

# DRAFT DPP 2020: POST-CONTRACT MANAGEMENT

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A new chapter on Post-Contract Management (PCM) has been included in the draft Defence Procurement Procedure (DPP) 2020.<sup>1</sup> While it is a good idea to have such a chapter in the DPP, the title as well as the contents of the chapter are a bit perplexing.

First, the entire gamut of activities connected with a contract can be divided into three phases. The first phase comprises the activities that precede the signing/award of a contract. Almost the entire DPP is devoted to this stage, right from germination of a requirement to the conclusion of the contract.

The second phase covers the actual implementation/execution of the contract. During this stage, whatever had transpired in the run-up to the signing of the contract matters little as the relationship between the buyer and the seller is governed by the express terms of the contract. This is the contract management stage, which lasts until the delivery of goods and services are completed.

The third and the last phase is what should be called the post-contract management phase in which residual matters, which survive successful completion/execution of the contract or its termination, are to be dealt with. Such matters would typically include settlement of pending claims, release of the final payment, warranty, etc.

It appears that the chapter on PCM is intended to cover the second phase, in which case the word 'post' could be deleted from its title. However, with or without this change in the title, the chapter would be incomplete without the inclusion of a distinct section covering the third phase, which seems to be missing from the draft chapter.

Second, the chapter is replete with provisions, selectively culled out from the first two chapters of the DPP, and the templates of the Statement of Case (SoC), Request for Proposal (RfP) and the Standard Contract Document (SCD). The contents of this chapter relating to the effective date of the contract, documents to be submitted for claiming payment, liquidated damages, warranty, arbitration, repeat order and option clauses, exchange rate variation, et al., fall in this category.

To illustrate further, a note below the section that deals with the documentation required for claiming payment states, "Depending upon the peculiarities of the procurement being undertaken, documents may be selected from the list given above and specified in the RFP and supply order/contract".<sup>2</sup> Certainly, this is of no relevance during the contract management stage.

Besides being unnecessary, the inclusion of generic contract clauses could be confusing as the contract is supposed to be a complete document in itself and the contractual relationship between the buyer and the seller has to be regulated exclusively as per the terms and conditions specified therein. The contract is a 'given' for those assigned the responsibility of managing it, and what matters at this stage is the written word of the contract.

This chapter must, therefore, begin with an unambiguous direction to the contract managers that they need to familiarise themselves with the terms of the contract and manage it only in the light of those terms.

Third, it is not clear whom this chapter is meant for. Though there is a passing reference to the 'Contract Operating Officer' (COO) somewhere in the middle of the chapter, the concept requires clearer articulation.

Ideally, a COO or a Contract Manager (CM) should be designated for every contract, along with one or two deputies (depending on the complexity of the contract) and their particulars mentioned in the contract, and any changes therein should be made by way of an amendment to the contract. This will make it easier to manage the contract and provide a single point of contact to the vendors.

Fourth, the function and responsibilities of the COOs/CMs need to be clearly defined. The chapter should specify the action to be taken by them at every stage during the implementation/execution of the contract until the deliveries are completed. It will be helpful if an indicative stage-wise checklist is included in the chapter.[3](#)

Of course, the COOs/CMs will have to customise the generic checklist, if provided in the DPP, by juxtaposing the functions/responsibilities mentioned in the checklist with the express provisions of a given contract. In any case, even if there is no generic checklist to go by, they will have to draw up a contract-specific checklist. It is this checklist which should then form the basis of managing the contract.

Fifth, the COOs/CMs cannot be made responsible for every action associated with the management of a contract. Payment, for example, is a complex function which involves several agencies. This is true of many other contractual provisions, such as organising pre-despatch/joint receipt inspections, operation of the price variation clause, raising of quality/quantity claims, imposition of liquidated damages, etc.

The extent of responsibility of the COOs/CMs in such situations needs to be carefully defined. Ideally, it should be limited to monitoring the progression of such issues through the bureaucratic maze and raising timely alerts to the relevant agencies or specified higher authorities about inexplicable delays and impending breach of any contractual term. The division of responsibility between them and the user and other directorates as well as the acquisition wing, etc., should be defined.

Sixth, the chapter seems to selectively cover the capital as well as the revenue procurement contracts. Considering that revenue procurements are governed by the Defence Procurement Manual (DPM), which is also under revision, and keeping in view the difference between the revenue and capital procurement contracts, mixing up of the two would not be desirable. This also conflicts with the scope of the DPP defined in Chapter 1 of the draft DPP, according to which the provisions of this document are applicable primarily to capital acquisitions.

The confusion may arise from the fact that some provisions like the one related to change in the name of the vendor figures in this chapter, but it is yet to be included in the DPM. Similarly, there is a reference to the chapter on design and development in the paragraph dealing with indigenous development cases, but there is no such chapter in the DPP, while there is a chapter on design, development and fabrication contracts in the DPM.

Seventh, the COOs/CMs need not remain associated with a contract in the third phase, once the delivery is completed, or after a contract is terminated. The workload related to the management of a contract during this phase would be comparatively lighter, making it possible to club several contracts under the management of a single team of officers. This responsibility could be taken over by a centralised authority in the service headquarters/Ministry of Defence, whose particulars should also be included in the contract.

Redrafting the chapter, expatiating the concept of the COO/CM, and laying down their role and responsibilities vis-à-vis the other agencies involved in the implementation of a contract, preferably by way of a checklist, should go a long way in serving its purpose.

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