

Striking Optimum Balance among Diverse Oversight Concerns in Defence Acquisition

K. Subramaniam*

Transparency in public procurement bears an immediate cost both for government and bidders. However, it is a key element to support fundamental principles of the public procurement system, especially competition and integrity. The drive for transparency must therefore be tempered by making transparent what sufficiently enables corruption control. If the level of transparency is adequately defined, the benefits will outweigh the cost, especially when comparing the initial cost of transparency with the potential negative consequences of corruption.

Introduction

Defence acquisitions are critical for the security of the nation as they determine the operational preparedness of the armed forces. Defence procurements, capital

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and revenue put together, consume about 50% of the defence budget which works out to about Rs 70,000 crore for the 2010-11 budget. This is higher than the budget of many State Governments. Defence procurements are also highly vulnerable to corruption. Transparency International classifies defence industry as the third most corrupt sector of business. With a steady growth in arms trade and increasing competition among vendors, the arms industry is ever willing to deploy all means to clinch a deal and the stakes are high for all. India being one of the largest arms importers coupled with the fact that its procurement system is yet to mature, the vulnerabilities are even higher. Therefore defence procurement is an area of high concern for agencies

mandated with oversight functions.

Oversight Concerns in Defence Acquisitions

The primary concern of all the stakeholders including the oversight agencies is one and the same viz. to obtain value for money. Value for money in defence

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acquisition means:

1. That the acquired product meets the user's requirement or the "capabilities sought for", in the best possible manner.
2. That the product is acquired at an optimum cost of ownership.
3. That the product is acquired at the shortest possible time.

Putting it simply, it means buying the right product, at the right price and at the right time. Selection of a right product can only be ensured if:

1. The Qualitative Requirements (QRs) are formulated in such a manner that they truly reflect the user's functional requirement.
2. There is an objective system of technical evaluation.

Right price of a product can be ensured only through competitive price discovery.

The concept of "Value for money" is central to defence procurements and all oversight concerns converge at this single point. Concerns like objectivity, integrity, transparency, fair play and competition are essential factors which ensure that the buyer gets the best deal. These are not mere ethical requirements. Compromising any of these values not only exposes the acquisition to the risk of corruption but also to the risk of diluted quality, increased cost or delayed deliveries. Therefore the belief among public officials that if oversight authorities are less enthusiastic in pursuing these concerns, goals could be achieved better and faster, is somewhat misplaced.

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Since basic values of public procurement are supposed to be enshrined in the procurement procedure. The oversight agencies strive to enforce strict compliance to procedures, even if it leads to practically inconsistent outcomes. However there remains a need for the oversight agencies to realise the practical limitations of regulations and adherence to rules in the context of their outcomes. If deviation from stipulated procedure could be justified in terms of better quality or faster outcomes, without the risk of corruption, then such deviations should not be viewed too seriously. This raises the question – "what are rules for if they are not to be strictly followed". The answer is that rules should be framed in such a

way that they enforce the basic values and are consistent with ground realities. Inconsistent rules should be modified immediately.

Role of Oversight Agencies

While the primary responsibility of addressing these concerns lies with the procurement authorities, the oversight agencies are mandated to enforce these values and concerns. They provide a means of monitoring the activities of government procurement officials, enforcing their compliance with procurement laws and regulations, and correcting improper actions. Furthermore, they provide an opportunity for bidders and other stakeholders to contest the process and verify the integrity of the award. For instance, in the United States, any interested party can file a protest with the Government Accountability Office, the supreme audit authority.

