DRDO. Cases in which foreign vendors are allowed to select an Indian production agency, the eligibility criteria of PAs, will be provided in the RFP. The eligibility criteria for Indian private firms as PA, shall be promulgated by the DDP.

3. In any case, where ToT is being transferred to Indian private firm, it is essential to define critical technologies as per the specified range, depth and scope relevant for manufacture of the defence equipment.

4. The contract in 'Buy & Make' category is placed on a foreign firm. The ToT is then transferred to a production agency in India by the vendor. Since the technology is being acquired along with the procurement of defence equipment, the same is directly or indirectly being financed by MoD and hence the decision to transfer the technology to a production agency has to be done in a fair and transparent manner after considering the capabilities and the capacities of the industries in the government set-up, public and private sectors, engaged in defence production.

5. Following discussions with and inputs from the stakeholders, including Industry Associations, the following is issued as the eligibility criteria for Indian private firm as Production Agency:

5.1 General Parameters

5.1.1 Production Agency should be an Indian company (as defined under the Companies act, 2013 or as amended from time to time), owned and controlled by resident Indian citizens. The management of applicant entity should be in Indian hands with majority representation on the Board of Directors. 'Control' shall include the right to appoint a majority of the directors or control to the management or policy decisions, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements.

5.1.2 Business dealing with applicant entity or any of its allied entities (as defined in MoD Guidelines for Penalties in Business Dealings with Entities) should not have been suspended or banned, by MoD/SHQ or any Government Department or organization.

5.2 **Technical Parameters**

5.2.1 Production Agency shall be a manufacturing entity or a system integrator of defence equipment and not a trading company.

5.2.2 Minimum 02 years experience in manufacture/ assembly/ integration of same/ similar product (s) (to be decided on case to case basis). If not, then cumulative experience of at least 03 years in related field (s) (to be decided on case to case basis) resulting in gaining of competence for manufacturing the proposed product. The SHQs/ tender issuing authority should ensure that the experience asked (for similar products and related fields) is not restrictive in nature and should promote competition as certain capabilities/experience may not be currently available with the local industry. (In case, the SHQ feels that for a particular equipment, a lesser experience could be accepted, then the same should be got approved by the competent authority before hosting the RFP).

5.2.3 The firm should possess adequate capability to absorb ToT. (SHQs to define the requisite capabilities and OEM to determine whether the Production Agency has the requisite capability).

5.3 **Financial Parameters:**

5.3.1 Turnover: Minimum average annual turnover for last two financial years should not be less than 10% of the estimated cost of the 'Make' part of the project.

5.3.2 Net worth: The Production Agency should have minimum Net worth of 5% of the estimated cost of 'Make' part of the project at the close of the preceding financial year.

5.3.3 The SHQ may consider to prescribe additional financial parameters based on the complexity of the project.

5.4 **Other Parameters**

5.4.1 **Industrial Licence (IL).** Production Agency should be either holding a valid defence industrial licence or should have applied for the same before responding to RFP. In any case, the Production Agency must confirm holding of

IL before opening of commercial bids.

5.4.2 None of the Promoters and Directors of applicant entity should be wilful defaulter.

5.5 STIPULATIONS FOR APPLYING PARAMETERS

5.5.1 In case the Production Agency is a fully owned subsidiary of another company, all technical, turnover and net worth parameters can be assessed after including the achievement against these parameters of the parent company. In case of Joint Venture Company, such Joint Ventures may be evaluated for eligibility to participate as Production Agency, on the above parameters, in proportion of the equity holding of the Parent Companies.

5.5.2 OEMs should provide all necessary self-authenticated documentation in support of the identified Production Agency. Such documentation should, inter-alia, include:-

- (i) Details of projects/supply orders successfully executed in the last two years.
- (ii) Annual reports for two years of Production Agency, parent and associate companies and JV partners.
- (iii) Details of shareholders, promoters, associated, allied and JV companies.
- (iv) Details of vigilance action, viz ongoing investigation and suspension/debarment/blacklisting actions against the applicant entity or any of its allied entities, parent company or consortium and JV partners, if any, by any Department/agency of Central Government.
- (v) Any OEM furnishing false information will be liable for action under Para 93 of Chapter II of DPP 2016.

5.5.3 Based on these generic parameters, more specific criteria should be evolved by the SHQs with regard to Technical and Financial parameters in each procurement case depending upon requirements peculiar to each case keeping in view the overall need to ensure wider zone for selection of Production Agency. The specific criteria evolved for each case, as per these guidelines, may be approved within SHQ and shall be incorporated as part of RFPs.

5.6 The eligibility criteria for Indian private firms as PA shall be clearly stipulated in RFIs/ RFPs so as to maintain transparency in the process. Care shall be taken to ensure that the stipulated criteria are not open to subjectivity and arbitrary interpretation.

5.7 In respect of ship building projects, Indian Navy and Coast Guard shall ensure that criteria for capacity assessment of Shipyards are stipulated in advance of such assessments and made known to all the prospective vendors.
