# CHAPTER III

# PROCEDURE FOR PROCUREMENT UNDER 'MAKE' AND 'INNOVATION' CATEGORIES

## Background

1. Self- reliance in defence manufacturing continues to be an important pillar of India's strategic autonomy. In line with the Government's 'Make in India' programme, several initiatives have been taken in the recent years to build a robust defence industrial ecosystem capable of meeting existing and future requirements of the Armed Forces. The emerging dynamism of the Indian industry needs to be gainfully utilised to build domestic capabilities for designing, developing and manufacturing state of the art defence equipment.

2. R&D and innovation remain important cornerstones of India's defence production strategy. With the launch of 'Start-Up India' programme, India has become the hotspot of start-up activity in the world, having the third-largest start-up ecosystem globally. These strengths need to be leveraged to catapult India to next level of frontier defence technologies, both for domestic use as also to foster exports.

3. The indigenous 'Make', and 'Innovation' Categories outlined in this Chapter attempt to further build on these initiatives and provide a focussed, structured and significant thrust to development of defence design and production capabilities in the country. Projects under 'Make' or 'Innovation' category, except 'Make III' will essentially pertain to products involving indigenous design, development and manufacturing. To enable Indian industry to leap frog to higher or complex technology, cases where Indian companies either hold the IPR, including where it has been acquired from the foreign companies, or have the ownership of the design of the main system/equipment, will be deemed to be indigenously designed and developed. In such cases, the companies will have to furnish undertaking as detailed at Appendix 'A' to Chapter I.

4. The Chapter is divided in two sections; Section I pertains to indigenous 'Make' Categories, whereas, Section II refers to categories nurturing indigenous innovation.

## SECTION I –'MAKE' CATEGORIES

5. The 'Make' Categories aim to achieve the objective of self-reliance by involving greater participation of Indian industrial eco-system including private sector through the following procedures:-

(a) **Make-I (Government Funded)**. Projects involving design and development of equipment, systems, major platforms or upgrades thereof by the industry. For Projects under Make-I sub-category, MoD will provide financial support upto **70%** of prototype development cost or maximum ₹ 250 crores per Development

Agency (DA). Funding would be released in a phased manner based on the progress of the scheme, as per terms agreed between MoD and the DA(s). However, the final percentage or upper limit of financial support to be provided may vary from case to case and would be dependent upon nature of the project and the fund support sought by the selected DAs for development of prototype.

(b) **Projects Under Make II and Make III.** Projects under Make II and Make III would encompass equipment/ system/ platform or their upgrades or their sub-systems/ sub-assembly/ assemblies/ components/ materials/ ammunition/ software, primarily for import substitution.

(i) **Make-II (Industry Funded)**. This would include design and development and innovative solutions by Indian vendor, for which no Government funding will be provided. In Make-II, where solutions have been offered even by a single individual or a firm as a Suo-Moto proposal, the cases would be progressed as a Resultant Single Vendor. However, SHQ should seek for multivendor options in such cases, if feasible, before progressing the case as Single Vendor Case.

(ii) **Make-III.** This although would not be designed/developed indigenously, but can be manufactured in India as import substitution for product support of weapon systems/equipment held in the inventory of the Services. Indian firms may manufacture these either in collaboration or with ToT from foreign OEMs. In this category, an Indian vendor can enter into a JV with OEM.

6. **Eligibility & Categorisation**.

(a) **Make-I**.

(i) Eligible for Indian vendor defined at Paragraph 20 including additional conditions at Paragraph 20(a) and Paragraph 20(b) of Chapter I.

(ii) Other technical and financial criteria will be as per Appendix F of Chapter III.

(b) **Make-II**. The eligibility criteria will be as under:-

(i) Eligible for Indian vendor defined at Paragraph 20 including additional conditions at Paragraph 20(a) and Paragraph 20(b) of Chapter I.

(ii) For projects having cost of development phase ≤ Rs. 3 Cr and cost of procurement phase ≤ Rs. 100 Cr/year based on delivery schedule at the time of seeking AoN, there will be no commercial and financial criteria.

(iii) For all cases having cost of prototype development phase > Rs. 3 Cr and/or procurement cost > Rs. 100 Cr/ year based on delivery schedule at the time of seeking AoN, the entity should have:-

(aa) Average annual turnover of the applicant company for the last three financial years ending 31st March of the previous financial year, should not be less than 5% of the estimated cost of the project. In case of JV, the average annual turnover of the lead partner may be considered.

(ab) Net worth of the entities ending 31st March of the previous financial year should be "Positive".

(iv) Other Technical criteria will be determined out by concerned SHQ based on the project requirement.

(v) Apart from entities eligible as per Paragraph 6(b) above, OFB & the 'Start-up' recognized by Department for Promotion of Industry and Internal Trade (DPIIT) from time to time, shall be eligible to participate under 'Make-II' procedure.

(c) **Make III**.

(i) Indian vendor defined at Paragraph 20 excluding sub paragraphs 20 (a) and 20 (b) of Chapter I.

(ii) Other eligibility criteria same as Paragraph 6(b) (ii) to 6(b) (iv) of Make II.

(d) Successful development under Make I and Make II would result in acquisition, from successful Development Agency(ies) (DA/DAs), through the 'Buy (Indian-IDDM)' category with indigenous Design & Development and a minimum of **50%** IC. Schemes under Make III will be procured under the Buy 'Indian' category with a minimum of **60% IC.**

**Innovation & Indigenisation Organisation (IIO)**.

7. To provide impetus to indigenisation, each SHQ may establish an Innovation & Indigenisation Organisation within existing resources. The mandate of IIO/ SHQ will be as follows:-

(a) Be responsible for spearheading innovation & indigenisation.

(b) Identify projects for Indigenous Design and Development including import substitutions.

(c) Undertake advance planning and consultations with stakeholders.

(d) Facilitate conduct of Feasibility Study.

(e) Monitor formulation of Preliminary Services Qualitative Requirements (PSQRs) in consultation with potential DAs.

(f) Facilitate fielding of SoC for Categorisation and accord of Acceptance of Necessity (AoN).

(g) Assign responsibilities and hold task owners accountable for delivery.

(h) Closely monitor and ensure periodic update on all ‘Make’ projects to AoN according authority by respective Project Facilitation Teams on a half yearly basis.

(j) Employ project/programme implementation experts, as also latest execution/monitoring techniques and software to ensure timely development and implementation under delegated powers of SHQ through the revenue powers.

8. The acquisition process under the Categories mentioned at Paragraph 5 above would involve the following common procedural activities, elucidated in succeeding paragraphs:-

(a) Advance Planning and Consultations.

(b) Feasibility Study.

(c) Preliminary Services Qualitative Requirements (PSQRs).

(d) Categorisation and accord of Acceptance of Necessity (AoN).

(e) Constitution of PFT.

**Advance Planning and Consultations**

9. **Identification of Projects and Approval-in-Principle**. SHQ, will identify the potential projects to be undertaken under each of the categories listed at Paragraph 5 above in consultation with industry. The list of such projects will be hosted on MoD/SHQ website and also shared with the industry. SHQ will also hold extensive consultations with the stakeholders. Industry can also forward Suo-Moto proposals under Make-II and Make-III. These proposals will be examined by SHQ in a time-bound manner, preferably within eight weeks. Potential projects identified under the ‘Make’ categories by SHQ, shall be deliberated and 'Approved-in-Principle' by a Collegiate Committee headed by Secretary (DP) with members from SHQ, Acquisition Wing, DDP, DRDO, MoD (Fin) (for non-delegated cases)/ IFA (for delegated cases). Projects once identified and accorded AIP under ‘Make’ categories shall not be retracted due to technology being developed by DRDO/DPSU/OFB. Proposals rejected by SHQ will be informed to the collegiate committee headed by Secretary DP.

10. **<u>Dissemination and Consultations with Industry</u>**. Once AIP has been accorded, list of potential projects along with project briefs, questionnaire for industry, contact point details shall be uploaded on MoD and SHQ websites to seek Industry participation. SHQ may also provide timely feedback to industry on Suo-Moto proposals, which are either accorded AIP or not accepted for further pursuance. Once AIP has been accorded, a Project Facilitation Team (PFT) will be constituted by SHQ. The detailed modalities of PFT are given in succeeding paragraphs

11. **<u>Annual Acquisition Plan (AAP)</u>**. Make projects will be listed at Part C of AAP as given in Paragraph 26 of Chapter I. Additional Proposals under 'Make-II', 'Make-III' and 'Innovation' categories will deem to be automatically included in AAP, after accord of AoN. However, AoN for such cases being processed under delegated powers will be accorded by DPB within the overall financial limits linked to anticipated budget, as prescribed by HQ IDS for AAP. The AAP will be accordingly revised and brought up for approval of the DPB as per next scheduled revision.

12. **<u>Incentives for MSMEs</u>**. Projects under the Make categories, with procurement not exceeding Rs **100** Cr/year based on delivery schedule at the time of seeking AoN will be earmarked for MSMEs. However, if at least two MSMEs do not express interest for a Make programme earmarked for them, the same shall be opened up for all, under th**e** condition that interested MSME(s), if any at that stage and meeting the eligibility criteria, will get preference over Non- MSMEs in selection of DAs.

**<u>Feasibility Studies</u>**.

13. For 'Make' projects, SHQ shall carry out the feasibility study with the involvement of other stakeholders. Rep of FM/ IFA as applicable will be a stakeholder in feasibility study of Make projects. Industry associations including MSME associations would also be consulted. SHQ may engage consultants/experts to assist in preparation of feasibility study report. Funding requirements for such experts shall be borne by SHQ under relevant revenue budget.

14. The Feasibility Study shall look into the following aspects:-

**(a)** **<u>Make I</u>**.

(i) A preliminary assessment of enabling technologies to realise the requisite equipment/system/platform/components or their upgrades.

(ii) A preliminary assessment of capability of Indian industry to undertake design and development of the requisite equipment/system/platform or their upgrades, and to list out probable vendors.

(iii) A preliminary assessment to ascertain the 'Make' category under which the case shall be processed.

(iv) Estimated time period for development.

(v) Estimated cost of prototype development and for subsequent procurement under ‘Buy (Indian-IDDM)’ category.

(vi) In case of Make-I sub-category, feasibility study shall also recommend number of DAs to be selected. (As Make-I entails Government funding for prototype development, feasibility study will generally recommend not more than two DAs, however in case OFB is also participating it will be the third DA without government funding with the approval of DAC)

(vii) ‘Foreclosure’ criteria.

