



**PROJECT
ENGINEERING
MANAGEMENT**

**GENERAL CONDITIONS
OF CONTRACT (GCC)**

Revision no. 07

ANNEXURES

ANNEXURE-II: DEVIATION SHEET (COST OF WITHDRAWAL)

PROJECT:
PACKAGE:

TENDER ENQUIRY REFERENCE:

NAME OF VENDOR:

SL NO	VOLUME/ SECTION	PAGE NO.	CLAUSE NO.	TECHNICAL SPECIFICATION/ TENDER DOCUMENT	COMPLETE DESCRIPTION OF DEVIATION	COST OF WITHDRAWAL OF DEVIATION	REFERENCE OF PRICE SCHEDULE ON WHICH COST OF WITHDRAWAL OF DEVIATION IS APPLICABLE	NATURE OF COST OF WITHDRAWAL OF DEVIATION (POSITIVE/NEGATIVE)	REASON FOR QUOTING DEVIATION
TECHNICAL DEVIATIONS									
COMMERCIAL DEVIATIONS									
PARTICULARS OF BIDDERS/ AUTHORISED REPRESENTATIVE									
NAME					DESIGNATIONS				
NOTES:					SIGN & DATE				

- Cost of withdrawal of deviation will be applicable on the basic price (i.e. excluding taxes, duties & freight) only.
- All the bidders have to list out all their Technical & Commercial Deviations (if any) in detail in the above format.
- Any deviation not mentioned above and shown separately or found hidden in offer, will not be taken cognizance of.
- Bidder shall submit duly filled unpriced copy of above format indicating "quoted" in "cost of withdrawal of deviation" column of the schedule above along with their Techno-commercial offer, wherever applicable. In the absence of same, such deviation(s) shall not be considered and offer shall be considered in total compliance to NIT.
- Bidder shall furnish price copy of above format along with price bid.
- The final decision of acceptance/ rejection of the deviations quoted by the bidder shall be at discretion of the Purchaser.
- Bidders to note that any deviation (technical/commercial) not listed in above and asked after Part-I opening shall not be considered.
- For deviations w.r.t. Credit Period, Liquidated damages, Firm prices if a bidder chooses not to give any cost of withdrawal of deviation (loading as per Annexure-VII, will apply). For any other deviation mentioned in un-priced copy of this format submitted with Part-I bid but not mentioned in priced copy of this format submitted with Priced bid, the cost of withdrawal of deviation shall be taken as NIL.
- Any deviation mentioned in priced copy of this format, but not mentioned in the un-priced copy, shall not be considered.
- All techno-commercial terms and conditions of NIT shall be deemed to have been accepted by the bidder, other than those listed in unpriced copy of this format.
- Cost of withdrawal is to be given separately for each deviation. In no event bidder should club cost of withdrawal of more than one deviation else cost of withdrawal of such deviations which have been clubbed together shall be considered as NIL.
- In case nature of cost of withdrawal (positive/negative) is not specified it shall be assumed as positive.
- In case of discrepancy in the nature of impact (positive/negative), positive will be considered for evaluation and negative for ordering.

ON COMPANY LETTER HEAD

TO,

**M/s Bharat Heavy Electricals Ltd.,
Project Engineering Management,
Power Project Engineering Institute,
HRD & ESI Complex,
Plot No 25, Sector-16 A, Noida-201301**

KIND ATTN.:

Dear Sir,

This has reference to :

1. Our offer for **PACKAGE NAME** for **PROJECT NAME**
2. Order no. F.No. 6/18/2019-PPD dt. 23.07.2020 issued by Ministry of Finance, Department of Expenditure Public Procurement Division.
3. BHEL mail reference:

I have read the clause regarding restriction on procurement from a bidder of a country which shares a land border with India. I hereby certify that **Company name**, is not from such a country and is eligible to be considered.

Thanking You,

Yours faithfully,

(COMPANY SEAL AND SIGNATURE)

Guidelines for Remote Inspection of PEM BOIs

1) OBJECTIVE:

To lay down the procedure for carrying out Remote Inspection of Bought-out Items (BOIs) for PEM suppliers wherever applicable.

2) SCOPE:

It will cover suppliers for packages of PEM BOIs for various project requirements.

Invitation is sent to the suppliers for remote inspection on applications like MS Teams, Webex, etc. by BHEL.