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In the Indian defence procurement scenario, there are three major oversight agencies viz. the Comptroller and Auditor General of India (C&AG), the Central Vigilance Commission (CVC) and the Central Information Commission (CIC). The Comptroller and Auditor General of India is mandated by the Constitution to assure the Parliament about the regularity and propriety of all government expenditure. Towards this end, the C&AG conducts two types of audits viz. Compliance Audit aimed at examining aspects of regularity or adherence to rules, and Performance Audit which examines financial prudence. All acquisitions above Rs. 75 crore are subject to mandatory audit by the C&AG while contracts below Rs.75 cores are subject to sample audit. The Central Vigilance Commission as the independent anti-corruption agency exercises both preventive as well as a reactive role in ensuring integrity and transparency in the procurement process. As a preventive measure it can study and assess the risk of corruption and suggest systemic or procedural corrections. In its reactive

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role it can inquire into or cause investigation into transactions based on complaints received or source information. The Central Bureau of Investigation, which is the premier investigation agency for cases of suspected corruption which are overseen by the CVC, also keeps a keen eye on defence procurements. After the introduction of the landmark Right to Information Act in 2004, the Chief Information Commissioner has been playing a vital role in ensuring transparency in all

aspects of governance. An important reason for the high vulnerability of defence procurements to corruption is that, defence deals are veiled in secrecy. While there may be disputes regarding the degree of success of the RTI Act, one thing is certain that it has compelled the management to support its decisions with well documented reasoning. On the negative side it has given rise to demand for frivolous information for vexatious purpose.

Is There Really a Need for the Oversight Agencies to Balance Their Concerns While Examining Defence Procurements?

The very statement that oversight concerns need to be balanced is based on a serious misconception of oversight as a roadblock to efficiency or quality. The various myths surrounding oversight, especially in the context of defence sector is discussed below:

Oversight Agencies Perceived as Discouraging Decision Making

A popular perception among the executives is that the lurking fear of the oversight agencies inhibits bold and expedient decision making while discouraging risk-taking which are often essential for successful implementation of projects. The prime cause of this phenomenon is the faulty regulatory framework governing public procurements in India. Rules and procedures are largely formulated in the form of do's and don'ts without explaining the values they strive to uphold. Everyone including the oversight bodies understands and tries to enforce these rules in letter rather than spirit. For example the CVC guidelines stipulate that there should be no negotiations at all, except in exceptional circumstances and that too only with the L-1 vendor. But negotiations with the L-1 vendor have

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become routine and are even encouraged by the auditors on the ground that it results in saving of government money. The spirit behind the CVC guidelines was that there should be no negotiations as the bidders cushion their bids accordingly and thus distort the price discovery mechanism. Besides, negotiation provides scope for corruptions.

Further, most of the rules are narrowly framed and do not provide operational flexibility. They do not cater for every conceivable situation and are often inconsistent with ground realities. There may be situations during execution wherein deviation from the stipulated procedure becomes inevitable in the larger

organisational interest. The executive is faced with a dilemma. If it strictly plays by the rule book the desired result may not be obtained in time. On the other hand if it circumvents the procedure, it has to face objections from the oversight agencies. It has to choose between committing irregularity and committing impropriety and often it chooses the later because irregularity is viewed more seriously. The emphasis is on adhering to rules even at the cost of outcomes. For example, for the construction of houses at Jalandhar and Amritsar under the Married Accommodation Project, the works had to be retendered twelve times resulting in huge cost and time overrun. This was done to comply with the tendering rules which prohibit accepting prices above 10% of the estimated value.

Another drawback is that the procurement procedures are a patch work of reactive controls aimed at solving a problem without actually addressing the root cause of the problem. For example, when it was found that about 50% of the acquisition cases required some alteration in the QRs in order to facilitate technical selection, the procurement procedure was amended to state that all alteration or waiver to QRs would require the approval of the Raksha Mantri. The root cause of the problem, faulty formulation of QRs, was never addressed. As a result waiver continued to be sought from the R.M. in 50% of the cases, but with an added delay of 4 to 6 months- and an adverse remark by the RM. Similarly, in the procurement of Special Clothing and Mountaineering Equipment problems were faced during receipt inspection because of the absence of well defined QRs. But instead of developing QRs for the clothing, the procedure was amended wherein the DGQA was made to develop specifications from the sample of the selected product through reverse engineering. This resulted in a unique and absurd system where specifications are made not for selection of a product but after its selection for the purpose of inspection.