(viii) Any other aspect considered important.

**(b)** **Make II and III**.

(i) **New Proposals Including Suo-Moto Proposals**. Same as Make I as given in Paragraph 14(a)(i) to 14(a)(viii).

(ii) **Import Substitution**.

(aa) A preliminary assessment of capability of Indian industry to undertake design and development of the requisite equipment/ system/ platform or their upgrades, and to list out probable vendors.

(ab) Estimated time period for development.

(ac) Estimated cost of prototype development and for subsequent procurement under ‘Buy (Indian-IDDM)’ and Buy (Indian) category respectively.

15. All stakeholders shall endeavour to complete feasibility study within twelve weeks from date of commencement for Make-II/Make-III Projects, and sixteen weeks for Make-I cases. Studies not completed within the stipulated period are to be brought to the notice of authorities according AIP, with reasons for delay.

**Preliminary Services Qualitative Requirements (PSQRs)**.

16. SHQ in consultation with other stake holders would formulate the PSQRs, specifying essential and desirable parameters.

**Categorisation and Accord of AoN**.

17. SHQ will prepare SoC and take AoN as per procedure outlined in Chapter II.

18. In case of 'Make-1' category (Govt Funded), if OFB is also participating, it will be the third DA without government funding with the approval of DAC. The estimated cost of prototype phase and the final procurement of developed product would be indicated separately in the SoC. For Make–I category, the AoN will be sought based on the combined estimated cost of prototype phase and the cost of subsequent procurement under 'Buy (Indian-IDDM)' category. While for Make–II and Make–III categories, the AoN will be sought only for the cost of final procurement under 'Buy (Indian-IDDM)' category and Buy(Indian) respectively.

19. The SoC will highlight the following: -

(a) Recommended level of Indigenous Content (Minimum as prescribed for 'Buy (Indian-IDDM)' category and Buy(Indian)), if applicable.

(b) The design and development of the system is indigenous (For Make I and II cases only).

(c) Minimum Order Quantity (MOQ) which can be exclusively committed**,** keeping in mind the financial viability of the identified project at the production stage, after the successful development of prototype.

(d) Envisaged 'Development Timeline' for prototype.

(e) Estimated development cost of prototype.

(f) Estimated procurement cost of orders under Buy (Indian-IDDM) and Buy(Indian)category.

(g) List of likely DAs.

(h) Tentative time frame of procurement.

(j) Acceptability of multiple technical solutions and division of ordered quantity among successful DAs, where applicable.

20. **Foreclosure Criteria**. To ensure that development timelines do not inordinately deny the Services of critical capability, the SoC would also include mutually agreed 'Foreclosure Criteria' {provision for Service to seek foreclosure of the project in case the project does not progress in accordance with predicted developmental timelines or if the

equipment under development is overtaken by emergence of better technology (ies), etc}. Foreclosure clause would be exercised only with the approval of AoN according authority.

(a) **Make-I**.

(i) In case the project does not proceed according to the predetermined milestones and as agreed in the DPR and/or if there are undue time and cost overruns, or failure of the prototype(s) on staff evaluation or on account of any other reasons, the ‘Make-I’ project may be foreclosed in respect of the DA(s) concerned and proposal for foreclosure will be approved by the authority who had accorded AoN on the recommendation of PFT, through DPrB. Foreclosure criteria will be spelt out in the Project Sanction Order.

(ii) In such cases, the total expenditure made by the DA(s) on the prototype development till foreclosure would be assessed and if excess funds with reference to MoD share have been paid to the DA(s), the same shall be recovered. If the expenditure is in excess of the amount paid, the balance shall be paid to the DA(s). The total amount paid to the DA(s) shall be written off with the approval of the competent authority.

(b) **Make-II and Make III**. Under Make II and Make III, no government funding is envisaged for prototype development but there is an assurance of orders on successful development and trials of the prototype. No Foreclosure of the Project will be done after issue of Project Sanction Order, other than for reasons of default/ non-adherence to Project Sanction Order by Vendors.

21. **Multiple Technological/Source Solutions**. For Make and Innovation Cases involving large quantities, and where multiple technological/source solutions are acceptable, SHQ may seek approval of AoN granting authority for dividing specified quantities (in the appropriate ratio) between two vendors with lowest bids (referred to as L1 & L2), who have successfully developed the prototype/product, on the condition that the second (L2) vendor accepts the price and terms & conditions quoted by the L1 vendor. In case L2 vendor refuses to meet the price or the terms and conditions of L1 vendor, either the L3 vendor could be offered the same option to match L1 price and terms/conditions, or the entire order could be placed on L1 vendor. This provision would need to be included in the SoC seeking AoN, and if approved, in the EoI/RFP, as applicable. In case, Multiple Technological Solutions are not acceptable, the other successful vendor(s) will be issued a certificate by the DDP indicating that the product has been successfully trial evaluated, to facilitate vendors to explore other markets.

22. **Pre-Contract Integrity Pact (PCIP)**. For Make and Innovation, Pre-Contract Integrity Pact (PCIP), as per Chapter II of DAP 2020, shall apply mutatis mutandis, to 'Buy (Indian - IDDM)' and Buy(Indian) phase of 'Make’ projects. Depending upon the sensitivity/secrecy of the information related to the Project, participating vendors may be

asked to sign a Non-Disclosure Agreement at the time of sharing the QRs/other sensitive information for certain projects as deemed necessary by SHQ.

**Validity of AoN**.

23. In case of 'Make-I' category, the AoN will be valid for one year from the date of accord of AoN, whereas for Make-II/III categories, the AoN will be valid for six months from the date of accord of AoN. In case where Expression of Interest (EoI), as described in succeeding paragraphs, is not issued within the stipulated period, SHQ shall seek revalidation of AoN with due justification. For cases where the original EoI has been issued within the stipulated period and later retracted for any reason, the AoN would continue to remain valid, as long as the original decision and categorisation (sub-category) remain unchanged and the subsequent EoI is issued within six months from the date of retraction of original Expression of Interest (EoI).

**Project Facilitation Team (PFT)**.

24. SHQ will constitute a PFT under a two-star/one-star officer/ Director level officer. PFT will consist of representatives from SHQ, DDP, DGQA/DGAQA/DGNAI, MoD(Finance)/IFA as required and other experts if considered necessary. PFT is to act as the primary interface between the SHQ and the industry during the design and development stage. PFT may be constituted prior to seeking AoN if necessitated.

25. For Make-I projects which are more complex in nature, SHQ may also engage consultant/ experts from public/private sector if considered necessary. Funding for the same shall be borne by SHQ under revenue budget.

26. The PFT shall be inter-alia responsible for the following functions: -

(a) Preparation of Project Definition Document (PDD) **(Only for Make-I).**

(b) Assist SHQ in preparation and issue of EOI including format of DPR.

(c) Assist SHQ in analysis of EoI responses and evaluation of DPRs (Only for Make –I) and shortlisting of DAs by Secretary DP.

(d) Facilitate issue of RFP by Acquisition Wing for solicitation of limited commercial offers for prototype phase and commercial offer for procurement phase to shortlisted DAs **(Only for Make-I)**.

(e) Recommend in consultation with Acquisition Wing two/three DAs, as applicable, from the shortlisted panel, based on commercial offers to SHQ/DPrB for selection **(Only for Make-I)**.

(f) Assist in obtaining CFA approval through DDP for **Make I cases**, as per financial powers detailed in Appendix C to this Chapter.

(g) Assist in preparation of draft Project Sanction Order, obtaining requisite approvals and issue of Project Sanction Order by SHQ.

(h) Assist/ handhold DAs by providing clarifications related to functional or operational aspects of the equipment under development, as may be sought by the DAs from time to time, during the design and development of prototype.

(j) Assist in finalization of trial methodology.

(k) Facilitate provisioning of trial range/test facilities/consumables, etc., as mentioned in the EoI.

(l) Assist in conversion of PSQRs to SQRs, prior to commencement of Field Evaluation Trials.

(m) Coordinate solicitation of Revised Commercial Offer through Acquisition Wing.

(n) Coordinate Field Evaluation trials with the SHQ, based on the trial methodology. SHQ will formulate the Trial Directive and constitute the Trial Team. The Trial Directive must specify the fundamental points that need to be addressed for validating the 'Essential' Parameters.

(o) Periodically assess the relevance of the project vis-à-vis contemporary technology, cost and time overruns, or any other relevant factor, and introduce timely correctives, as well as recommend invoking of the ‘Foreclosure Clause’, to AoN according authority, if considered necessary **(Only for Make-I**).

(p) Any other responsibilities as may be entrusted by the AoN according authority/DPrB/PSO at SHQ.

27. **Progress Monitoring**. The progress of the ‘Make’ phase would be monitored by the PFT under overall guidance of respective Innovation & Indigenisation Organisation as defined in EoI responses. SHQ may engage services of independent consultants/experts for assessing the physical and/or financial progress of the Make project. Expenditure for engaging of consultants will be borne by SHQs from their allotted revenue budget. PFT, through respective 'Innovation & Indigenisation Organisation’ will also apprise the progress of the project to Acquisition Wing and DPrB every six months through PSO concerned at SHQ, as the case may be.

28. **Certification of IC Content**. Once the PSQRs are frozen, the vendor shall submit the IC certificate as per Annexure II to Appendix B of Chapter I. All projects above ₹ 500 crores will have mandatory audit of IC content.

29. **Deviations**. Any deviation from the prescribed procedure will be put up to DAC through DPrB for approval. Any clarification or difficulty arising during execution shall be referred to Secretary (DP), who would either take a decision or refer the case to the DAC.

**Follow-on Procedures**.

30. Post accord of AoN, the 'Follow-on' procedures, would vary for each category, and are therefore highlighted separately in succeeding paragraphs.

## 'MAKE-I' CATEGORY

31. Under 'Make-I' category, post accord of AoN, the development & procurement process would involve the following functions: -

(a) Constitution of PFT and preparation of Project Definition Document (PDD) by PFT (If not done prior to Accord of AoN).

(b) Issue of EOI and seeking DPR and other financial and technical information.

(c) Shortlisting of DAs based on financial gates, technical gates and DPR (Qualification criteria), by Secretary DP.

(d) Issue of RFP by Acquisition Wing for solicitation of limited commercial offer for prototype development and commercial offer for the procurement phase.

(e) Selection of DAs based on commercial bids by SHQ/ DPrB. (Weightages recommended to be 30% for Prototype Phase and 70% for Procurement Phase).