3) MINIMUM REQUIREMENTS AT SUPPLIER'S WORKS:

- i. Uninterrupted internet services
- ii. Good internet bandwidth (Min 100 Mbps)
- iii. Good resolution camera (2 nos) – one preferably CCTV (static at one place) and one hand hold (moving)
- iv. Smart phone with minimum 8MPi camera front and back both with optical zoom facility suitable for using web applications like Webex, MicroSoft (MS) Teams, etc.
- v. Computer and Scanner with good resolution
- vi. Digital signatures of supplier's Quality Engineer
- vii. Availability of web applications like Webex, MicroSoft (MS) Teams, as required.
- viii. All Test certificates, internal test reports, calibration reports, etc. for the items offered for inspection.
- ix. Availability of the above to be submitted to BHEL two days in advance before inspection.
- x. Dedicated team from supplier side for facilitating inspection requirements.
- xi. For ensuring proper visibility, the suggested Portable lighting sources (torch/ electric LED bulb of minimum 15 W) with no glare is to be ensured at offered job, location for remote inspection/testing. This is to be verified before start of the inspection.
- xii. The GPS location co-ordinates or any method to locate inspection location shall be captured indicating the location of the Vendor-Premises of remote inspection/testing.

4) MINIMUM REQUIREMENTS AT BHEL and CUSTOMER LOCATION :

- i. Uninterrupted internet services
- ii. Suitable internet bandwidth
- iii. Digital signatures wherever required.
- iv. Availability of web applications like Webex, MS Teams, etc. as required.
- v. Clearance from customer for conducting remote inspection

5) PROCEDURE:

- i. Supplier will raise the inspection call in BHEL - CQIR portal.
- ii. Supplier shall ensure availability of minimum requirements at supplier's works as mentioned above at point 3.

- iii. Before starting the inspection, the supplier shall submit the documents (TCs, internal test reports and calibration certificates as per approved QAP) two days before the date of inspection for review by BHEL and supplier shall coordinate with BHEL and if found satisfactory, inspection shall be considered for remote.
 - iv. Prior to commencement of remote inspection a pre inspection meeting shall be organised by BHEL inspector with supplier to ascertain the readiness for remote inspection.
- 6) During inspection, supplier shall share the location on Google maps for verifying the address of the manufacturer. Location may be captured by BHEL as screenshot.
- i. Inspection shall be on the basis of approved Quality Plans and associated reference documents mentioned.
 - ii. For witnessing inspection, supplier shall bring the mobile video camera near to the surface of the equipment or as per requirement of the inspector for clarity in viewing the test/ equipment which shall be the responsibility of supplier. Supplier shall ensure that proper lighting is available during live video streaming.
 - iii. Before start of the inspection, inspector shall ensure that all instruments shall have valid calibration report. Supplier shall ensure use of digital instruments preferably for inspection to the extent possible.
 - iv. Details of suppliers's dedicated team handling the remote inspection shall also be incorporated in the CQIR.
 - v. All details of inspection/ testing referred documents shall be mentioned in the CQIR. Recording of remote inspection shall be maintained by the BHEL inspector and this recording (unedited) shall be maintained at BHEL system for a minimum period of 3 years or till the warranty period whichever is later.
 - vi. PEM (Engineering) shall accord final technical clearance, in case of any deviation in inspected item noticed during inspection.
 - vii. Inspection shall be conducted by PEM-Q&BE assigned inspector along with PEM-Engg (if required). CQIR shall be prepared and maintained by PEM-Q&BE.
 - viii. PG will issue MDCC on the basis of acceptance of inspected items along with accepted packing photographs as per contract provisions.
- 7) **UNDERTAKING BY VENDOR:** Material inspected through remote inspections is meeting all technical requirements of BHEL. In case of any discrepancy from the above procedure/ material inspected, if found later, vendor will replace the materials without any cost implication to BHEL.
- 8) Vendor shall provide the signed and stamped of the above guidelines to BHEL as a token of acceptance.



**PROJECT
ENGINEERING
MANAGEMENT**

**GENERAL CONDITIONS
OF CONTRACT (GCC)**

Revision no. 07

ANNEXURES

ANNEXURE– VIII

INTEGRITY PACT

Between

Bharat Heavy Electricals Ltd. (BHEL), a company registered under the Companies Act 1956 and having its registered office at "BHEL House", Siri Fort, New Delhi – 110049 (India) hereinafter referred to as "The Principal", which expression unless repugnant to the context or meaning hereof shall include its successors or assigns of the ONE PART

and

_____, (description of the party along with address), hereinafter referred to as "The Bidder/ Contractor" which expression unless repugnant to the context or meaning hereof shall include its successors or assigns of the OTHER PART

Preamble

The Principal intends to award, under laid-down organizational procedures, contract/s for

_____. The Principal values full compliance with all relevant laws of the land, rules and regulations, and the principles of economic use of resources, and of fairness and transparency in its relations with its Bidder(s)/ Contractor(s).

In order to achieve these goals, the Principal will appoint Independent External Monitor(s), who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

Section 1 – Commitments of the Principal

1.1 The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles: -

1.1.1 No employee of the Principal, personally or through family members, will in connection with the tender for, or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.

