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**DETAILS OF THE STEPS IN THE  
DECISION MAKING PROCESS LEADING TO THE AWARD OF  
36 RAFALE FIGHTER AIRCRAFT ORDER**

**Order of Hon'ble Supreme Court dated 10 October 2018**

1. The Hon'ble Supreme Court in its order has mentioned that *"We would like to be apprised by the Government of India of the details of the steps in the decision making process leading to the award of the order for the defence equipment in question i.e. Rafale Jet-Fighters (36 in number)"*.
2. It has also been mentioned in the Hon'ble Supreme Court order that *"we also make it clear that the steps in the decision making process that we would like to be apprised of would not cover the issue of pricing or the question of technical suitability of the equipment for purposes of the requirement of the Indian Air Force"*.
3. The procurement process laid down in the Defence Procurement Procedure (DPP) has been completely followed for the procurement of 36 Rafale aircraft.

**Defence Procurement Procedure (DPP)**

4. Post Kargil war, a new set of defence procurement management structures and systems were set up in the Ministry of Defence in 2001 in pursuance of the recommendations of the Group of Ministers on reforming the National Security System. The procedures for defence procurement were comprehensively reviewed and the Defence Procurement Procedure (DPP) - 2002 was introduced in December 2002 recognizing the uniqueness of Defence Procurement and to ensure expeditious procurement of the approved requirements of the Armed Forces in terms of capabilities sought and timeframe prescribed by optimally utilizing the allocated budgetary resources. The scope of these procedures have been successively revised and enlarged through periodical reviews resulting in the promulgation of DPP-2005, 2006, 2008, 2011, 2013 and 2016 to include aspects of indigenous manufacture, Transfer of Technology (ToT), offsets, etc. Since 2002, more than 1100 contracts valued at



7. The DAC is the highest body headed by Hon'ble Raksha Mantri for Defence Procurement which also includes all Service Chiefs, Defence Secretary, Secretary (Defence Production), Secretary, Defence R&D and Secretary, Defence Finance.
8. Para 71 of DPP-2013 on Inter Government Agreement (IGA) states that *"there may be occasions when procurements would have to be done from friendly foreign countries which may be necessitated due to geo-strategic advantages that are likely to accrue to the country. Such procurements would not classically follow the Standard Procurement Procedure and the Standard Contract Document but would be based on mutually agreed provisions by the Governments of both the countries. Such procurements will be done based on an Inter-Governmental Agreement after clearance from Competent Financial Authority (CFA)".* The CFA for procurement cases valued at more than Rs.1000 crores was the Cabinet Committee on Security (CCS) during the DPP 2013.
9. Further, Para 72 of DPP-2013 mentions that *"In case of large value acquisition, especially that requiring product support over a long period of time, it may be advisable to enter into a separate Inter Government Agreement (if not already covered under an umbrella agreement covering all cases) with the Government of the country from which the equipment is proposed to be procured after the requisite inter-ministerial consultation. Such an Inter Governmental Agreement is expected to safeguard the interests of the Government of India and should also provide for the assistance of the foreign Government in case the contract(s) runs into an unforeseen problem".*
10. The IGA is typically an assurance from a sovereign foreign government for assistance in case of unforeseen problems, e.g. international sanctions, contractor failure, need to integrate more sophisticated weaponry, requirement of product support etc. IGA provides geo-strategic advantage to the country placing it at advantageous position compared to its adversaries. IGA also facilitates and strengthens the foreign industry's commitment for long-term support for the equipment and spares through a matching commitment by a sovereign government.

11. Defence procurement quite often involves sovereign governments because of such issues like transfer of certain technologies and security perceptions of the producing countries. Procurements from USA and Russia are typically done in terms of such umbrella agreements like Foreign Military Sales (FMS)/ Standard Clauses of Contract (SCOC). **Of the total procurement of about Rs.7.45 lakh crore since 2002 under DPP, IGAs of different kind including FMS and SCOC account for nearly 40%.** Special Government to Government arrangements with Russia, USA and other countries have been made to ensure smooth procurement and supply of spares, refits, upgrades, etc. Producer countries and the private firms also insist on special security protocols to protect Intellectual Property Rights (IPRs) and the classified information.