Oversight is Perceived to Cause Delay

There are three primary reasons for delay in defence acquisitions:

Incorrect Formulation of QR

QRs reflect the functional needs of the user and therefore should be defined in terms of functional parameters i.e. the functions or duty that the product is expected to perform. On the contrary, in actual practice, QRs are often defined in terms of narrow technical specifications. The process of formulation of QRs is generally market driven

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instead of need driven i.e. QR parameters are arrived at by surveying the market and mixing the features of the various products available in the market. This method of determining the QRs creates problems wherein the QR parameters turn out to be unrealistic with the ground realities or inconsistent with each other. Often some of the parameters could not be tested due to lack of testing facilities. These deficiencies in the QRs necessitate relaxation or alteration of the QRs which requires the approval of the RM. On an average procurements get delayed by about 4 to 6 months due to such situations. This delay could be avoided if the QRs are formulated properly at the first instance.

Inconsistency and Delay in Trial Evaluation

There are two major problems with the technical evaluation process. Trial evaluation or field trials are not fully objective as many of the QR parameters are evaluated on the basis of judgement. The other major problem is the severe delay in the conduct of trials. If we analyse the progress of procurements, we would find that at least 60% of the procurements are delayed due to trials where the trial evaluation

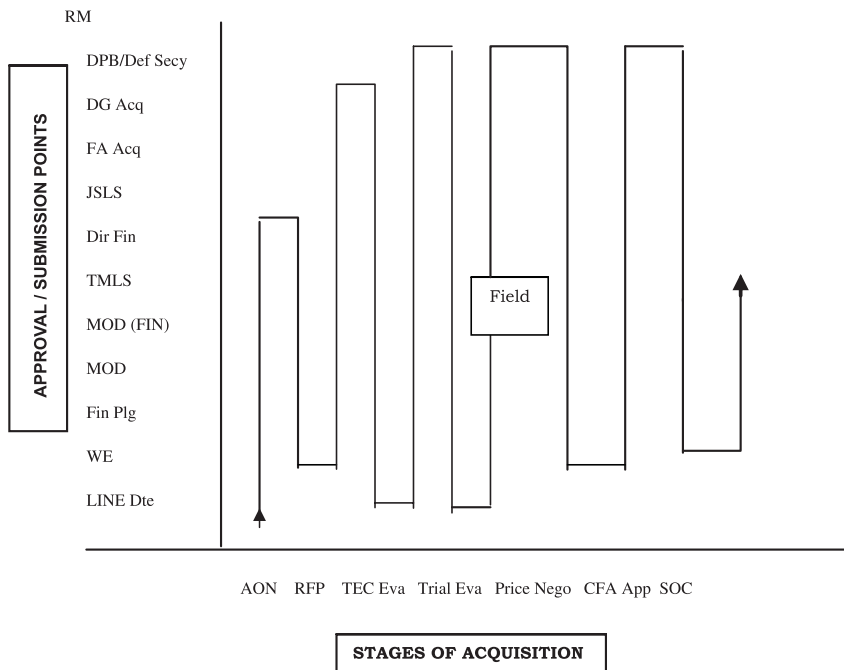
takes anywhere between 2 to 4 years (see annexures I & II) Even after accounting for the time needed for extensive summer and winter trials in various terrains, the delay remains unjustified. Another intriguing fact is that the preparation of the Trial Report or the Staff Evaluation Report takes far more time than the actual trials. Delay in preparation of Trial Report raises scepticism about the objectivity of the report.

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The Labyrinthine Organisation and Procedure Governing Defence Procurement

The root cause of the problem of delay in capital acquisitions is the way the procurement function is organised and the way procurements are processed. From the initiation to the signing of the contract, a procurement case has to sequentially go through 7 distinct stages like Acceptance of Necessity, Solicitation of Offers, and Trial Evaluation etc. Each stage consists of 6 to 10 approval points with each approval point having at least 2 submission points. Therefore any acquisition has to be processed at about 60 to 80 processing points.