1.1.2 The Principal will, during the tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential / additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.

1.1.3 The Principal will exclude from the process all known prejudiced persons.

1.2 If the Principal obtains information on the conduct of any of its employees which is a penal offence under the Indian Penal Code 1860 and Prevention of Corruption Act 1988 or any other statutory penal enactment, or if there be a substantive suspicion in this regard, the Principal will inform its Vigilance Office and in addition can initiate disciplinary actions.

Section 2 – Commitments of the Bidder(s)/ Contractor(s)

2.1 The Bidder(s)/ Contractor(s) commit himself to take all measures necessary to prevent corruption. He commits

	PROJECT ENGINEERING MANAGEMENT	GENERAL CONDITIONS OF CONTRACT (GCC) Revision no. 07	ANNEXURES
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himself to observe the following principles during his participation in the tender process and during the contract execution.

2.1.1 The Bidder(s)/ Contractor(s) will not, directly or through any other person or firm, offer, promise or give to the Principal or to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material, immaterial or any other benefit which he / she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.

2.1.2 The Bidder(s)/ Contractor(s) will not enter with other Bidder(s) into any illegal or undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.

2.1.3 The Bidder(s)/ Contractor(s) will not commit any penal offence under the relevant IPC/ PC Act; further the Bidder(s)/ Contractor(s) will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

2.1.4 Foreign Bidder(s)/ Contractor(s) shall disclose the name and address of agents and representatives in India and Indian Bidder(s)/ Contractor(s) to disclose their foreign principals or associates. The Bidder(s)/ Contractor(s) will, when presenting his bid, disclose any and all payments he has made, and is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.

2.2 The Bidder(s)/ Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.

2.3 The Bidder(s)/ Contractor(s) shall not approach the Courts while representing the matters to IEMs and will await their decision in the matter.

Section 3 – Disqualification from tender process & exclusion from future contracts

If the Bidder(s)/ Contractor(s), before award or during execution has committed a transgression through a violation of Section 2 above, or acts in any other manner such as to put his reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s)/ Contractor(s) from the tender process or take action as per the separate "Guidelines on Banning of Business dealings with Suppliers/ Contractors". framed by the Principal.

Section 4 – Compensation for Damages

4.1 If the Principal has disqualified the Bidder from the tender process prior to the award according to Section 3, the Principal is entitled to demand and recover the damages equivalent Earnest Money Deposit/Bid Security.

4.2 If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to section 3, the Principal shall be entitled to demand and recover from the Contractor liquidated damages equivalent to 5% of the contract value or the amount equivalent to Security Deposit/Performance Bank Guarantee, whichever is higher.

Section 5 – Previous Transgression

5.1 The Bidder declares that no previous transgressions occurred in the last 3 years with any other company in any country conforming to the anti-corruption approach or with any other Public Sector Enterprise in India that could justify his exclusion from the tender process.





**PROJECT
ENGINEERING
MANAGEMENT**

**GENERAL CONDITIONS
OF CONTRACT (GCC)**

Revision no. 07

ANNEXURES

5.2 If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

Section 6 – Equal treatment of all Bidders/ Contractors/ Sub-contractors

6.1 The Principal will enter into agreements with identical conditions as this one with all Bidders and Contractors. In case of sub-contracting, the Principal contractor shall be responsible for the adoption of IP by his sub-contractors and shall continue to remain

responsible for any default by his sub-contractors.

6.2 The Principal will disqualify from the tender process all bidders who do not sign this pact or violate its provisions.

Section 7 – Criminal Charges against violating Bidders / Contractors / Sub-contractors

If the Principal obtains knowledge of conduct of a Bidder, Contractor or Subcontractor, or of an employee or a representative or an associate of a Bidder, Contractor or Subcontractor which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the Vigilance Office.

Section 8 –Independent External Monitor(s)

8.1 The Principal appoints competent and credible Independent External Monitor for this Pact. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.

8.2 The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He reports to the CMD, BHEL.

8.3 The Bidder(s)/ Contractor(s) accepts that the Monitor has the right to access without restriction to all contract documentation of the Principal including that provided by the Bidder(s)/ Contractor(s). The Bidder(s)/ Contractor(s) will grant the monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his contract documentation. The same is applicable to Sub-contractor(s). The Monitor is under contractual obligation to treat the information and documents of the Bidder(s)/ Contractor(s) / Sub-contractor(s) with confidentiality in line with Non-disclosure agreement.

8.4 The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the contract provided such meetings could have an impact on the contractual relations between the Principal and the Contractor. The parties offer to the Monitor the option to participate in such meetings.