12. To promote indigenisation, a robust offset clause has been included in the Defence Procurement Procedure (DPP) since 2005. The aim is to leverage our capital acquisitions to develop the Indian defence industry, improve defence research and encourage the development of synergistic sectors such as civil aerospace and internal security. The offsets are to ensure that for every dollar that went to a foreign arms supplier, 30-50% get back into India for an investment or procurement. As per DPP-2013, the offset clause would be applicable for all procurement proposals where indicative cost is Rs 300 Crore or more involving outright purchase from foreign / Indian vendors and purchases from foreign vendors followed by licensed production. The offset discharge is to be undertaken through various offset avenues like direct purchase of eligible products/services, FDI in JV and transfer of technology/provision of equipment. As per the Defence Offset Guidelines, the vendor/ Original Equipment Manufacturer (OEM) is free to select its Indian Offset Partners (IOPs) for implementing the offset obligation.

### Background

13. The Indian Air Force has an approved strength of \_\_\_\_ fighter squadrons to achieve capability to counter a two front scenario. It has been making efforts to procure new aircraft to replace several ageing planes due to be phased out. In principle approval for the procurement of 126 fighter aircraft was granted by the then Hon'ble Raksha Mantri in June, 2001. Services Qualitative Requirements (SQRs) in essence user requirements, were prepared on 08 June 2006. The Defence Acquisition Council (DAC) granted Acceptance of Necessity (AoN) on

29<sup>th</sup> June, 2007 for procurement of 126 Medium Multi Role Combat Aircraft (MMRCA) which included **18 direct flyaway aircraft equivalent to a single squadron, from the Original Equipment Manufacturer (OEM) and 108 under license manufacture by HAL to be delivered over the period of 11 years from the date of signing of contract.** Bids for 126 fighter aircraft were issued on 28<sup>th</sup> August 2007.

**14.** Six vendors submitted their proposals on 28<sup>th</sup> April, 2008. Technical Evaluations were approved in June 2009 and Field Evaluations conducted from July 2009 to May 2010. The Staff Evaluation Report was accepted in April 2011 wherein Rafale (M/s Dassault Aviation) and Eurofighter (M/s EADS) qualified field evaluations. Technical Oversight Committee report was approved in June 2011. The commercial bids were opened in November, 2011 and M/s Dassault Aviation was determined as L1 in January 2012. Contract Negotiations commenced from February 2012. In the context of letters received and the issues raised relating to the determination of the L1 vendor, the then Hon'ble Raksha Mantri directed that the Independent Monitors be requested to examine the issues related to the determination of L1. The Independent Monitors cleared the process.

**15.** It was proposed to the Hon'ble Raksha Mantri that the CNC may proceed to expeditiously complete its discussions with the L1 vendor and finalize its report for further action for seeking CFA approval. Though the Independent Monitors had cleared the process, the then Hon'ble Raksha Mantri directed in June 2012 that "the CNC may proceed to complete its deliberations with the L1 vendor and finalize its report. After the CNC report has been finalized, the entire issue of approach and methodology adopted by the CNC to determine the L1 vendor may be re-examined by MoD (Fin) and MoD to ascertain that it is reasonable, appropriate and as per the laid down procedure."

**16.** In addition to the above, the contract negotiations could not conclude mainly due to unresolved issues related to 108 aircraft to be manufactured in India. These issues pertained to lack of common understanding between HAL and Dassault Aviation on following :-

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- i) Man-Hours that would be required to produce the aircraft in India : HAL required 2.7 times higher Man-Hours compared to the French side for the manufacture of Rafale aircraft in India.
- ii) Dassault Aviation as the seller was required to undertake necessary contractual obligation for 126 aircraft (18 direct flyaway and 108 aircraft manufactured in India) as per RFP requirements. Issues related to contractual obligation and responsibility for 108 aircraft manufactured in India could not be resolved.

17. The above issues remained unresolved for more than three years. This delay impacted the cost of acquisition, as the offer was with in-built escalation and was influenced by the Euro-Rupee exchange rate variations.