Detailed Process Flow Chart of Procurement Processing



- RM: Raksha Mantri (Defence Minister)
- DPB/Def Secy: Defence Procurement Board/Defence Secretary
- DG Acq: Director General Acquisition
- FA Acq: Financial Advisor Acquisition
- JSLS: Joint Secretary, Land Systems
- Dir Fin: Director Finance
- TMLS: Technical Manager, Land Systems
- MoD (Fin): Ministry of Defence (Finance)
- Fin/Plg: Finance/Planning
- WE: Weapons Equipment
- LINE Dte: Line Directorate
- AON: Acceptance of Necessity
- RFP: Request for Proposal
- TEC Eva: Technical Evaluation
- Trial Eva: Trial Evaluation
- Price Nego: Price Negotiation
- CFA Appr: Competent Financial Authority Approval
- SOC: Signing of Contract

Stages of Acquisition

A work study by C&AG in 2007 has shown that while only 20% of these processing points are involved in formulating the proposal per se, the remaining 80% are involved only in scrutiny, much of which is redundant. Therefore as opposed to the oversight it is the misplaced “insight” or internal controls which is the main cause of delay. Therefore blaming the oversight agencies for delay is totally unfounded.

There is *Excess Oversight in Defence Matters*

Another belief held by the defence establishment is that they are subject to too much oversight by multiple agencies. But if one makes a comparative study of the acquisition processors across various countries it will be evident we that the

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oversight is minimal in the Indian procurement system. The only comprehensive coverage of defence acquisitions is by the external audit of C&AG. There is no internal audit of acquisitions. Intervention by the CVC or CIC is only based on complaints or specific requests. There is no independent full time Chief Vigilance Officer. In most of the countries the defence acquisitions are subject to a well organised internal audit setup under an Inspector General in addition to the external audit by the Supreme Audit

Institution. In the USA all defence acquisitions are audited by an independent third party agency called the Defence Contract Audit Agency in addition to the internal audit by the Inspector General, and external audit by the General Accountability Office (GAO). In addition, there is a very strong Parliamentary oversight in the US and the UK.

Oversight is Ineffective as no Action is Taken on its Outcomes

Unless action is taken on its findings, the oversight activity does not reach its logical conclusion and remains a mere ritual. There are two kinds of action the executive is expected to take on the report of the oversight agencies:

1. Penal action against authorities responsible for the financial irregularity, impropriety or corruption, not only to meet the ends of justice but also to act as a deterrent.
2. Systemic improvements and midcourse corrections based on the oversight findings.

The ultimate objective of oversight is to improve governance which remains unachieved due to the executive’s failure to act upon the outcomes of oversight engagements. This is why despite regular audit by the C&AG and anticorruption

activities of the CVC, mismanagement, waste, inefficiencies and corruption continues unabated. The oversight agencies are blamed for ineffectiveness, while the truth is otherwise.

C&AG audit is the key instrument of Parliamentary Financial Control wherein, based on the CAG's report, the Parliament, through the Parliamentary Accounts Committee (PAC) recommends suitable action to the government. But this system has its limitation because the PAC is able to select only few cases from the C&AG report for detailed examination and action. The others are dealt in a routine manner wherein the government gives an Action Taken Report to the PAC and the matter ends. Oversight would be effective only if the Parliament is able to make deeper analysis of important issues and enforce action by the government.

It needs to be remembered that the C&AG and the CVC are only advisory bodies which make recommendations to the executives. It is for the organisations to utilise oversight as an aid to management and as a feedback control mechanism.

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One of the reasons for the lack of action by the management is the lack of faith in oversight agencies. There is ab-initio scepticism about audit and therefore the reluctance to accept audit findings even though they are supported by credible evidence and scientific analysis. Often defence authorities question the competence of oversight agencies to examine technical or managerial issues. Management fails to appreciate that the oversight

work involves due diligence and consists of a scientific process of gathering facts and their analysis using statistical and quantitative tools before arriving at the findings. Domain knowledge though an important requirement is gained during the engagement.