8.5 The role of IEMs is advisory, would not be legally binding and it is restricted to resolving issues raised by an intending bidder regarding any aspect of the tender which allegedly restricts competition or bias towards some bidders. At the same time, it must be understood that IEMs are not consultants to the Management. Their role is independent in nature and the advice once tendered would not be subject to review at the request of the organization.

8.6 For ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process, the matter should be examined by the full panel of IEMs jointly as far as possible, who would look into the records, conduct an investigation, and submit their joint recommendations to the Management.

8.7 The IEMs would examine all complaints received by them and give their recommendations! views to CMD, BHEL, at the earliest. They may also send their report directly to the CVO and the Commission, in case of suspicion of serious

	<p align="center">PROJECT ENGINEERING MANAGEMENT</p>	<p align="center">GENERAL CONDITIONS OF CONTRACT (GCC)</p> <p align="center">Revision no. 07</p>	<p align="center">ANNEXURES</p> <p align="center">TZ0Z-S0-8T</p>
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irregularities requiring legal administrative action. IEMs will tender their advice on the complaints within 10 days as far as possible.

8.8 The CMD, BHEL shall decide the compensation to be paid to the Monitor and its terms and conditions.

8.9 IEM should examine the process integrity, they are not expected to concern themselves with fixing of responsibility of officers. Complaints alleging mala fide on the part of any officer of the organization should be looked into by the CVO of the concerned organization.

8.10 If the Monitor has reported to the CMD, BHEL, a substantiated suspicion of an offence under relevant Indian Penal Code/ Prevention of Corruption Act, and the CMD, BHEL has not, within reasonable time, taken visible action to proceed against such offence or reported it to the Vigilance Office, the Monitor may also transmit this information directly to the Central Vigilance Commissioner, Government of India.

8.11 The number of Independent External Monitor(s) shall be decided by the CMD, BHEL.

8.12 The word 'Monitor' would include both singular and plural.

Section 9 – Pact Duration

9.1 This Pact shall be operative from the date IP is signed by both the parties till the final completion of contract for successful bidder and for all other bidders 6 months after the contract has been awarded. Issues like warranty/ guarantee etc. should be outside the purview of IEMs.

9.2 If any claim is made / lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified as above, unless it is discharged/ determined by the CMD, BHEL.

Section 10 – Other Provisions

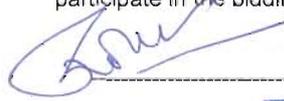
10.1 This agreement is subject to Indian Laws and jurisdiction shall be registered office of the Principal, i.e. New Delhi.

10.2 Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.

10.3 If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.

10.4 Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

10.5 Only those bidders/ contractors who have entered into this agreement with the Principal would be competent to participate in the bidding. In other words, entering into this agreement would be a preliminary qualification.



रोहित जुनेजा / Rohit Juneja

उप. प्रबंधक (पी.जी.-II) / Dy. Manager (P.G.-II)

भारत हेवी इलेक्ट्रिकल्स लिमिटेड / Bharat Heavy Electricals Ltd.

पावर सेक्टर-परियोजना अभियंत्रण प्रबंधन

Power Sector-Project Engineering Management

पीपीईआई भवन, एच आर डी & एसी कॉम्प्लेक्स

PPEI Bldg, H.R.D.I. & ESI Complex,

प्लॉट नं. 25, नई दिल्ली

Plot No. 25, New Delhi

For & On behalf of the Principal
(Office Seal)

For & On behalf of the Bidder/ Contractor
(Office Seal)

Place: Noida

Date: 15/01/2021

Witness: _____

(Name & Address) काशिक / Karuna Kaushik

Witness: _____

(Name & Address) _____

No. P-45021/2/2017-PP (BE-II)
Government of India
Ministry of Commerce and Industry
Department for Promotion of Industry and Internal Trade
(Public Procurement Section)

Udyog Bhawan, New Delhi
Dated: 16th September, 2020

To

All Central Ministries/Departments/CPSUs/All concerned

ORDER

Subject: Public Procurement (Preference to Make in India), Order 2017– Revision; regarding.

Department for Promotion of Industry and Internal Trade, in partial modification [Paras 2, 3, 5, 10 & 13] of Order No.P-45021/2/2017-B.E.-II dated 15.6.2017 as amended by Order No.P-45021/2/2017-B.E.-II dated 28.05.2018, Order No.P-45021/2/2017-B.E.-II dated 29.05.2019 and Order No.P-45021/2/2017-B.E.-II dated 04.06.2020, hereby issues the revised 'Public Procurement (Preference to Make in India), Order 2017' dated 16.09.2020 effective with immediate effect.