18. As the contract negotiations reached a stalemate and RFP compliance could not be ensured, the process for RFP withdrawal was initiated in March, 2015 and RFP for 126 MMRCA was finally withdrawn in June 2015.

19. During this long period of inconclusive 126 MMRCA process, our adversaries inducted modern aircraft and upgraded their older versions. They acquired better capability air-to-air missiles and inducted their indigenous fighters in large numbers. Further, they modernized and inducted aircraft with advanced weapon and radar capabilities. As per available information, our adversaries inducted more than 400 fighters (equivalent to more than 20 Squadrons) during the period from 2010 to 2015. They not only inducted 4<sup>th</sup> Generation Aircraft but also inducted 5<sup>th</sup> Generation Stealth Fighter Aircraft. The combined effect of our own reducing combat potential and our adversaries enhancing their combat potential made the situation asymmetrical and extremely critical. An urgent need was felt to arrest the decline in the number of fighter squadrons in IAF and enhance their combat capabilities.

20. In view of the above, through the Indo-French Joint Statement issued on 10<sup>th</sup> April 2015, an intent was brought out for acquisition of 36 Rafale jets (two squadrons) in fly-away condition, on terms which would be better than conveyed by M/s Dassault Aviation in the process which was already underway.

21. The following Indo-French Joint Statement was issued on 10<sup>th</sup> April 2015 by the two countries for supply of 36 fly-away Rafale aircraft.

*“Government of India conveyed to the Government of France that in view of the critical operational necessity for Multirole Combat Aircraft for Indian Air Force (IAF), Government of India would like to acquire 36 Rafale jets in fly-away condition as quickly as possible. The two leaders agreed to conclude an Inter-Governmental Agreement for supply of the aircraft on terms that would be better than conveyed by Dassault Aviation as part of a separate process underway; the delivery would be in time-frame that would be compatible with the operational requirement of IAF; and that the aircraft and associated systems and weapons would be delivered on the same configuration as had been tested and approved by IAF, and with a longer maintenance responsibility by France”*

**Decision Making Process followed in acquisition of 36 Rafale aircraft**

22. In the case for procurement of 36 Rafale aircraft, all the requisite steps i.e. preparation of Services Qualitative Requirements (SQR), Acceptance of Necessity (AoN) by Defence Acquisition Council (DAC), Technical Evaluation and acceptance of technically qualified platform, commercial negotiations by Contract Negotiation Committee (CNC) and approval of Competent Financial Authority (CFA) as per requirement of Defence Procurement Procedure 2013 have been followed which is explained in the subsequent paragraphs.
23. The acquisition process for MMRCA had reached commercial evaluation stage after completion of all the standard processes as per DPP. As stipulated in the Defence Procurement Procedure (DPP) 2013, approval of the Defence Acquisition Council (DAC) for procurement of 36 fly-away Rafale aircraft from the French Government through Inter Governmental Agreement (IGA) was taken on 13<sup>th</sup> May 2015. The background of the case was brought to the notice of the DAC where it was mentioned that operational capability of 36 Rafale aircraft will be in accordance with the SQR for the procurement of MMRCA. It was further brought to the notice of the DAC that 36 Rafale aircraft will equip two squadrons and operate from two operating bases.