Another related problem is the highly defensive attitude of the management which arises out of a culture which discourages acceptance of failures and mistakes. Despite all facts and evidence produced in support of audit assertions, the executive keeps justifying its actions under some pretext or the other even after the report is laid in the house. The following case studies show that despite the much evident breach of objectivity and preferential

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treatment to a vendor in technical selection, the defence establishment remained defensive and never accepted the discrepancy.

Case Study -I: Procurement of Binoculars for the Army

Result of Trial Evaluation

Sl. No.	GSQR	Steiner (8x30R)	Bushnell	BEL	OFB
1.	Clarity of Definition chart	Upto 2000m in plain & 3000m in HAA	Upto 2500m in plain & 3500m in HAA	Upto 2500m in plain & 3500m in HAA	Upto 2000m in plain & 3000m in HAA
2.	Visibility of Vehicle & equipment	Upto 2500m in plain & 4000m in HAA.	Upto 3000m in plain & 4500m in HAA	Upto 3000m in plain & 4500m in HAA	Upto 2500m in plain & 4000m in HAA
3.	Magnification 7 times or more	Magnification - 8 times	Magnification - 7 times	Magnification - 10 times	Magnification - 10 times
4.	Weight - less than 1.2 kg	0.52 kg	1 kg	1 kg	1 kg
5.	Minimum focusing distance 4m to 8m	4.8 m	8m	9 to 10m	8m

Note: Contrary to the findings of the Trial Evaluation shown in the table above, the General Staff Evaluation Staff stated that “the binocular of M/s. Stienner has good resolution and clarity, better magnification; and light in weight and is handy”.

Case Study-II: Purchase of Bullet Proof Vehicles

Comparative Analysis of Trial Evaluation

Field Trial Report of Army		Test Report of Vehicle Research Development Establishment
Mahindra Rakshak performed better than Tata Sumo for the following reasons:		
1.	Higher power to weight ratio	Power to Wt Ratio of Mahindra Rakshak = 16 kw/t Power to Wt Ratio of Tata Sumo = 18.28 kw/t
2.	Better Pick up	Mahindra Rakshak (in Sec) = 3.22 , 9.16, 19.07,34.06 Tata Sumo = 2.76, 7.64,14.28, 26.77

3.	Better road clearance	Mahindra Rakshak = 178 mm Tata Sumo = 240 mm
4.	Adequate driving comfort and crew fatigue	Mahindra Rakshak = Mechanical Steering Tata Sumo = Power Steering
5.	Better cruising speed	Mahindra Rakshak = 53.2 (Highway) 36.3 (Cross country) Tata Sumo = 59.2 (Highway) 36.1 (Cross country)

Note: For the procurement of bullet proof vehicles, two vehicles viz. Mahindra Rakshak and Tata Sumo were shortlisted for trials. Field Trials were conducted by the Army and Mahindra Rakshak was recommended for its better performance. However, the same five parameters when scientifically tested showed that the performance of Tata Sumo was superior.

Some of the important Performance Audits conducted by the C&AG viz. “Defence Capital Acquisition – 2007”, “Quality Assurance - 2006” and “Procurement of Special Clothing and Equipment for Siachen – 2008” had recommended important reforms in the procurement system based on an indepth management audit. These findings and recommendations have never been utilised.