Whereas it is the policy of the Government of India to encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment, and

Whereas procurement by the Government is substantial in amount and can contribute towards this policy objective, and

Whereas local content can be increased through partnerships, cooperation with local companies, establishing production units in India or Joint Ventures (JV) with Indian suppliers, increasing the participation of local employees in services and training them,

Now therefore the following Order is issued:

1. This Order is issued pursuant to Rule 153 (iii) of the General Financial Rules 2017.
2. **Definitions:** For the purposes of this Order:

'Local content' means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.

'Class-I local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-I local supplier' under this Order.

.....Contd. p/2

'Class-II local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-II local supplier' but less than that prescribed for 'Class-I local supplier' under this Order.

'Non - Local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than that prescribed for 'Class-II local supplier' under this Order.

'L1' means the lowest tender or lowest bid or the lowest quotation received in a tender, bidding process or other procurement solicitation as adjudged in the evaluation process as per the tender or other procurement solicitation.

'Margin of purchase preference' means the maximum extent to which the price quoted by a "Class-I local supplier" may be above the L1 for the purpose of purchase preference.

'Nodal Ministry' means the Ministry or Department identified pursuant to this order in respect of a particular item of goods or services or works.

'Procuring entity' means a Ministry or department or attached or subordinate office of, or autonomous body controlled by, the Government of India and includes Government companies as defined in the Companies Act.

'Works' means all works as per Rule 130 of GFR- 2017, and will also include 'turnkey works'.

3. Eligibility of 'Class-I local supplier' / 'Class-II local supplier' / 'Non-local suppliers' for different types of procurement

(a) In procurement of all goods, services or works in respect of which the Nodal Ministry / Department has communicated that there is sufficient local capacity and local competition, only 'Class-I local supplier', as defined under the Order, shall be eligible to bid irrespective of purchase value.

(b) Only 'Class-I local supplier' and 'Class-II local supplier', as defined under the Order, shall be eligible to bid in procurements undertaken by procuring entities, except when Global tender enquiry has been issued. In global tender enquiries, 'Non-local suppliers' shall also be eligible to bid along with 'Class-I local suppliers' and 'Class-II local suppliers'. In procurement of all goods, services or works, not covered by sub-para 3(a) above, and with estimated value of purchases less than Rs. 200 Crore, in accordance with Rule 161(iv) of GFR, 2017, Global tender enquiry shall not be issued except with the approval of competent authority as designated by Department of Expenditure.

(c) For the purpose of this Order, works includes Engineering, Procurement and Construction (EPC) contracts and services include System Integrator (SI) contracts.

3A. Purchase Preference

(a) Subject to the provisions of this Order and to any specific instructions issued by the Nodal Ministry or in pursuance of this Order, purchase preference shall be given to 'Class-I local supplier' in procurements undertaken by procuring entities in the manner specified here under.

(b) In the procurements of goods or works, which are covered by para 3(b) above and which are divisible in nature, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

- i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract for full quantity will be awarded to L1.
- ii. If L1 bid is not a 'Class-I local supplier', 50% of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the 'Class-I local supplier' will be invited to match the L1 price for the remaining 50% quantity subject to the Class-I local supplier's quoted price falling within the margin of purchase preference, and contract for that quantity shall be awarded to such 'Class-I local supplier' subject to matching the L1 price. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price or accepts less than the offered quantity, the next higher 'Class-I local supplier' within the margin of purchase preference shall be invited to match the L1 price for remaining quantity and so on, and contract shall be awarded accordingly. In case some quantity is still left uncovered on Class-I local suppliers, then such balance quantity may also be ordered on the L1 bidder.

(c) In the procurements of goods or works, which are covered by para 3(b) above and which are not divisible in nature, and in procurement of services where the bid is evaluated on price alone, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

- i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract will be awarded to L1.
- ii. If L1 is not 'Class-I local supplier', the lowest bidder among the 'Class-I local supplier', will be invited to match the L1 price subject to Class-I local supplier's quoted price falling within the margin of purchase preference, and the contract shall be awarded to such 'Class-I local supplier' subject to matching the L1 price.
- iii. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price, the 'Class-I local supplier' with the next higher bid within the margin of purchase preference shall be invited to match the L1 price and so on and contract shall be awarded accordingly. In case none of the 'Class-I local supplier' within the margin of purchase preference matches the L1 price, the contract may be awarded to the L1 bidder.

- (d) "Class-II local supplier" will not get purchase preference in any procurement, undertaken by procuring entities.