(f) Approval of CFA as per Appendix C for funding arrangements and issue of Project Sanction Order.

(g) Design and Development of prototype including technical and limited field trials of the prototype (suggested phases/ progression outlined at Appendix 'D').

(h) Conversion of PSQRs to SQRs by SHQ.

(j) Solicitation of Revised Commercial Offers by Acquisition Wing.

(k) Field Evaluation Trials (FET) by SHQ and Staff Evaluation.

(l) Commercial negotiations by Contract Negotiation Committee CNC and

Award of contract.

(m) The flow chart for procurement under Make I category is attached as Appendix A.

32. **<u>Preparation of Project Definition Document by PFT</u>**. The PFT will prepare a Project Definition Document (PDD) in consultation with stakeholders as per the sample format given at Appendix E to this Chapter. The PDD shall be approved by PSO concerned at the SHQ and shall serve as the principal guidance document for preparation of DPR.

33. **<u>Expression of Interest (EOI), Detailed Project Report (DPR) and Shortlisting of DAs</u>**. The EOI and format for DPR will be issued together to the DAs by SHQ. The response to the EOI and the DPR will be submitted by all DAs to SHQ. The modalities of EOI, DPR and shortlisting of DAs are given in succeeding paragraphs.

(a) **<u>Issue of EOI and Evaluation</u>**.

(i) PFT will assist SHQ in shortlisting Indian vendors for issue of EoI based on the feasibility study. In addition, SHQ will also host the AIP details on the MoD/SHQ website. Any vendor evincing interest in participating in the said project within a period of four weeks from the date of hosting the proposal, will also be issued with the EoI.

(ii) The EoI shall be approved by the PSO concerned at SHQ and may contain information as per sample format at Appendix F to this Chapter.

(iii) Indian vendors who are issued an EoI, shall have the choice to respond either in their individual capacity as EoI recipients, or as an AoP (i.e. consortium) of Indian companies/organisations, through an AoP Agreement led by an EoI recipient.

(iv) SHQ may, if required, engage Standing Consultancy Firms to provide assistance in preparation of EoI, industry outreach programmes and evaluation of EoI etc. Expenditure for engaging of consultants will be borne by SHQs from their allotted revenue budget.

(v) The PFT will assist SHQ in assessment of EoI responses based on approved criteria. Illustrative evaluation criteria are contained in sample format at Annexure I to Appendix F. Where required, PFT/SHQ reps may also visit vendor’s premises.

(b) **Detailed Project Report(DPRs)**.

(i) The DPRs as per sample format at Appendix G will be submitted to SHQ for their examination. The DPRs will be submitted by all vendors along with the EOI responses.

(ii) The DPR will clearly include the list of trials/items/facilities/ consumables, which will be provided free of cost during trials. It will also specify the number of times free tests will be carried out. The liability against any collateral damages/third party, to the extent permitted under the Indian Insurance Act, occurring during the course of trials should be covered through insurance cover by the respective DA(s). The cost of such insurance cover may be included in the project under DPR.

(iii) Submission of DPR as per format will be a Qualification Criteria for opening of commercial bids for selection of DAs.

(iv) For this purpose, PSQRs and relevant extracts from the PDD will be shared by the SHQ, with the short-listed DAs.

(c) **Evaluation of DPRs**.

(i) The PFT/SHQ in consultation with DDP will evaluate the DPR for viability of the project.

(ii) DA(s) may collaborate with academic and /or research institutions and/or foreign companies/foreign research and academic institutions having required technologies for the development of project. DA(s) would be required to disclose the details of such collaborations in DPR.

(d) **Short listing of Development Agency(ies) (DAs) based on EOI Responses**. Post evaluation of EOI responses and DPR, PFT will forward list of shortlisted Indian vendors or consortium who are capable of undertaking design and development of the equipment to Secretary DP for approval.

34. **Issue of Commercial RFP by Acquisition Wing for Solicitation of Limited Commercial Offer for Prototype Costing and Commercial Offer for the Procurement Phase for Selection of DAs**.

(a) A commercial RFP will be issued by Acquisition Wing for solicitation of limited commercial offer for Prototype Costing and solicitation of commercial offer for procurement phase for selection of DAs. The RFP will also highlight the submission of revised commercial offers post finalisation of SQRs.

(b) The quantities in the Buy (Indian-IDDM) phase cannot be reduced from the quantities indicated in AoN. The limited commercial offer for prototype development and commercial offer of the procurement phase will be submitted in separate envelopes.

(c) Shortlisted vendors shall be required to submit their limited commercial offer for development of Prototype(s) and commercial offer of the Procurement Phase based on MOQ as given out in the AoN.

(d) In case of development by an AoP, RFP shall be issued to 'Lead Partner' who will submit an undertaking to supply the required quantities under Buy (Indian-IDDM) phase with life cycle support for the product.

(e) A weightage of 30% for limited commercial offer bid for prototype development phase and a weightage of 70% for the procurement phase is recommended for selection of L1 bidder. The same will be included in the SoC which is being fielded for AoN.

35. **Selection of Development Agency(ies) (DAs)**.

(a) The sealed commercial offers of the shortlisted vendors will be opened by SHQ (delegated cases)/Acquisition Wing (non delegated cases) along with reps of DDP at a predetermined date and time under intimation to vendors, permitting such vendors or their authorised representatives to be present. The final selection of DAs for cases upto ₹ 50 crores will be by SHQ and selection of DAs for cases above ₹ 50 crores will be by DPrB.

(b) The lowest prototype development cost offered in the limited commercial bid by the selected DAs will decide for 70 % of government funding, however not exceeding 250cr/DA. A cost variation of 15% of the lowest bid would be allowed for the other selected DAs. However, in certain cases, if there is a requirement to change the cap of Rs 250cr/ DA, the same may be included in the SoC at the time of seeking AoN.

36. **Approval of Competent Financial Authority (CFA)**. For cases being progressed under Make-I sub-category, the financial sanction for project development, taking the relevant prototype development costs into account, would be obtained by the DDP as per delegation of financial powers detailed in Appendix C to this Chapter.

37. **Funding**. Funds for development projects approved under this procedure shall be borne under the Account Head **'Make Procedure-Prototype Development Account'** operated by respective SHQ.

38. **Funding for Projects under Make-I Category**.

(a) The prototype development cost to be borne by the MoD will be d**ecided based on the final cost-share agreed to** by the selected DA(s) in the Project Sanction Order in accordance with Appendix H.

(b) For all projects where MoD is required to fund part of the prototype development cost, an advance of 20% of the agreed share of the prototype development cost, will be paid against a bank guarantee for the equivalent amount.

(c) Balance payment will be paid on completion of the stipulated stages/milestones. On completion of every stage against the milestones detailed in the DPR, DAs will submit claims for reimbursement to PFT. While submitting reimbursement claims, the Chief Executive Officer/a suitable nominee along with an authorised auditor/licensed Chartered Accountant will certify the incurred expenditure linked to a particular development stage. Based on the recommendations of PFT, SHQ will reimburse the development cost within sixty days, which may extend up to another 30 days in exceptional cases. The advance will be adjusted proportionately in subsequent payments as per the payment terms prescribed in DPR and bank guarantees will be proportionately and automatically reduced until full extinction.

39. SHQ will generally procure the MOQ approved in the AoN, post successful completion of FET. However, in case for reasons beyond control of the SHQ, the project is foreclosed, the DA(s) will be entitled for reimbursement of cost incurred by DAs with reference to MoD share for the prototype development within a period of three months.

40. **Time Overrun**. The approval of extension of timelines for any 'Make-I' project up to 25% of the timelines agreed upon in the approved DPR may be accorded by CISC/ VCOAS/ VCNS/ DCAS/ DG ICG based on the recommendations of Chairman Innovation & Indigenisation Organisation. For extension of time beyond 25%, the matter would be referred to DPrB.

41. **Project Sanction Order**.

(a) SHQ will issue a Project Sanction Order to all selected DAs for development of prototype.
(b) Post development of prototype and trials, the PSQRs will be converted to SQRs.

(c) The quantities in the 'Buy (Indian-IDDM)' phase cannot be reduced from the quantities indicated in AoN.

42. **Revised Commercial Offer**. The Revised Commercial bids on finalised SQRs will be solicited from the DAs prior to FET by Acquisition Wing. Any increase in revised

commercial bids from earlier commercial bid will be duly justified by the selected DAs. CNC will also consider the earlier commercial bids submitted at EOI stage while benchmarking.

43. **Field Evaluation Trials(FET) and Staff Evaluation**. FET would be carried out as given in Chapter II. At this stage, no changes should be suggested which require redesigning of the system/sub system or technology upgrade. Such suggestions would be considered and implemented in subsequent phases of development of follow on models if required. The Staff Evaluation will be carried out as given at Chapter II of DAP2020. Once the Staff Evaluation report is accepted and final instalment under prototype phase as per DPR has been released, no more funds would be released from 'Make Procedure- Prototype Development Account'.

44. **Benchmarking by Benchmark Models Committee**. The benchmarking will be carried out as given out in Chapter II. The Benchmark model committee will consider the commercial bid submitted by vendors prior to development of prototype for benchmarking.

45. **Commercial Negotiations by Contract Negotiation Committee (CNC)**. As per provisions of Chapter II of DAP2020.

46. **Access to Books of Accounts**. The DAs shall maintain separate books of accounts with an independent bank account, for the project sanctioned under Make-I sub-category of prototype development. MoD or its authorised representative(s) shall have unfettered rights to access these books of account of DAs.

47. Intellectual Property Rights (IPRs) in the 'Make-I' projects undertaken under provisions of this Chapter shall vest as described in Appendix J.

48. **Disposal of Tangible Assets Created in Make-I Projects**.

(a) The ownership of all tangible assets and the developed prototypes under the Make-I category shall vest with the MoD. These may be passed on to the DAs at depreciated value as per the extant guidelines of the Government of India.

(b) In case of foreclosed Make-I sub category of projects, the tangible assets thus created may be disposed of as per the extant government guidelines. Expenditure incurred on intangible assets as defined in the relevant Indian Accounting Standards will be written off with the approval of Secretary (DP).

49. **Timelines**. Typical expected timelines for undertaking 'Make-I' Projects are contained in Appendix K. All the formats given as Appendices and Annexures to this chapter are illustrative and may be amended / modified, as per the requirements of projects under consideration.

## 'MAKE-II' CATEGORY

50. After accord of AoN, the development & procurement process under Make-II sub-category would involve the following functions: -

(a) Issue of Expression of Interest (EoI).