Inability of Oversight to Distinguish between Bonafide Procedural Deviations and Irregularities Committed with a Malafide Intent

The problem of distinguishing between an irregularity arising out of bonafide concerns and those committed with an intention of corruption, is more acute in the case of vigilance investigation. Often vigilance angle is inferred straightaway, upon detecting irregularity without examining further whether the deviation from procedures could be justified in terms of situational exigencies. Ideally, corruption should be inferred only when there is no credible justification for the procedural deviations. The distinction between bonafide and malafide acts becomes more difficult in a situation where the systems and procedures are faulty. The following case study would explain the predicament of the oversight agencies:

Case Study : Procurement of Special Clothing and Mountaineering Equipment

Imported trousers numbering 20,000 were rejected in receipt inspection. But the Master General Ordnance ordered re-inspection of the whole consignment using

a diluted sample plan and the whole consignment was cleared. Similarly, 7,000 Rucksacks were imported and were rejected by DGQA during receipt inspection as the tensile strength of the aluminium frame was far less than what was specified in the contract. The MGO amended the specification in the contract and conducted re-inspection against the amended specifications whereby the consignment was cleared.

These were serious violations having vigilance connotations. They would have invited serious action had it been any other sector. However, it could be equally correct in assuming that the MGO was compelled to do so in order to overcome the stalemate caused by the faulty system, in the operational interest of the Army.

Oversight a Post Mortem Exercise

Much of the oversight, except for investigation by CVC on an ongoing procurement, is conducted in an ex-post facto manner which has led critics to call it a “spectator sport”. Auditors are also called as post mortem experts. Questions have been raised regarding the utility of audit findings after the conclusion of the contract. The problem lies in the independent nature of the oversight agencies which prevents them from interfering in an ongoing decision making process. World over the oversight agencies are finding ways of dealing with this problem.

Following the judgement of the European Court of Justice in the case of Alcatel, several countries have recently introduced a mandatory standstill period between the contract award and the beginning of the contract to provide the bidders with a reasonable opportunity for the award to be set aside.

Balancing the Oversight Concerns

Perceived holistically, the concerns of the oversight are not essentially diverse from the concern of the management for effectiveness and efficiency, yet in many situations there is a need for balancing some of the oversight concerns because pursuing them beyond a point may harm the other good governance imperatives. In order to ensure overall value for money, the challenge for decision makers is to define an appropriate degree of transparency and accountability to reduce risks to integrity in public procurement while pursuing other aims of quality and efficiency.

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There is a need for the oversight agencies to take a practical view of procedural deviations instead of upholding a concern in a highly theoretical manner. For example, if in a situation adequate competition could be generated by inviting limited tenders from five firms, the insistence for open tendering may not prove cost effective and may cause delay. The bottom line is that adequate


competition should be generated and not that rules of open tendering should be followed. Another example of overzealous and theoretical pursuit of oversight concerns is the tendency of oversight agencies to suggest re-tendering as a panacea for all problems faced during a tendering process. Management is held responsible for not retendering when confronted with restricted QRs, poor competition, higher cost of bids as compared to the estimates or cartel formation. It is not realised that retendering is a painful process which any manager would try to avoid. Moreover retendering does not guarantee that the same problems will not recur, besides enhancing the risk of cost and time overrun. Retendering is neither a solution for breaking cartelisation.

Therefore there is a need for the oversight agencies to realise that the bottom line of all regulations is to uphold the basic values of good governance viz. transparency, accountability, competition and integrity. If these requirements are met, the rules get implemented in their spirit and adherence to the rules in letter may not be insisted upon.

Recommendations for Improving Oversight in Defence Procurements

1. The regulatory framework governing public procurement in India needs to be reformed so that procurement guidelines uphold the basic values of public procurement instead of stipulating do's and don'ts. The emphasis should be on adherence to the spirit of the stipulations rather than the letter.
2. An integrated defence acquisition organisation incorporating all the functional elements and specialisation under one head should be put in place as recommended by the Group of Ministers in February 2001.