1. An Indian Negotiating Team (INT) was constituted to negotiate the terms and conditions of the procurement of 36 Rafale aircraft with the French Government team. The INT was headed by the Deputy Chief of Air Staff (DVCAS) of IAF and comprised of the Joint Secretary & Acquisition Manager (Air), Joint Secretary (Defence Offset Management Wing), Joint Secretary & Additional Financial Advisor, Finance Manager (Air), Advisor (Cost) and Assistant Chief of Air Staff (Plans) as members from Indian Government side. The French side was headed by the Director General of Armament (DGA), Ministry of Defense, Government of France.
25. Negotiations between INT and the French side started in May 2015 and continued upto April 2016. **A total of 74 meetings, which included 48 internal INT meetings and 26 external INT meetings with French side were held during the negotiations.** As mandated by the DAC, the INT undertook a collegiate process involving due deliberations and diligence at various levels during the negotiations. Aspects pertaining to the responsibility and obligations of French Government, pricing, delivery schedule, maintenance terms, offsets, IGA terms, etc. were discussed and negotiated during these meetings.
26. The proposal for procurement of 36 Rafale was presented to the DAC on three occasions between 28<sup>th</sup> August – 1<sup>st</sup> September 2015 and subsequently on 11<sup>th</sup> January 2016 and 14<sup>th</sup> July 2016 for approvals on various aspects of the negotiations and directions. As mandated by the DAC, the INT completed its negotiations and arrived at better terms relating to price, delivery and maintenance as compared to the MMRCAs offer of M/s Dassault Aviation. The INT report was finalized and signed on 21<sup>st</sup> July 2016. The INT report also indicated better terms and conditions arrived at as a result of negotiation as compared to 126 MMRCAs case and achievements of Negotiating Team.
27. Chairman, INT submitted the report on 4<sup>th</sup> August, 2016 and recommended the case to be progressed for CCS approval & signing the IGA. The INT report and the proposal for obtaining approval of the Cabinet Committee on Security (CCS) was processed in Ministry of Defence. After inter-ministerial consultations with Finance Ministry and Ministry of Law & Justice, the proposal was placed before the Cabinet Committee on Security (CCS) on 24<sup>th</sup> August, 2016. The approval of Cabinet Committee on Security

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(CCS) for signing of the IGA for procurement of 36 Rafale aircraft was accorded on 24<sup>th</sup> August, 2016. After approval of the CCS, IGA for procurement of 36 Rafale aircraft along with Aircraft Package Supply Protocol, Weapons Package Supply Protocol, Technical Arrangement and Offset Contracts were signed on 23<sup>rd</sup> September 2016. The IGA was signed by the Hon'ble Raksha Mantri and the French Defence Minister on behalf of Government of India and the Government of France respectively.

28. In so far as the discharging of the offset obligations by OEM and its Tier-1 vendors through Indian Offset Partners (IOPs) is concerned, there is no mention of any private Indian Business House(s) in IGA or Offset Contract. The Offset Contract does not envisage manufacture of 36 Rafale Aircraft in India by any public or private sector firm. As per the Offset Contract, the vendor/OEM is required to confirm the details of IOPs / products either at the time of seeking offset credits or one year prior to discharge of offset obligation. The annual offset implementation schedule, as per offset contract, will commence from October 2019. The vendor/OEM is yet to submit a formal proposal in the prescribed manner indicating details of IOPs and products for offset discharge.

29. It is reiterated that the procurement process as laid down in the Defence Procurement Procedure (DPP)-2013 was followed in procurement of 36 Rafale aircraft. The approval of DAC for procurement of 36 Rafale aircraft was taken, Indian Negotiating Team (INT) was constituted which conducted negotiations with the French side for about a year and approval of CCS being CFA was taken before signing the IGA.

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OFFSETS

1. The Hon'ble Supreme Court of India in its Order dated 31<sup>st</sup> October, 2018 has also mentioned that "Further details that could legitimately come in the Public Domain with regard to the induction of the Indian Offset Partner (if any) be also furnished to the Learned Counsels of the Parties, as well as Petitioners in person".

2. The following details are already included in another Paper separately being provided giving "Details of the Steps in the Decision Making Process leading to the award of 36 Rafale Fighter Aircraft Order".

*"To promote indigenisation, a robust offset clause has been included in the Defence Procurement Procedure (DPP) since 2005. The aim is to leverage our capital acquisitions to develop the Indian defence industry, improve defence research and encourage the development of synergistic sectors such as civil aerospace and internal security. The offsets are to ensure that for every dollar that went to a foreign arms supplier, 30-50% get back into India for an investment or procurement. As per DPP-2013, the offset clause would be applicable for all procurement proposals where indicative cost is Rs 300 Crore or more involving outright purchase from foreign / Indian vendors and purchases from foreign vendors followed by licensed production. The offset discharge is to be undertaken through various offset avenues like direct purchase of eligible products/ services, FDI in JV and transfer of technology/ provision of equipment. As per the Defence Offset Guidelines, the vendor/ Original Equipment Manufacturer (OEM) is free to select its Indian Offset Partners (IOPs) for implementing the offset obligation.*