(b) Evaluation of EoI responses.

(c) Award of Project Sanction Order.

(d) Design and Development of Prototype.

(e) Conversion of PSQRs into SQRs.

(f) Solicitation of Commercial Offer.

(g) Field Evaluation Trials by SHQ.

(h) Staff Evaluation.

(j) Commercial negotiations by Contract Negotiation Committee (CNC).

(k) Award of Contract.

(l) The Flow Chart for procurement under Make II and Make III is attached as Appendix B.

51. **Issue of EoI**. SHQ duly assisted by PFT shall publish 'EoI' on MoD/DDP Website inviting Company (ies) to participate into the 'Make-II' project. EOI for Make II projects could be on similar lines as EOI of Make I less the DPR, and as decided in the feasibility study or by SHQ. In addition, EoI shall also be issued to all companies which have shown interest to participate in the project during Feasibility Study. However, EoI may highlight the following: -

(a) PSQRs.

(b) Scope of the project including number of Prototypes required.

(c) Time frames and critical activities.

(d) Milestones.

(e) List of trials/items/facilities/consumables that will be provided free of cost and also specify 'number of times' such free trials will be allowed.

(f) Quantities in 'Buy (Indian-IDDM)’ phase preferably covering requirements of five years.

(g) Acceptability of Multiple Technological Solutions, if available.

(h) Details of Evaluation Criteria for assessment of EOI.

52. **Evaluation of EoI Responses**. Responses to EoI shall be evaluated by SHQ duly assisted by PFT as per criteria given in EoI and shall be approved by CISC/VCOAS/ VCNS/ DCAS/ DG(ICG). All the shortlisted companies will be called Development Agencies (DAs). Also refer Paragraph 6 above of this chapter for indicative criteria for evaluation of EoI for shortlisting of Development Agencies in Make- II and Make III categories. Project shall be progressed ahead even if only one EoI respondent is found meeting the eligibility criteria.

53. **Project Sanction Order**. SHQ will obtain sanction for prototype development with 'Nil' financial implications from CISC/ VCOAS/ VCNS/ DCAS/ DG(ICG) and issue a Project Sanction Order (PSO) to all the DAs. The quantities in the 'Buy (Indian-IDDM)' phase cannot be reduced from the quantities indicated once the PSO has been issued.

54. **Development of Prototype**. After the issuance of PSO, PFT will act as the primary interface between the SHQ and the industry during the design and development stage. After the prototype has been developed, the PFT would carry out User Trial Readiness Review (UTRR) of the prototype before offering it for Field Evaluation. Request for Proposal (RFP) for 'Buy (Indian-IDDM) phase, duly vetted by Acquisition Wing (for non-delegated cases)/concerned SHQ (for delegated cases), will be issued to all vendors who have successfully developed the prototype and participated in the UTRR for submission of their commercial offer prior to commencement of FET.

55. **FET and Staff Evaluation**. FET would be carried out by the SHQ in close consultation with PFT and will be followed up by Staff Evaluation in accordance with Chapter II of DPP. At this stage no changes should be suggested, which require re-designing of the system/sub-system or technology upgrade. Such suggestions would only be considered and implemented in the subsequent/follow-on models, if required. The user may however recommend minor modifications with regard to ease of handling or maintainability.

56. **Commercial Negotiations by Contract Negotiation Committee (CNC)**. The benchmark cost will be calculated on the basis of Last Purchase Price (where available) of the imported item being substituted and adjusted for inflation/escalation and other relevant factors. The CNC will carry out all processes from opening of commercial bids till conclusion of contract.

57. Negotiations in case of multivendor projects having procurement cost less than ₹150 crores shall be carried out only in special circumstances with reasons to be recorded. However, CNC will carry out negotiations for all single vendor cases, other than resultant single vendor, irrespective of value of the project. For products which are being developed under 'Make-II' and 'Make III' as an import substitute and their prices are known, no benchmarking & no negotiation may be carried out, even in Single Vendor Cases, if the offered price is lower than Import price / Last Purchase Price (LPP) suitably adjusted for inflation/escalation and other relevant factors by 20% or more. However, in such cases, the CNC will satisfy itself that the price of the selected offer is reasonable with respect to the AoN cost and consistent with the quantity required.

58. After the conclusion of negotiations, the procurement procedure would thereafter be same as for 'Buy (Indian- IDDM)' category from the successful DA/DAs, in accordance with Chapter-II of DPP.

**Other Aspects of Make II**.

59. **Intellectual Property Rights (IPRs)**. DA shall retain title or ownership and all other rights in intellectual property generated during the development of project. However, the Government shall have 'March-in rights' under which the Government can ask the contractor to grant, or may itself grant license for, inter alia, the following reasons: -

(a) Where health and safety requirements so require the Government to act in public interest;

(b) For National Security Reasons;

(c) To meet requirements for public use not reasonably satisfied by the contractor;

(d) For failure of the contractor to substantially manufacture the products embodying the subject invention in India; or

(e) For failure of the contractor to comply with any of the requirements laid down under these guidelines.

60. **Time Overrun**. Typical expected timelines for undertaking 'Make-II' Projects are contained in Appendix L**.** Based on the complexity of the equipment, AoN according authority may approve extended timelines at the time of according AoN". Approval of extension of timelines for any 'Make-II' project may be accorded by CISC/ VCOAS/ VCNS/ DCAS/ DGICG based on the recommendations of PFT. In case of only single vendor having offered the prototype within timelines stipulated in the Project Sanction Order, not more than

two-time extensions will be accorded to other vendors and thereafter the case shall be progressed as resultant Single Vendor Case (SVC).

61. **<u>Procedure for Accord of AoN - Low Value 'Make-II' Projects</u>**. 'Low Value Projects' for import substitution under Make-II procedure will follow a different procedure, as elucidated below: -

(a) Proposals meeting the following criteria will be considered as 'Low Value Projects' under Make-II procedure: -

(i) Technical specifications of the equipment/item and Last Purchase price (LPP) are known.

(ii) The estimated cost of procurement does not exceed Rs 100Cr/year based on delivery schedule at the time of seeking AoN.

(b) After accord of AIP, SHQ will prepare detailed Questionnaire within two weeks and upload the same on the MoD website, seeking necessary inputs required for preparing feasibility study report within a period of four weeks. Feasibility report will be completed within two weeks from last date of submission of detailed response to Questionnaire. Feasibility report finalized by Project Facilitation Team (PFT) will be construed as concurrence by all stakeholders. PFT will prepare the SoC based on Feasibility report and field the proposal directly to relevant AoN according authority, without circulating the SoC as otherwise required as per Chapter II of DAP.

62. **<u>Deviations</u>**. Any deviation from the prescribed procedure will be put up to DAC through DPrB for approval.

## <u>MAKE-III</u>

63. Projects in this category would encompass equipment/systems/platforms or their upgrades or sub-systems/ sub-assembly/ assemblies/ components/ materials, ammunition, etc, which although not designed/developed indigenously, but are being manufactured in India as import substitution for product support of weapon systems/equipment held in the inventory of the Services.

64. Indian firms may manufacture these either in collaboration or with ToT from foreign OEMs. Schemes under Make III will be procured under the Buy 'Indian' category with a minimum of **60% IC.** The procedure to be followed after accord of AoN, will be akin to Make-II.

## **SECTION II – INNOVATION**

**Introduction**.

65. MoD has set up Innovations for Defence Excellence (iDEX) initiative under the Defence Innovation Organisation (DIO) and Technology Development fund ( TDF) under DRDO to use a multi-pronged approach and reach out/engage a large pool of innovators/technocrats/professionals/academicians including amongst the smaller enterprises, start-ups and MSMES, to foster innovation in a coherent, strategized, and integrated manner. SHQs also undertake Innovations through their internal R & D organisations.

66. Procurement through Innovative solutions could be undertaken under following programmes: -

(a) **Innovations for Defence Excellence (iDEX)**. Projects of Start-ups, MSMEs etc. with low capital investments and high innovation would be pursued under the iDEX category.

(b) **Technology Development Fund (TDF) Scheme**. Projects supported through TDF of DRDO for leveraging the domestic capabilities available with Indian Industries especially MSMEs including Start-ups.

(c) **Indigenous Development by Services through Internal Organisations**. These would include projects where prototype development of equipment/system will be processed by the Services through their internal R&D organisations, such as Base workshop/Dockyards/ Base Repair Depots/ internal indigenisation Organisations/ Design Agency, etc.

**Innovations for Defence Excellence (iDEX)**.

67. Details of the programme through DISC, SPARK and other such frameworks would be uploaded on the iDEX website **www.iDEX.gov.in** from time to time. The procurement of the final product will be processed under the Buy (Indian-IDDM) category.

68. Like the Make-II category, Innovators/Industry/academia/start-ups can also forward suo-moto proposals for innovation to SHQ/iDEX-DIO. These proposals will be examined by SHQ/iDEX-DIO in a time-bound manner, preferably within two months.

69. **Development of Prototype**. A Project Facilitation Team (PFT) or nodal officer will be nominated by the SHQs for each iDEX case. PFT/Nodal officer will act as the primary interface between the SHQ and the industry during the design and development stage. After the prototype has been developed, the PFT would carry out UTRR of the prototype before offering it for User Trials.

70. Prototypes that have been successfully developed through the iDEX framework will be taken up by the SHQs for grant of AoN after finalisation of SQRs as per procedure outlined in Chapter II of DAP.The SoC will be prepared by the SHQs, with the involvement of important stakeholders such as HQ IDS, DRDO, DDP, Advisor (Cost) and MoD (Fin)/ IFA.

71. **Solicitation of Commercial Offers**. A commercial Request for Proposal (RFP) for 'Buy (Indian-IDDM) phase will be issued to all DAs (iDEX Winners who have successfully developed the prototypes) for submission of their commercial offer prior to commencement of User trials.

72. **FET**. FET will be carried out as per Chapter II of DAP 2020, in coordination with iDEX. Project, where prototype of only a single firm/individual clears the trials, will be progressed as resultant single vendor.

73. **Follow-on Procedures**. Subsequent procedures of Staff Evaluation, CNC and award of Contract will be same as for 'Buy (Indian- IDDM)' category, from the successful DA/DAs, in accordance with Chapter II of DAP.

74. **Developmental Agencies (DA)**. All reference to the word DA in context of iDEX may be construed as referring to iDEX winners or iDEX fellows for iDEX cases. IPR provisions will remain same as Make-II category.