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3. Specialised cadre of acquisition managers should be developed to man defence acquisition.
4. Basic reforms should be carried out in the process of formulation of QRs and trial evaluations.
5. The oversight agencies need to adopt a risk management approach while conducting oversight engagements. They should help the management in assessing and managing the risk. They also need to adopt a risk based approach wherein they engage only in issues of high risks leaving the rest to the internal control system.
6. There needs to be more emphasis on the preventive aspect of oversight. The Central Vigilance Commission has been working towards strengthening its preventive vigilance framework.
7. Improve the effectiveness and efficiency of the “insight functions” viz. internal control which would require elimination of the redundant scrutiny points in the procurement process. Once the internal control system is made effective, the degree of external oversight would also reduce accordingly. Similarly with more effective Parliamentary oversight, the outcome of oversight would be more fruitful which would in turn reduce the extent of oversight.
8. Oversight should become a cooperative effort involving constructive cooperation between the management and the oversight bodies.
9. The oversight agencies need to be more practical and sensitive to managerial exigencies instead of adopting a theoretical approach. Rules should be appreciated and enforced in spirit rather than in letter.
10. There is a need for synergy between the different oversight agencies in order to enhance efficiency. Defence acquisitions are of high concern to both the C&AG and the CVC. Detection of fraud and corruption is an essential part of audit and risk assessment by audit includes the risk of fraud and corruption. Therefore given the extent of common ground covered by both the C&AG and the CVC it is highly desirable that their efforts are synergized. 

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Annexure I

Time taken for trials and approval of GS Evaluation Report

Sl.No.	Equipment	Time taken for trials (months)	Time taken for GSER (months)
1.	Night Vision Device for FOO	9 days	12
2.	Boot Anti-mine	16	7
3.	Air Target Imitator	34	7
4.	R.O. Vehicle	6 ½	6
5.	R.L. Mark-III	13 days	9 ½
6.	IOCMH	7 days	10
7.	H.R. Binocular	1 ½	7
8.	TISAS	24	2
9.	De-mining equipment	8 days	2 ½
10.	EW System for Kargil & North East	3	9
11.	T.I. Sight for BMP-II	10 ½	7 ½

Annexure II

Sl. No	Item	Date of issue of RFP	Whether still under trials as of 8/06	Whether GSER prepared/approved as of Aug 2006.	Time taken as of Aug 2006
1.	2MB Frequency Hoping Radio Relay Set	12.3.04	Under trials	Not prepared/finalized	30 months
2.	834 MBP Radio Relay Set	14.12.04	Under trials	Not prepared/finalized	20 months
3.	Subscriber and Secrecy Device	19.4.04	Under trials	Not prepared/finalized	28 months
4.	DRDO developed 5/50W Radio Sets	7.5.04	Under trials	Not prepared/finalized	27 months
5.	Schilka Gun up-grade	20.10.03	Under trials	Not prepared/finalized	34 months
6.	MSCN	12.3.04	Under trials	Not prepared/finalized	30 months
7.	MSPCE	26.3.04	Trials completed	Not prepared/finalized	29 months

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8.	ECM Jammer Mk-II	8.12.04	Trials over	6.2.06	14 months 7 months
9.	Skid Steer Loaders	7.2.05	Under trials	Not prepared	19 months
10.	ATGM Konkur Sml BMP-II	10.4.03	Trials over	17.6.06	38 months
11.	Kornet Launcher/ Missile	16.12.03	Trials over	8.7.06	31 months
12.	TISAS T-72 (700 qty) 3rd Gen	20.11.03	Under trials	Not prepared	33 months
13.	ALNS	27.1.04	Trials over	20.1.05	12 months 20 months
14.	Laser Target Desig- nator	27.2.04	Under trials	Not prepared	30 months
15.	Passive Night Sight for AK-47 Rifle	4.3.04	Under trials	Not prepared	30 months
16.	MGL	12.3.04	Under trials	Not prepared	29 months
17.	Optical Sight for Rifle AK-47	12.3.04	Under trials	Not prepared	29 months
18.	Bore Sight Collima- tor	28.4.04	Under trials	Not prepared	28 months
19.	Hand Held Digital Compass	6.9.04	Under trials	Not prepared	24 months

(Source: Information received from TMLS under MOD I.D. No. 10014/TM(LS)/Coord dated 25.8.2006).