3B. Applicability in tenders where contract is to be awarded to multiple bidders -
In tenders where contract is awarded to multiple bidders subject to matching of L1 rates or otherwise, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

- a) In case there is sufficient local capacity and competition for the item to be procured, as notified by the nodal Ministry, only Class I local suppliers shall be eligible to bid. As such, the multiple suppliers, who would be awarded the contract, should be all and only 'Class I Local suppliers'.
- b) In other cases, 'Class II local suppliers' and 'Non local suppliers' may also participate in the bidding process along with 'Class I Local suppliers' as per provisions of this Order.
- c) If 'Class I Local suppliers' qualify for award of contract for at least 50% of the tendered quantity in any tender, the contract may be awarded to all the qualified bidders as per award criteria stipulated in the bid documents. However, in case 'Class I Local suppliers' do not qualify for award of contract for at least 50% of the tendered quantity, purchase preference should be given to the 'Class I local supplier' over 'Class II local suppliers'/'Non local suppliers' provided that their quoted rate falls within 20% margin of purchase preference of the highest quoted bidder considered for award of contract so as to ensure that the 'Class I Local suppliers' taken in totality are considered for award of contract for at least 50% of the tendered quantity.
- d) First purchase preference has to be given to the lowest quoting 'Class-I local supplier', whose quoted rates fall within 20% margin of purchase preference, subject to its meeting the prescribed criteria for award of contract as also the constraint of maximum quantity that can be sourced from any single supplier. If the lowest quoting 'Class-I local supplier', does not qualify for purchase preference because of aforesaid constraints or does not accept the offered quantity, an opportunity may be given to next higher 'Class-I local supplier', falling within 20% margin of purchase preference, and so on.
- e) To avoid any ambiguity during bid evaluation process, the procuring entities may stipulate its own tender specific criteria for award of contract amongst different bidders including the procedure for purchase preference to 'Class-I local supplier' within the broad policy guidelines stipulated in sub-paras above.

4. **Exemption of small purchases:** Notwithstanding anything contained in paragraph 3, procurements where the estimated value to be procured is less than Rs. 5 lakhs shall be exempt from this Order. However, it shall be ensured by procuring entities that procurement is not split for the purpose of avoiding the provisions of this Order.

5. **Minimum local content:** The 'local content' requirement to categorize a supplier as 'Class-I local supplier' is minimum 50%. For 'Class-II local supplier', the 'local content' requirement is minimum 20%. Nodal Ministry/ Department may prescribe only a higher

percentage of minimum local content requirement to categorize a supplier as 'Class-I local supplier'/ 'Class-II local supplier'. For the items, for which Nodal Ministry/ Department has not prescribed higher minimum local content notification under the Order, it shall be 50% and 20% for 'Class-I local supplier'/ 'Class-II local supplier' respectively.

6. **Margin of Purchase Preference:** The margin of purchase preference shall be 20%.
7. **Requirement for specification in advance:** The minimum local content, the margin of purchase preference and the procedure for preference to Make in India shall be specified in the notice inviting tenders or other form of procurement solicitation and shall not be varied during a particular procurement transaction.
8. **Government E-marketplace:** In respect of procurement through the Government E-marketplace (GeM) shall, as far as possible, specifically mark the items which meet the minimum local content while registering the item for display, and shall, wherever feasible, make provision for automated comparison with purchase preference and without purchase preference and for obtaining consent of the local supplier in those cases where purchase preference is to be exercised.
9. **Verification of local content:**
 - a. The 'Class-I local supplier'/ 'Class-II local supplier' at the time of tender, bidding or solicitation shall be required to indicate percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I local supplier'/ 'Class-II local supplier', as the case may be. They shall also give details of the location(s) at which the local value addition is made.
 - b. In cases of procurement for a value in excess of Rs. 10 crores, the 'Class-I local supplier'/ 'Class-II local supplier' shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.
 - c. Decisions on complaints relating to implementation of this Order shall be taken by the competent authority which is empowered to look into procurement-related complaints relating to the procuring entity.
 - d. Nodal Ministries may constitute committees with internal and external experts for independent verification of self-declarations and auditor's/ accountant's certificates on random basis and in the case of complaints.
 - e. Nodal Ministries and procuring entities may prescribe fees for such complaints.
 - f. False declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rules for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the General Financial Rules along with such other actions as may be permissible under law.

- g. A supplier who has been debarred by any procuring entity for violation of this Order shall not be eligible for preference under this Order for procurement by any other procuring entity for the duration of the debarment. The debarment for such other procuring entities shall take effect prospectively from the date on which it comes to the notice of other procurement entities, in the manner prescribed under paragraph 9h below.
- h. The Department of Expenditure shall issue suitable instructions for the effective and smooth operation of this process, so that:
 - i. The fact and duration of debarment for violation of this Order by any procuring entity are promptly brought to the notice of the Member-Convenor of the Standing Committee and the Department of Expenditure through the concerned Ministry /Department or in some other manner;
 - ii. on a periodical basis such cases are consolidated and a centralized list or decentralized lists of such suppliers with the period of debarment is maintained and displayed on website(s);
 - iii. in respect of procuring entities other than the one which has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in the such a manner that ongoing procurements are not disrupted.