**Technology Development Fund (TDF) Scheme**.

75. Projects pursued under the category of Technology Development Fund (TDF) Scheme of DRDO will be progressed for acquisition under innovation Category. The details of TDF scheme are given out at website https://tdf.drdo.gov.in. The procurement will be made under the ‘Buy (Indian- IDDM)’ Category. A nodal officer from the Services may be nominated by the SHQs for each requirement under TDF Schemes who will be the member of the Project Monitoring and Mentoring Group (PMMG).

76. Once the prototype(s) have been successfully developed through TDF Scheme, the SHQ would finalise the SQRs and prepare the SoC for grant of AoN in consultation with other stakeholders. In case procurement from more than one DA is envisaged, the same may be included in the SoC with justification. The AoN will be sought based on the cost of the final product under ‘Buy (Indian- IDDM)’ Category.

77. **Solicitation of Commercial Offers**. A commercial Request For Proposal (RFP) for ‘Buy (Indian – IDDM) phase, will be issued to all successful DA(s) for submission of their commercial offer prior to commencement of FET. Cases where prototype has been developed by a single DA, would not be treated as Single Vendor Case.

78. **FET**. FET would be carried out by the SHQ in close consultation with PMMG and Directorate of TDF, DRDO as per Chapter II of DAP.

79. **Follow-on Procedures**. Subsequent procedures of Staff Evaluation, CNC and award of Contract will be same as for 'Buy (Indian- IDDM)' category, from the successful DA/DAs, in accordance with Chapter II of DAP.

80. **IPR of TDF Scheme**. Successful development under this scheme would result in the DAs jointly owning the IPR along with DRDO of the technology. Details are given in the Standard Operating Procedures (SOP) promulgated by DRDO for TDF.

**Indigenous Development by Services through Internal Organisations**.

81. Products developed by Army Base Workshops, Naval Dockyards, Air Force Base Repair Depots and other service organisations for ‘in house’ requirements can be procured by the Services from these agencies under “Buy (Indian-IDDM)” or “Buy (Indian)” category with the approval of SPB. The total cost of proposed quantity of each item required by SHQ under this procurement will be within the delegated powers of the SHQ. The costing of such proposals will be vetted by the IFA with the respective Services. SHQ can carry out user trials for the equipment without issue of RFP. Procurement of the equipment will be done by the services by placing indents.

82. Where the innovation is achieved within the Services, the concerned personnel/organisation may be allowed to file and hold the patent.

**Miscellaneous**.

83. **AoN.** AoN for Innovation cases will be valid for six months. For cases where RFP is not issued within six months from accord of AON, SHQ shall seek revalidation of the AoN with due justification, as per the prescribed procedure.

84. After successful development of Prototype, no changes should be suggested, which require re-designing of the systems/ sub- systems or technology upgrade. Such suggestions would only be considered and implemented in the subsequent/ follow-on models, if required. The user may however recommend minor modification with regard to ease of handling or maintainability.

85. In ‘Innovation’ Categories, even if a single individual or a firm develops the prototype, it will be progressed as Resultant Single Vendor.

86. **Time Overrun**. Approval of extension of timelines for any project under innovation categories may be accorded by CISC/VCOAS/VCNS/DCAS/DG (ICG) based on the recommendations of PFT/nodal agency.

87. **<u>Buyer Nominated Equipment/Buyer Furnished Equipment (BNE/BFE)</u>**. SHQ will have the option to procure or incorporate products that have matured through the aforesaid innovative processes as BNE/BFE in future procurement cases, where applicable. These would not be considered as Single Vendor Cases. However, SHQ should seek for multivendor options in such cases, if feasible, before progressing the case as Single Vendor Case.

**Appendix A to Chapter III**
(Refers to Paragraph 31(m) of Chapter III)

## FLOWCHART: MAKE – I

AIP by Secy DP

Constitution of PFT

Advance Planning and consultations

Feasibility Study

Preliminary Services Qualitative Requirements (PSQRs)

Categorisation and Accord of Acceptance of Necessity (AoN)

Constitution of PFT if not done prior to Accord of AoN

Preparation of PDD by PFT

Issue of Expression of Interest (EoI) and Format for DPR by SHQ for Shortlisting of DAs

Shortlisting of DAs based on Financial gates, Technical gates and Detailed Project Report by Secy DP

Issue of RFP by Acquisition Wing for Solicitation of Limited Commercial Offer for Prototype Development and Solicitation of Commercial offer of Procurement Phase to select DAs

Selection of Development Agencies (DAs) by DPrB

Approval of CFA, Funding and Issue of Project sanction order (SHQ)

Design and Development of Prototype

PSQRs to be converted to SQRs

Revised Commercial Offers Solicited by MoD (Acquisition)

Field Evaluation Trials

Staff Evaluation

Commercial Negotiations by Contract Negotiation Committee CNC

Award of Contract

**Appx B to Chapter III**
(Refers to Paragraph 50(l)
of Chapter III)

**FLOWCHART : MAKE – II & III**

**AIP by Secy DP**

↓

**Constitution of PFT**

↓

**Advance Planning and consultations**

↓

**Feasibility Study**

↓

**Preliminary Services Qualitative Requirements (PSQRs)**

↓

**Categorisation and Accord of Acceptance of Necessity (AoN)**

↓

**Issue of Expression of Interest (EoI)**

↓

**Evaluation of EoI responses**

↓

**Award of Project Sanction Order**

↓

**Design and Development of Prototype**

↓

**Conversion of PSQRs into SQRs**

↓

**Solicitation of Commercial Offer**

↓

**Field Evaluation Trial by SHQ**

↓

**Staff Evaluation**

↓

**Commercial Negotiations by Contract Negotiation Committee**

↓

**Award of Contract**

**Appendix C to Chapter III**
(Refers to Paragraph 26(f), 31(f)
& 36 of Chapter III)

**DELEGATED FINANCIAL POWERS OF CFA FOR 'MAKE I' AND 'INNOVATION' CATEGORIES**
**(Cumulative Cost of Two Prototypes and based on 70% Government Funding)**

| Description | CFA | Financial Limit |
|---|---|---|
| Project Cost for Prototype Development Phase | CISC/VCOAS/VCNS/ DCAS/DGICG | Upto 50cr |
| Project Cost for Prototype Development Phase | Secretary (DP) | 50-250cr |
| Project Cost for Prototype Development Phase | RM | 250-400cr |
| Project Cost for Prototype Development Phase | RM & FM | 400-500cr |
| Project Cost for Prototype Development Phase | CCS | Above 500cr |

**Note: The financial powers are amount required for prototype development for each project inclusive of all DAs**

**Appendix D to Chapter III**
(Refers to Paragraph 31(g) of Chapter III)

## PHASES IN DESIGN AND DEVELOPMENT OF PROTOTYPE FOR MAKE-I SUB-CATEGORY

The Design and Development stage under Make-I projects is expected to undergo the following phases: -

| Phase | | Activities | Remarks |
|---|---|---|---|
| (a) | Project Definition | • Mobilisation of initial start-up resources, including development laboratories | • As specified in the DPR |
| (b) | Preliminary Design | • Establishment of design parameters for configuration, performance in compliance with user requirements | • Tests and studies to be conducted must be specified |
| (c) | Detailed Design | • Detailed design of systems and sub-systems down to all components<br>• Finalisation of specifications of various equipment, systems, sub-systems<br>• Freezing and ratification of PSQRs by SHQs<br>• Firming up of engineering design drawings/documents and process plan | • Acceptable variances in parameters may be indicated as % or range.<br>• Several critical design reviews may be needed to fine-tune the designs.<br>• Concerned SHQ/PFT is to provide platform/equipment/ interface details as approved at the DPR stage. |
| (d) | Fabrication/ Development | • Manufacture of sub-assemblies in limited numbers as agreed to in DPR against total numbers required for subsequent stages. | • Fabrication to be based on final specifications arrived at in Phase III (Detailed Design) |
| (e) | Test and Analysis | • Testing of several components, systems and | • Software is also to be included in tests/analyses |

| | | | |
|---|---|---|---|
| | | sub-systems is to be undertaken concurrent with design | • Design testing through simulation can also be undertaken<br>• Testing may require specialised facilities such as firing ranges for proof firing, etc. Laboratory and other in-house facilities are to be made available to the DA as approved in the DPR.<br>• Existing Government Infrastructure for Trials, Testing and Inspection be made available on Time Sharing or on prescribed charges as defined in the policy on the subject. The procedure may be simplified for ease of business. |
| (f) | Integration | • Integration of systems/sub-systems<br>• Finalisation of interface details and performance and assembly of modules/sub-systems | • System integration testing in accordance with approved test procedures is to be progressed concurrently |
| (g) | Performance Evaluation | • Technical and limited field trials of the prototype<br>• Changes in design may be needed until final proving and meeting of essential SQRs | • DA and PFT are to assess performance against stated SQRs<br>• Subject to time limits approved in DPR. |

**Appendix E to Chapter III**
(Refers to Paragraph 32 of
Chapter III)

## PROJECT DEFINITION DOCUMENT (PDD): AN ILLUSTRATIVE FORMAT

The PDD would be prepared by the PFT in consultation with DAs. It could contain the following: -

(a) Brief description of the project.

(b) PSQRs.

(c) System requirements and functionalities.

(d) Major components of the proposed system.

(e) Maintenance and operational philosophy.

(f) Testing.

(g) Documentation.

(h) Life cycle management.

(j) Feasibility study details.

(k) Milestones.

(l) Phases of implementation.

(m) Technology demonstrators, if any.

(n) BFE required for development/Testing.

(o) Foreclosure Criteria/Risk management.

(p) Safety and security aspects.

(q) Phase wise induction schedule.

(r) Time frames for execution of the project.

**Appendix F to Chapter III**
(Refers to Paragraph 33(a)(ii) of Chapter III)

## EXPRESSION OF INTEREST (EoI): AN ILLUSTRATIVE FORMAT FOR MAKE I PROJECTS

1. General information about the product/equipment/system, number of systems required (for the prototype development phase and Buy (Indian-IDDM) phase), Life span, estimated financial aspects, performance/capabilities sought, security features, IPR aspects, payment aspects with linkage to milestones, grounds on which EoI respondent can be disqualified, grounds for blacklisting by any Indian government agency (of domestic/foreign technology partner), and product audit by nominated agencies of government etc.

2. Technical requirements of the project with proposed specifications and expected tolerance limits of various parameters.