*In so far as the discharging of the offset obligations by OEM and its Tier-I vendors through Indian Offset Partners(IOPs) is concerned, there is no mention of any private Indian Business House(s) in IGA or Offset Contract. The Offset Contract does not envisage manufacture of 36 Rafale Aircraft in India by any public or private sector firm. As per the Offset Contract, the vendor / OEM is required to confirm the details of IOPs/ products either at the time of seeking offset credits or one year prior to discharge of offset obligation. The annual offset implementation schedule, as per offset contract, will*

commence from October 2019. The vendor /OEM is yet to submit a formal proposal in the prescribed manner indicating details of IOPs and products for offset discharge."

3. Offset obligations can be discharged by the vendors by any one or a combination of the following offset discharge avenues. This is a summarized version from the DPP:-

- (a) Direct purchase or executing export orders for, eligible products manufactured by, or services provided by Indian enterprises, i.e. Defence Public Sector Undertaking (DPSU), Ordnance Factory Board (OFB) and private and public sector Indian enterprises.
- (b) Foreign Direct Investment in joint ventures with Indian enterprises (equity investment) for the manufacture and/or maintenance of eligible products and provision of eligible services.
- (c) Investment in kind in terms of Transfer of Technology (ToT) to Indian enterprises for the manufacture and/or maintenance of eligible products and provision of eligible services
- (d) Investment in kind in Indian enterprise in terms of provision of equipment through the non-equity route for the manufacture and/or maintenance of eligible products and provision of eligible services (excluding ToT, civil infrastructure and second hand equipment).
- (e) Provision of equipment and/or ToT to Government institutions and establishments engaged in the manufacture and/or maintenance of eligible products and provision of eligible services, including DRDO.
- (f) Technology Acquisition by the Defence Research Development Organisation (DRDO) in areas of high technology.

**Process followed for discharge of offset obligations**

4. The vendor of the equipment will be responsible for fulfilment of offset obligations. Offset obligations are to be discharged within the period of performance of the offset contract. The vendor may also allow his Tier-1 sub vendors to discharge offset obligations to the extent of work share by value in the main procurement contract, on behalf of the vendor. A Tier-1 sub vendor is one who is directly supplying equipment/services to the platform under procurement.

5. Offset obligations are undertaken by vendors/Tier-1 sub vendors through Indian enterprises and institutions and establishments engaged in the manufacture of eligible products/ provision of eligible services, who are referred to as the Indian Offset partner (IOP). The IOP shall comply with guidelines /licensing requirements stipulated by Department of Industrial Policy and Promotion (DIPP). Both the vendor and Tier-1 sub vendors are free to choose / select any Indian Offset Partner (IOP), provided the IOP has not been barred from doing business by the MoD.

6. However, as per the extant provisions of the DPP, if the vendor is unable to provide details of IOP at the time of submission of offset proposal prior to offset contract, he is permitted to provide the details of their IOPs either at the time of seeking offset credits, or one year prior to discharge of offset obligations.

7. The Defence Offset Management Wing (DOMW) under the Department of Defence Production (DDP) is responsible for all matters relating to post contract management which includes monitoring of discharge of offset obligations including audit and review of progress reports received from the vendor.

8. Post contract, the vendor submits six monthly offset reports and necessary supporting documents to DOMW. These offset discharge reports are then independently audited by the Controller General of Defence Accounts (CGDA) to ascertain veracity of the transactions vis-à-vis offset contract. Based on the audit report submitted by the CGDA, offset credits are granted or penalties if applicable are levied. Offset guidelines also have provisions for change of IOP, product, offset component and rephasing of period of performance, which can be availed by vendor, post approval of MoD.