10. Specifications in Tenders and other procurement solicitations:

- a. Every procuring entity shall ensure that the eligibility conditions in respect of previous experience fixed in any tender or solicitation do not require proof of supply in other countries or proof of exports.
- b. Procuring entities shall endeavour to see that eligibility conditions, including on matters like turnover, production capability and financial strength do not result in unreasonable exclusion of 'Class-I local supplier'/ 'Class-II local supplier' who would otherwise be eligible, beyond what is essential for ensuring quality or creditworthiness of the supplier.
- c. Procuring entities shall, within 2 months of the issue of this Order review all existing eligibility norms and conditions with reference to sub-paragraphs 'a' and 'b' above.

d. Reciprocity Clause

- i. When a Nodal Ministry/Department identifies that Indian suppliers of an item are not allowed to participate and/ or compete in procurement by any foreign government, due to restrictive tender conditions which have direct or indirect effect of barring Indian companies such as registration in the procuring country, execution of projects of specific value in the procuring country etc., it shall provide such details to all its procuring entities including CMDs/CEOs of PSEs/PSUs, State Governments and other procurement agencies under their administrative control and GeM for appropriate reciprocal action.

- ii. Entities of countries which have been identified by the nodal Ministry/Department as not allowing Indian companies to participate in their Government procurement for any item related to that nodal Ministry shall not be allowed to participate in Government procurement in India for all items related to that nodal Ministry/ Department, except for the list of items published by the Ministry/ Department permitting their participation.
 - iii. The stipulation in (ii) above shall be part of all tenders invited by the Central Government procuring entities stated in (i) above. All purchases on GeM shall also necessarily have the above provisions for items identified by nodal Ministry/ Department.
 - iv. State Governments should be encouraged to incorporate similar provisions in their respective tenders.
 - v. The term 'entity' of a country shall have the same meaning as under the FDI Policy of DPIIT as amended from time to time.
- e. Specifying foreign certifications/ unreasonable technical specifications/ brands/ models in the bid document is restrictive and discriminatory practice against local suppliers. If foreign certification is required to be stipulated because of non-availability of Indian Standards and/or for any other reason, the same shall be done only after written approval of Secretary of the Department concerned or any other Authority having been designated such power by the Secretary of the Department concerned.
- f. "All administrative Ministries/Departments whose procurement exceeds Rs. 1000 Crore per annum shall notify/ update their procurement projections every year, including those of the PSEs/PSUs, for the next 5 years on their respective website."

10A. Action for non-compliance of the Provisions of the Order: In case restrictive or discriminatory conditions against domestic suppliers are included in bid documents, an inquiry shall be conducted by the Administrative Department undertaking the procurement (including procurement by any entity under its administrative control) to fix responsibility for the same. Thereafter, appropriate action, administrative or otherwise, shall be taken against erring officials of procurement entities under relevant provisions. Intimation on all such actions shall be sent to the Standing Committee.

11. Assessment of supply base by Nodal Ministries: The Nodal Ministry shall keep in view the domestic manufacturing / supply base and assess the available capacity and the extent of local competition while identifying items and prescribing the higher minimum local content or the manner of its calculation, with a view to avoiding cost increase from the operation of this Order.

12. Increase in minimum local content: The Nodal Ministry may annually review the local content requirements with a view to increasing them, subject to availability of sufficient local competition with adequate quality.

13. **Manufacture under license/ technology collaboration agreements with phased indigenization:** While notifying the minimum local content, Nodal Ministries may make special provisions for exempting suppliers from meeting the stipulated local content if the product is being manufactured in India under a license from a foreign manufacturer who holds intellectual property rights and where there is a technology collaboration agreement / transfer of technology agreement for indigenous manufacture of a product developed abroad with clear phasing of increase in local content.

13A. In procurement of all goods, services or works in respect of which there is substantial quantity of public procurement and for which the nodal ministry has not notified that there is sufficient local capacity and local competition, the concerned nodal ministry shall notify an upper threshold value of procurement beyond which foreign companies shall enter into a joint venture with an Indian company to participate in the tender. Procuring entities, while procuring such items beyond the notified threshold value, shall prescribe in their respective tenders that foreign companies may enter into a joint venture with an Indian company to participate in the tender. The procuring Ministries/Departments shall also make special provisions for exempting such joint ventures from meeting the stipulated minimum local content requirement, which shall be increased in a phased manner.

14. **Powers to grant exemption and to reduce minimum local content:** The administrative Department undertaking the procurement (including procurement by any entity under its administrative control), with the approval of their Minister-in-charge, may by written order, for reasons to be recorded in writing,

- a. reduce the minimum local content below the prescribed level; or
- b. reduce the margin of purchase preference below 20%; or
- c. exempt any particular item or supplying entities from the operation of this Order or any part of the Order.