3. Guidelines in vogue for formation of Association of Persons (AoP) i.e. consortium.

4. **Financial Eligibility Criteria(Suggested)**.

(a) The entity needs to be registered for minimum five years; three years in the case of MSMEs.

(b) The entity shall have long-term issuer credit rating equivalent to Credit Rating Information Services of India Limited (CRISIL) or ICRA Limited **“BBB” accorded** by Reserve Bank of India (RBI) / Securities Exchange Board of India (SEBI) approved agencies. In case of MSMEs, the minimum rating should be ‘SME-4’. Rating report should not be older than 12 (twelve) months and be the latest available rating.

(c) The entity needs to be profitable for at least three out of the last five years; in case of MSME, it needs to be profitable (Profit after tax (PAT)) for at least one out of the last three years.

(d) **Net Worth**. Net worth of entities, ending 31st March of the previous financial year, should **not be less than 5% of the estimated cost of the** project. Capital Acquisition cases where estimated cost is ₹ 150 Crores and below, Net worth of entities should not be **negative**.

5. In case the Net Worth criteria, and/or credit rating is considered high or low for the purposes of adequate EoI responses and or due to prevailing economic environment, the Feasibility Study/SHQ will work out specific financial gates for consideration of the AoN according authority at the time of seeking AoN. Specific notes for planning are as under: -

(a) *In case of wholly owned subsidiary/subsidiary of a company, the strengths of its holding company may be taken into account for the criteria referred at* ***Paragraph 4,*** *if the holding company provides the 'Holding Company Guarantee' as per the format prescribed at Annexure-III of Appendix F.*

(b) *Guidelines for Putting on Hold, Suspension, Debarment and any other penal action on the Entities dealing with Ministry of Defence, as promulgated by Government from time to time, will be applicable on procurement process and bidders.*

6. All aforesaid data relating to eligibility of companies for issue of an EoI shall need to be demonstrated at the close of the financial year preceding issue of EOI, except the requirement for profitable financial record as specified under Paragraph 4 (c) above, which needs to show profits in at least three years of the last five years preceding the issue of EOI.

7. **Technical Eligibility Criteria(Suggested)**.

(a) **Integration Capability**. For large and complex projects (particularly under Make-I category), only companies with demonstrated technical capability of integration of "System of Systems", which refers to any system with multiple technologies of major systems in aerospace (including aircraft, helicopter, remotely piloted aircraft, spacecraft), ships and crafts, submarine, weapon systems (including command & control systems), etc, may be considered. To establish the same, the company should have:

(i) Successfully commissioned at least one project with a capital expenditure of not less than ₹ 500 Crores (Rupees Five Hundred Crores only) on each such plant/project.

OR

(ii) Successfully signed at least one contract in the product or related domain (eg. Aerospace/ shipbuilding/ armoured fighting vehicles/weapon systems / command & control systems, as the case may be) of value not less than ₹ 300 Crores (Rupees Three Hundred Crores), during the last seven (07) financial years.

(b) **Domain-Specific Criteria**. The minimum acceptable technical criteria in the product/solution domain are to be decided by SHQ in consultation with DDP. These could include, inter alia, the following:-

(i) Special static facilities necessary for development, fabrication or assembly of the product.

(ii) Design and manufacturing capabilities such as design simulators/software, tempering and machining, specialised welding technology, high-end control systems, etc.

(c) **MSME**. The Technical Gates for MSMEs will be decided on case to case basis by SHQ, contingent upon complexity of the project.

8. **Detailed Project Report (DPR)**. The DPR will be submitted by all vendors in response to EOI along with EOI. Format for submission of DPRs is attached as Appendix G.

9. Illustrative Details to be sought from EoI respondents: -

(a) Outline features of the proposal.

(b) Estimated Capital expenditure.

(c) Roles, responsibilities and expertise details of consortium members, if any.

(d) Role of foreign technology provider, if any.

(e) Recommended stages/phases of development with priorities & time schedules.

(f) Requirement of specialised testing assistance where facilities are available only with government entities, DPSUs and DRDO/DGQA/DGAQA/DGNAI.

(g) Cost-sharing Aspects.

(h) Undertaking to furnish the cost of the final product during evaluation stage itself, once the final configuration of the end product under development is frozen.

10. Documents to be submitted by EoI respondents: -

(a) Information Proforma (all partners/collaborators) as per Annexure-I to Appendix-F.

(b) Documents as per Annexure-II to Appendix-F.

(c) Copy of MoUs with consortium partners, if applicable.

**Annexure I to Appendix F**
(Refers to Paragraph 10(a) of Appendix F & 33(a)(v)) of Chapter III)

**INFORMATION PROFORMA: AN ILLUSTRATIVE LIST OF ELEMENTS**

1. **General Information**.

(a) Name of the Company.

(b) Address of the Registered Office.

(c) Category of Industry (Large Scale/Medium Scale/Small Scale).

(d) Nature of Company (Public Limited/Private Limited).

(e) CIN

(f) Shareholding pattern.

2. **Business Information**.

(a) Type/Description of current products.

(b) Products already supplied to Services/PSUs/DRDO/OFB/any other defence organisations

(c) Details of ISO, Quality Assurance and other Certification.

3. **Technical Information**.

(a) Availability of area for factory (including covered, uncovered and bonded space).

(b) Details of Developmental Facilities:-

(i) Manpower.

(ii) Inspection and Quality Control.

(iii) Laboratory and Drawing Office Facility.

(c) Integration capabilities for system-of-systems projects.

(d) Capability criteria specific to the product/solution/technology being offered. (To be decided by SHQ in consultation with Acquisition Wing).

4. **Financial Information**.

(a) Revenue and Net Profit during the last three Financial Years.

(b) Present Net Worth of the Company.

(c) Credit Ratings from RBI/SEBI approved agencies.

**Annexure II to Appendix F**
(Refers to Paragraph 10(b) of Appendix F)

**DOCUMENTS/INFORMATION TO BE SUBMITTED AS PART OF RESPONSES TO EoI : AN ILLUSTRATIVE LIST**

1. Latest Certificate of Incorporation by the Registrar of Companies (RoC).

2. Latest Memorandum of Association and Articles of Association of the Company.

3. Auditor certified data of company for:-

    (a) Share holding pattern including details of FDI.

    (b) Net worth.

    (c) Annual Consolidated Turnover.

4. Credit Rating Certificate.

5. Copy of Association of Persons (AoP) Agreement.

6. Certificate for Technical Eligibility criteria.

7. Any other undertaking/affidavit as required by the MoD.

**Note**. The company/organisation is to certify the correctness of reply (ies) to this EoI on an undertaking signed by the authorised signatory.

**Annexure III to Appendix F**
(Refers to paragraph 5(a) of
Appendix F)

**Parent Company Guarantee format**

This GUARANTEE ("Guarantee") is issued on the _____ day of ______, ___ by _______________________, a Company organised and existing under the laws of ___________ having its Registered Office at ____________________________ (hereinafter referred to as "Guarantor" and/or "__________________"), at the request and/or behest of ________________________, a Company organised and existing under the laws of _________________ having its Registered Office at ____________________ (hereinafter referred to as Wholly Owned Subsidiary/Subsidiary), in favour of "Ministry of Defence, Government of India" (hereinafter referred to as "Beneficiary" or "MoD").

**WHEREAS**
The Beneficiary floated a RFI/EoI dated __________ inviting offers from Vendors for ________________(purpose). The Vendor have submitted their quotation dated _________ and advised the Beneficiary that the Vendor is the subsidiary of the Guarantor. The Guarantor is ready and willing to give a Parent Company Guarantee (PCG) inter alia for the performance of their Subsidiary to the terms and conditions of the RFI/EoI and on failure to assume the said obligations. We, the Guarantor are hereby recording the terms and conditions governing our obligations under this Guarantee with the intent of being legally bound by the same and hereby agree, covenant and bind ourselves as follows: -

1. The Guarantor hereby irrevocably and unconditionally guarantees to MoD that its wholly owned Subsidiary/Subsidiary will perform its obligations under the terms and conditions of the EoI/RFI, if the contract is being awarded to them in future for ___________ and agrees to provide further comfort letters/guarantees, if so desired by beneficiary, in terms of the RFI/EoI.

2. The Guarantor unconditionally and irrevocably guarantees to the Beneficiary that it will make available or cause to be made available to the Wholly Owned Subsidiary/Subsidiary all financial, technical and other resources required to ensure that the Wholly Owned Subsidiary/Subsidiary can carry out its obligations as per the RFI/EoI terms and conditions and that the Wholly Owned Subsidiary/Subsidiary at all times fully and effectively discharge its obligations under the terms and conditions of RFI/EoI, including by discharging the obligations within the time and cost so stipulated.

3. The Guarantor hereby agrees that if the Wholly Owned Subsidiary/Subsidiary shall in any respect commit any breach or fails to fulfil any of the terms of the Contract/EoI/RFI or complete it in all respects or if there is a failure to make any supplies or if any material, equipment or machinery under the contract so supplied is not of the required specifications or does not perform as envisaged under the contract, then the Guarantor will forthwith perform

the same and fulfil all the obligations required under tender terms & conditions on behalf of their Wholly Owned Subsidiary/Subsidiary, without any extra cost and time implications.

4. The Guarantor further undertakes to indemnify all losses, damages, expenses, claims, costs and proceedings which may be suffered or incurred by Beneficiary due to the failure or breach on the part of its Wholly Owned Subsidiary/Subsidiary.

5. The Guarantor assures and undertakes that during the term of the contract or of any guarantee for performance as per the contract, the Wholly Owned Subsidiary/Subsidiary shall continue to be the *(name of the company)----/Subsidiary/a wholly owned subsidiary of the Guarantor and the Guarantor's liability shall not be affected due to any incapacity or lack of power or legal personality or change in the status of the Wholly Owned Subsidiary/Subsidiary or the Guarantor.

6. The Guarantor's liabilities under this Guarantee shall not exceed the liability of the Wholly Owned Subsidiary/Subsidiary under the tender terms and conditions but this shall in any manner not affect the Guarantor's own responsibilities and liabilities under the Guarantee.

7. The obligation of the Guarantor shall take effect from the date of this Guarantee and shall remain in full force until all the obligations of the Wholly Owned Subsidiary/Subsidiary have been fully performed and discharged and/or all sums of money payable to Beneficiary have been fully paid under the contract being entered into by Beneficiary with the Wholly Owned Subsidiary/Subsidiary. The Guarantor further undertakes to perform forthwith without insisting on any proof of breach of Contract by its Wholly Owned Subsidiary/Subsidiary and purely relying on Beneficiary‟ s written demand.