**Offset Process: Rafale Aircraft IGA**

9. The offset contracts under the Rafale IGA are governed by the offset guidelines of DPP 2013. As per offset guidelines, the Defence Acquisition Council (DAC) may prescribe varying offset obligation above 30% in special cases. Accordingly, an offset obligation of 50% was prescribed for the Rafale aircraft IGA.
10. Two offset contracts were also signed, one with M/s Dassault Aviation and another with M/s MBDA, on 23<sup>rd</sup> September, 2016, the same day on which an Inter-Governmental Agreement (IGA) was signed between the Government of India and Government of France for the procurement of 36 Rafale aircraft. The following further details pertaining to offset contracts of 36 Rafale procurement are provided:-

**Offset Contracts in 36 Rafale IGA**

- 11(a) The two offset contracts with M/s Dassault Aviation and M/s MBDA who are the French industrial suppliers of the Aircraft Package and Weapon Package respectively have a period of performance comprising seven years.
- (b) It has been indicated in the offset schedule that details of IOPs/products will be confirmed by vendors either at the time of seeking offset credits or one year prior to discharge of offset obligations.
- (c) There are no offset obligations in the first three years. As per the contract, vendor's offset obligations are to commence from the fourth year, i.e. from Oct 2019 onwards.
- (d) Mandatory six-monthly reports have been submitted by both the vendors and indicate NIL offset discharge. The last six-monthly report has been received from M/s Dassault Aviation on 17 July 2018 for the period ending 30 June 2018 and from M/s MBDA on 22 January 2018 for the period ending 31 December 2017.
- (e) In addition to offset obligation discharged by the two vendors – M/s Dassault Aviation and M/s MBDA, offset obligations will also be discharged by 21 Tier-I sub-vendors & 12 Tier-I sub vendors which have been permitted by M/s Dassault Aviation and M/s MBDA, respectively, to do so on their behalf. The share of M/s

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Dassault Aviation in the total offsets is 19.9% only. and that of M/s MBDA is 6.27%.

- (f) Critical technology acquisition projects with DRDO are foreseen to be included in the offset contracts depending on the discussions with DRDO and the vendors.

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Ministry of Defence

## Clarification on Offset Policy

Posted On: 22 SEP 2018 4:39PM by PIB Delhi

Unnecessary controversies are being sought to be created following media reports regarding a statement purportedly made by the former French President, Francois Hollande, concerning the selection of Reliance Defence as the Offset partner by Dassault, the manufacturers of Rafale aircraft.

The reported statement perhaps needs to be seen in its full context – where the French media has raised issues of conflict of interest involving persons close to the former President. His subsequent statements are also relevant in this regard.

The Government has stated earlier and again reiterates that it had no role in the selection of Reliance Defence as the Offset partner.

For a rounded appreciation of this matter, it may be worthwhile to briefly dwell upon why and how Offset Policy came into play. The Offset Policy was formally announced for the first time in 2005 and has been revised several times. To leverage its huge arm-imports in order to develop a strong indigenous industry, a flow-back arrangement is made in the defence contracts, which is widely known as offsets, and constitutes a certain percentage of the contract value. The key objectives of the Defence Offset Policy is to leverage the capital acquisitions to develop Indian defence industry by fostering development of internationally competitive enterprises; augmenting capacity for research and development in defence sector and to encourage development of synergistic sector like civil aerospace and internal security. The offset can be discharged by many means such as direct purchase of eligible products/services, FDI in joint ventures and investment

towards equipment and transfer of technology. As per Defence Offset Guidelines, the foreign Original Equipment Manufacturer (OEM) is free to select any Indian company as its offset partner.

It has been reported that a JV between Reliance Defence and Dassault Aviation came into being in February, 2017. This is a purely commercial arrangement between two private companies. Incidentally, media reports of February, 2012 suggest that Dassault Aviation, within two weeks of being declared the lowest bidder for procurement of 126 aircraft by the previous Government, had entered into a pact for partnership with Reliance Industries in Defence sector.

Dassault Aviation has issued a Press Release stating that it has signed partnership agreement with several companies and is negotiating with hundred odd other companies. As per the guidelines, the vendor is to provide the details of the offset partners either at the time of seeking offset credit or one year prior to discharge of offset obligation, which in this case will be due from 2020.

In view of above, it is once again reiterated that the Government of India has no role in the selection of Indian Offset partner which is a commercial decision of the OEM..

**SRR/Rajib**

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