8. The liabilities of the Guarantor shall not be discharged, diminished or otherwise affected by:-

(a) Any change in the Articles of Association or Bye-Laws or constitution of the Wholly Owned Subsidiary/Subsidiary or the Guarantor.

(b) Any time, indulgence, waiver or consent given to Wholly Owned Subsidiary/Subsidiary by the Beneficiary.

(c) Any amendment to the Contract or any security or other guarantee or indemnity to which Wholly Owned Subsidiary/Subsidiary has agreed.

(d) The dissolution, amalgamation, reconstruction or reorganisation of Wholly Owned Subsidiary/Subsidiary or Guarantor.

9. **<u>Notice</u>**. Any notice, demand, declaration or other communication to be given by the Beneficiary or the Guarantor to the other shall be in writing, in English language and delivered in person or by Courier Services or by Facsimile or by E-Mail to the address given below:-

| | |
|---|---|
| **For Guarantor** | |
| **Attention of** | |
| **Mailing Address** | |
| **Email Address** | |
| **Fax No.** | |
| **For Beneficiary** | |
| **Attention of** | |
| **Mailing Address** | |
| **Email Address** | |
| **Fax No.** | |

10. **Governing Law And Jurisdiction.** This Guarantee shall be exclusively governed by and construed in accordance with the laws of India without giving effect to the principles of conflict of laws therein. No party shall take a plea that any forum is inconvenient. It may been forced in terms of the Indian laws.

11. **Dispute Resolution.** Any dispute arising out of or in relation to this Guarantee shall be resolved by arbitration of a sole arbitrator to be appointed as per the rules set out in the RFI/EoI.

12. This Guarantee may be executed in one or more counterparts, all of which shall be read and construed as one document and any fax copy or scanned copy or print of a scanned copy of a signed Guarantee shall be deemed to be an original signature.

13. No modification, alteration or amendment of this Guarantee or any of its terms or provisions shall be valid or legally binding unless the Beneficiary consents to the same in writing.

14. No failure to take any action with respect to a breach of this Guarantee or a default by any other party shall constitute a waiver of the Beneficiary’s right to enforce any provision of this Guarantee or to take action with respect to such breach or default or any subsequent breach or default.

15. Waiver of any breach or failure to comply with any provisions of this Guarantee shall not be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other breach of or failure to comply with any other provision of this Guarantee, unless any such waiver has been consented to by the concerned party in writing.

16. This document has been executed by a duly authorised signatory on behalf of the Guarantor having the requisite power to do so.

**IN WITNESS WHEREOF** the Guarantor has duly executed this Guarantee as at the date first
above written.

**For and on behalf of Guarantor,**

**____________________________**

**Witness**

**(Signature) Signature :**

**Name :**

**Designation :**

**Date :**

********

**Appendix G to Chapter III**
(Refers to Paragraph 33(b)(i) of Chapter III and Paragraph 8 of Appendix F)

## **DETAILED PROJECT REPORT (DPR): AN ILLUSTRATIVE LIST OF DPR ELEMENTS**

1. The PFT would order preparation of Detailed Project Report and provide following inputs to the nominated DA(s):-

(a) Provisional Service Qualitative Requirements (PSQRs).

(b) Time frames and critical activities.

(c) Milestones.

(d) Evaluation process and acceptance criteria

(e) List of trials/items/facilities/consumables that will be provided free of cost, and the ‘number of times’ such free trials will be allowed.

(f) Commercial Negotiation aspects.

(g) Project Monitoring Methodology.

2. The DPR would stipulate the scope of the work in terms of the following: -

(a) PSQRs and compliance for eligibility.

(b) Envelope along with weightages for enhancing SQRs.

(c) Overview of the project.

(d) Scope of the project.

(e) Infrastructure requirements.

(f) Operational requirements.

(g) Integration requirements.

(h) Estimated Bill of Material/Phase-Wise Cost Break-up and critical phases susceptible to cost over-runs.

(j) Technical specifications of equipment to be used for the project.

(k) Sources of Raw Materials for the project: -

(i) Imported/Indigenous.

(ii) Brief Description.

(iii) Estimated CIF Value.

(iv) Percentage FE Content in Final Product.

(l) Source and quantum of sanctioned, installed and back-up power supply.

(m) Details of important facilities that will be employed in the project, including but not limited to: -

(i) Production (including Heat Treatment, jigs and fixtures).

(ii) CAD, CAM, robotics and other advanced technology tools.

(iii) Environmental Test Facilities.

(iv) Tool Room, Metrology and Test Equipment and Facilities.

(v) Types of Instruments, Make and Model, Date of Purchase,

(n) Indigenisation Criteria.

(i) Indigenous design capability.

(ii) Indigenous manufacturing capability.

(iii) Indigenous content in percentage of total cost.

(iv) %age of proprietary items.

(v) Components to be manufactured indigenously.

(vi) Components designed indigenously but likely to be manufactured abroad.

(vii) Components likely to be procured from abroad along with country of origin.

(viii) Methodology to build up on technologies and experience from current project for new deliverables/upgrades.

(o) Estimated timelines for various phases of prototype development, total timeframe for implementation of the project and critical phases most susceptible to slippages.

(p) Critical activities and milestones.

(q) Estimated expenditure for various phases of prototype development inclusive of all taxes & duties to be incurred by DA, estimated total capital expenditure.

(r) Detailed risk analysis and risk management plan.

(s) Funding for development of prototype and carrying out research activities.

(t) Role of technology provider, if any.

(u) Upfront disclosure of details of foreign collaboration, if any including major assemblies and sub-assemblies to be defined to include Armament, Power Pack, Transmission System, Sighting system etc. as Priority I and II.

(v) Requirement and employment plan of proof firing and other specialised testing assistance where facilities are available only with DRDO/DGQA/DGAQA/DGNAI/SHQ.

(w) Utilisation of existing government infrastructure for leasing, maintenance and manufacture of components, assemblies and sub assemblies.

(x) Upfront disclosure of details of foreign collaboration, if any.

(y) Requirement and employment plan of proof firing and other specialised testing assistance where facilities are available only with DRDO/DGQA/DGAQA/DGNAI.

(z) Evaluation process and acceptance criteria.

(aa) Sharing of development cost.

(ab) Premium for insurance cover against collateral/third party damages.

(ac) Estimates numbers for prototype development and for Mark-I procurement under "Buy (Indian-IDDM)" phase.

(ad) Requirement of minimum order quantity to be placed on the successful developer.

(ae) Methodology for life-cycle support, mid-life upgrades or life extensions, if applicable.

(af) Any other detail as required such as Project Management Plan, QA Plan, detailed project validation of simulators if used, configuration management plan (CMP), Verification and Validation Plan, etc.

**Appendix H to Chapter III**
(Refers to Paragraph 38(a) of Chapter III)

## GUIDELINES FOR APPROVAL AND ACCEPTANCE OF COST-SHARING ARRANGEMENTS

**Procedures**

1. The cost estimates shall be prepared by the finally shortlisted DA(s) and shall be submitted to the PFT within the required date and time as part of the DPR.

2. The DA(s) shall prepare the cost estimates in accordance with the general principles outlined in this Appendix and shall record a certificate to that effect as part of the documentation submitted.

3. These cost estimates shall be examined by the PFT as part of the EOI. The PFT shall hold consultations with the DA as required and shall submit its final recommendations to the DDP for approval. Depending upon individual requirements of DA(s) in terms of development of technology and indigenous content, the PFT could consider and recommend a cost variation up to 15% amongst the EOI submitted by the two DA(s), as compared to the lower of the two.

4. The approved cost estimates shall then be communicated by the PFT to the DA(s) as part of the Project Sanction Order (development contract); and shall form the basis for design and development of prototype and claiming of costs by the DA(s).

5. Claims for reimbursement of MoD share shall be made by the DA(s) upon completion of different phases at Paragraph 30(g) and Appendix D to Chapter-III, as finalised in the EOI. The cost to be reimbursed shall be restricted to actual cost.

6. Indian Accounting Standard 7 (AS7) shall be followed for accounting procedure.

7. The following criteria shall be used by the Ministry of Defence for determining whether, what and up to what extent the costs incurred by DA shall be paid out of public funds:-

(a) Costs Allowability;

(b) Cost Allocability;

(c) Cost Reasonableness; and

(d) Terms of the Contract.

8. The DA shall not charge any unallowable costs; and shall segregate the same from any proposal, billing, indirect cost pool or claim submitted to the Ministry. The following costs are specifically considered unallowable for the purpose of these guidelines:-

(a) Bad Debts;

(b) Interest;

(c) Land;

(d) Permanent Building;

(e) Entertainment;

(f) Contributions or donations;

(g) Fines, legal expenses and penalties;

(h) Advocacy and business development;

(j) Losses on other contracts;

(k) Alcoholic beverages; and

(l) Business organisation costs such as costs of incorporation, re-organisation and merger.

9. A cost shall not be presumed to be allowable merely because the DA actually incurred the costs, unless meets the test of relevancy, financial prudence, reasonability and relationship.

10. **Allocability of the Cost**. A cost is allocable if it is assignable or chargeable to one or more cost objectives on the basis of relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a Government contract if it: (a) is incurred specifically for the contract; (b) benefits both the contract and other work and can be distributed to them in reasonable proportion to the benefits received; and (c) is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown. In any case, indirect costs shall not exceed 10% of the total approved cost for prototype development.

11. A cost is reasonable if it would have been incurred by prudent entity in the conduct of competitive business. To be reasonable, the cost must be: (i) generally recognised as an ordinary or necessary cost of business; (ii) follow sound business practices; (iii) comply with

Central, State, local laws; and (iv) be consistent with the Development Agency's established business practices. The determination of reasonableness of a particular cost shall depend on all relevant facts and circumstances concerning the costs; and the decision of the Ministry of Defence in this regard shall be final. If there is any change in the Indian Accounting Standard 7, the changes will be suitably incorporated in the DAP by Acquisition Wing, in consultation with MoD (Fin).

12. The Development Agency shall submit a break-up of cost estimates for each stage outlined at Appendix D to Chapter III. These stages shall also form specific potential exit points for the Ministry of Defence without any further liability, if the Ministry of Defence is of the considered opinion that requisite and timely progress has not been made by the DA for successful completion of that phase.

13. The Ministry of Defence shall not, under any circumstances, entertain or consider any revisions, submissions or arguments for inclusion of un-allowable costs as specified in these Guidelines.

**Appendix J to Chapter III**
(Refers to Paragraph 47 of Chapter III)

## INTELLECTUAL PROPERTY RIGHTS OF GOVERNMENT IN "MAKE"- I PROJECTS

### Guiding Principles

1. The Government shall retain only a license in the Intellectual Property[1] being generated under contract; and the contractor retains title or ownership and all other rights in intellectual property that are not granted to the Government, subject to conditions prescribed herein.

2. During the development of prototype, if any technology/product is developed, which the Government considers to be sensitive or classified and needs to be restricted for use in other purposes or for export, the Government through PFT or any other expert or body may identify such technology/product. The provisions for IPRs in respect of such technology/product will be separately negotiated in compliance with the laws and regulations on the subject.

3. All technology licensing is divided up between two mutually exclusive categories of deliverables:

(a) Technical Data (TD)[2]; and

(b) Computer Software (CS)[3]. The Government shall also have certain rights to subject inventions and patents generated under the "Make" contract.

4. The EoI shall contain details of:-

---

[1] The term 'Intellectual property' shall refer to all categories of intellectual property as provided in TRIPS Agreement.

[2] "Technical data" means recoded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

[3] (a)"Computer software" means computer programs, source code, source code listings, object code listings, design details algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated or recompiled. Computer software does not include computer data bases or computer software documentation. (b) "Computer program" means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations. (c) "Computer software documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software. (d) "Computer data base" means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

(a) The delivery requirements, storage formats and storage medium; and

(b) The associated data rights, in all technologies required to be developed or delivered under the “Make” contract. Officials connected with award of “Make” projects shall ensure that all such delivery requirements are clearly stated in the EoI and the “Make” contract signed, if any, including delivery and form in which source code is required as a contract deliverable.

5. The Government’s standard license rights in:-

(a) Subject inventions and associated data; and

(b) All other data generated under the “Make” contract, including technical data and computer software whether associated with such subject inventions or otherwise, shall be “Government-Purpose Rights” (GPR). In respect of subject inventions, the Government shall hold a non-exclusive, non-transferable, irrevocable, paid up (royalty-free) license to practise, or have practiced for on its behalf, the subject invention throughout the world.

6. These guiding principles shall apply at both the prime and subcontract levels; i.e., the prime DA(s) shall incorporate the rights of the Government as prescribed in this Annexure in all their subsequent sub-contracts and agreements insofar as technology development under “Make” projects is concerned.

**Government Rights**

7. The Government shall have “Government-Purpose Rights” and “Unlimited Rights” as explained in succeeding paragraphs.

8. For all subject inventions[4]under the “Make” Contract, including technical data and computer software associated with such subject inventions, the Government shall hold “Government-Purpose Rights” (GPRs), in that it shall hold a non-exclusive, non-transferable, irrevocable, paid up (royalty-free) license to practice, or have practiced for on its behalf, the subject invention throughout the world. These GPRs shall automatically convert to “Unlimited Rights” as defined under this section upon the expiry of ten years.

9. For the purpose of all technical data and computer software, whether related to subject inventions or otherwise, GPRs shall imply the right to use such technical data and computer software within the Government without restriction and the right to authorise any other entity

[4]“Subject Invention” implies any invention of the contractor conceived or first actually reduced to practice in the performance of work under a Government Contract. “Invention” implies any invention or discovery that is or may be patentable or otherwise protectable under the Patent Laws in force in India.

for any government purpose including re-procurement. More specifically, "Government-Purpose Rights" includes the rights to:-

(a) Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and

(b) Release or disclose technical data outside the Government and authorise persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for Government purposes.

(c) Form, Fit and Function data and Manuals or instructional and training materials for installation, operation, or routine maintenance and repair;

(d) Computer software documentation required to be delivered under the "Make" contract;

(e) Corrections or changes to computer software or computer software documentation furnished to the contractor by the Government;

(f) Computer software or computer software documentation that is otherwise publicly available or has been released or disclosed by the contractor or subcontractor without restrictions on further use, release or disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

10. For the purposes of these guidelines, "Government Purpose" means an activity in which the Government of India is a party, including cooperative agreements with international or multi-national defence organisations, or sales or transfers by the Government of India to foreign Government or international organisations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorise others to do so. 11. In addition to standard GPRs, Government rights in computer software to be delivered under contract shall also include the right to:-

(a) Use of a computer program with government computer(s);

(b) Transfer to another Government computer;

(c) Make copies of computer software for safekeeping; backup or modification purposes;

(d) Modify computer software;

(e) Disclose to service contractors;

(f) Permit service contractors to use computer software to diagnose/correct deficiencies, or to modify to respond to urgent or tactical situations; and

(g) Disclose to contractors or any other third-parties for proposes of emergency repair and overhaul.

**March-In Rights**

11. The Government shall have "March-In" rights for all items covered under its "Government-Purpose Rights". "March-In" Rights shall include the right to work the patent, either by itself, or by another entity on behalf of the Government, in case the contractor fails to work the patent on its own within a specified and reasonable period of time.

12. Under its march-in rights, the Government can require the contractor to grant, or may itself grant license for, inter alia, the following reasons: -

(a) The contractor fails to work the patent towards practical application within a reasonable time; or

(b) Where health and safety requirements so require the Government to act in public interest; or

(c) For National Security Reasons; or

(d) To meet requirements for public use not reasonably satisfied by the contractor; or

(e) For failure of the contractor to substantially manufacture the products embodying the subject invention in India; or

(f) For failure of the contractor to comply with any of the requirements laid down under these guidelines.

**Miscellaneous**.

13. The contractor is required to have a timely and efficient disclosure system in place for reporting of intellectual property generation under the "Make" contract to the Ministry of Defence. Failure to disclose in timely manner, or failure on part of the contractor to invoke his/her default right of ownership, shall imply that all IPRs shall ab-initio vest in the Government of India. The contractor may elect to retain title of any invention made in the performance of work under a contract. If the contractor does not elect to retain title, the title shall ab-initio vest in the Government as stared above and the contractor shall only be entitled

to a license on such terms and conditions that the Government may deem it fit. Such license to the contractor shall usually be (a) revocable, non-exclusive and royalty-free; (b) extend to its domestic subsidiaries and affiliates; and (c) include the right to sublicense; but (d) shall not be transferable without prior approval of the Government.

14. The contractor shall also be required to submit periodic reports about commercialization and manufacturing activities undertaken for products embodying the subject invention under “Make” contracts.

15. The Government’s IPRs shall flow down from the prime contractor to all sub-contractors at all tiers; that is, every sub-contractor will have the same obligations vis-à-vis the Government as applicable to the prime contractor under the main procurement contract. To this end, the sub-contractors shall have limited contractual privity with the Government solely for the purposes of their IPR obligations to the Government.

16. The ownership of any rights by the contractor does not include an absolute right to transfer of any software, product or documentation; and such transfer, including export thereof, shall continue to be governed by and be subject to the Export Policy, Export Guidelines and all applicable laws, rules, regulations, orders and instructions of the Government of India. All such transfers and exports shall require prior and explicit approval of the Ministry of Defence.

17. Where the DA is not a consortium, ownership rights in intellectual property being generated under the “Make” contract shall vest with the Government upon dissolution of such DA. Where the DA is a consortium, the ownership rights in the IP generated under the “Make” contract, upon dissolution of the consortium, shall vest amongst the partners as per their agreement on the subject contained in the joint partnership agreement of the consortium, without government rights as licensee being adversely affected in any manner.

**Appendix K to Chapter III**
(Refers to Paragraph 49 of Chapter III)

**TENTATIVE TIMELINES FOR MAKE – I**

| Ser No | MAKE Phases | Timeline in Weeks |
|---|---|---|
| **Phase I** | | |
| 1. | Approval of proposals as potential Make-I projects by collegiate to be headed by Secy DP & uploading on MoD/DDP website | To |
| 2. | Completion of feasibility study | 16 |
| 3. | Preparation of PSQRs | 4 |
| 4. | Categorisation and Accord of AoN | 6 |
| 5. | Formation of PFT and shortlisting of potential EOI recipients (parallel activities) | 4 |
| 6. | Issue of EOI | 8 |
| 7. | EOI response submission including DPR & Pre EOI meeting | 16 |
| 8. | EOI response evaluation and Shortlising of Development Agencies (DAs) | 8 |
| 9. | Issue of RFP for Limited Commercial Offer for Prototype Costing and Commercial Offer for Procurement Phase | 8 |
| 10. | Receipt of Commercial Offers | 10 |
| 11. | Evaluation of Commercial offer and Selection of DAs | 8 |
| 12. | CFA Approval | 6 |
| 13. | Project Sanction Order | 4 |
| 14. | **Total Timeline for Phase I** | 98 |
| 15 | **Phase II** | |
| 16. | Prototype Development & Evaluation (Refer Appendix D) | As per DPR |
| 17 | PSQRs to be converted to SQRs | 4 |
| 18. | Solicitation of Revised Commercial Offers | 4 |
| 19. | **Phase III** – FET till Contract | As per chapter II |
| | **Total** | **106+ Phase II + Phase III** |

**Appendix L to Chapter III**
(Refers to Paragraph 60 of Chapter III)

## TENTATIVE TIME LINES FOR MAKE-II AND MAKE III PROJECTS

| Ser. No | Activity | Time in weeks |
|---|---|---|
| | **Phase I** | |
| 1. | Approval of proposals as **POTENTIAL** 'Make-II' projects by Collegiate to be headed by Secretary (DP) and uploading on MoD/DDP website | To |
| 2. | Completion of Feasibility study | 12 |
| 3. | Preparation of PSQRs | 4 |
| 4. | Categorisation and Accord of AoN | 6 |
| 5. | Formation of PFT and Shortlisting of potential EOI recipients (parallel activities) | 4 |
| 6. | Issue of Eol | 8 |
| 7. | Eol Response submission | 8 |
| 8. | Eol response evaluation | 6 |
| 9. | Issue of Project Sanction Order | 2 |
| 10 | Total time line for Phase I | 50 |
| 11 | **Phase II** | |
| 12. | Prototype development and Evaluations | 30-48 |
| 13. | Conversion of PSQRs to SQRs/ | 4 |
| 14 | Solicitation of Commercial offer | 4 |
| 15. | **Phase III** - FET till Contract | As per chapter II |
| 16 | **Total** | **88-106 weeks + Phase III** |