A copy of every such order shall be provided to the Standing Committee and concerned Nodal Ministry / Department. The Nodal Ministry / Department concerned will continue to have the power to vary its notification on Minimum Local Content.

15. **Directions to Government companies:** In respect of Government companies and other procuring entities not governed by the General Financial Rules, the administrative Ministry or Department shall issue policy directions requiring compliance with this Order.

16. **Standing Committee:** A standing committee is hereby constituted with the following membership:

Secretary, Department for Promotion of Industry and Internal Trade—Chairman
Secretary, Commerce—Member
Secretary, Ministry of Electronics and Information Technology—Member
Joint Secretary (Public Procurement), Department of Expenditure—Member
Joint Secretary (DPIIT)—Member-Convenor

The Secretary of the Department concerned with a particular item shall be a member in respect of issues relating to such item. The Chairman of the Committee may co-opt technical experts as relevant to any issue or class of issues under its consideration.

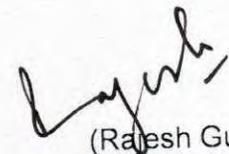
17. Functions of the Standing Committee: The Standing Committee shall meet as often as necessary, but not less than once in six months. The Committee

- a. shall oversee the implementation of this order and issues arising therefrom, and make recommendations to Nodal Ministries and procuring entities.
- b. shall annually assess and periodically monitor compliance with this Order
- c. shall identify Nodal Ministries and the allocation of items among them for issue of notifications on minimum local content
- d. may require furnishing of details or returns regarding compliance with this Order and related matters
- e. may, during the annual review or otherwise, assess issues, if any, where it is felt that the manner of implementation of the order results in any restrictive practices, cartelization or increase in public expenditure and suggest remedial measures
- f. may examine cases covered by paragraph 13 above relating to manufacture under license/ technology transfer agreements with a view to satisfying itself that adequate mechanisms exist for enforcement of such agreements and for attaining the underlying objective of progressive indigenization
- g. may consider any other issue relating to this Order which may arise.

18. Removal of difficulties: Ministries /Departments and the Boards of Directors of Government companies may issue such clarifications and instructions as may be necessary for the removal of any difficulties arising in the implementation of this Order.

19. Ministries having existing policies: Where any Ministry or Department has its own policy for preference to local content approved by the Cabinet after 1st January 2015, such policies will prevail over the provisions of this Order. All other existing orders on preference to local content shall be reviewed by the Nodal Ministries and revised as needed to conform to this Order, within two months of the issue of this Order.

20. Transitional provision: This Order shall not apply to any tender or procurement for which notice inviting tender or other form of procurement solicitation has been issued before the issue of this Order.



(Rajesh Gupta)
Director

Tel: 23063211

rajesh.gupta66@gov.in



सत्यमेव जयते

भारत सरकार
Government of India
विद्युत मंत्रालय
Ministry of Power
केन्द्रीय विद्युत प्राधिकरण
Central Electricity Authority
शोध एवं विकास प्रभाग
Research & Development Division

No. CEA/PLG/R&D/MII/2020

Date: 03.07.2020

To CMDs of PSUs and DG BEE, CPRI, NPTI etc

Subject: Ministry of Power Order dated 02.07.2020 regarding Power Sector as Strategic and Critical Sector-Testing of imported equipment, components, and parts

Sir,

It has been decided that the Power Sector is a strategic and critical sector. Ministry of Power has brought out the subject cited Order and the same is enclosed herewith. Kindly take a note of it for compliance with immediate effect and send the response of your Organisation in terms of Action Plan to implement the same/Action taken so far.

Encl.- As above

(अशोक कुमार राजपूत)/A K Rajput
मुख्य अभियंता/ (CE(R&D))

Copy for information to:

Chairperson (CEA) / Member (Planning/ Thermal/ Power System, GoD, E&C & Hydro), CEA

Sh Rajpal, Economic Adviser, MoP, New Delhi

The Deputy Secretary (Coordination), MoP, New Delhi

Concerned Chief Engineers of CEA – for taking necessary action in the matter.

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Member.god@cea.nic.in,
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Sa.memberhydro@gmail.com,
ravindranath.singh@nic.in,
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ssandesh@yahoo.com

→ GM & Head / PS-PMG.

04/07/20

for circulation to
all concerned
please.

सेवा भवन, आर. के. पुरम-I, नई दिल्ली-110066 टेली: 011-26732257 ईमेल: ce-rndcea@nic.in वेबसाइट: www.cea.nic.in

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No.25-11/6/2018-PG
Government of India
Ministry of Power
Shram Shakti Bhawan, Rafi Marg, New Delhi – 110001
Tele Fax: 011-23730264

Dated 02/07/2020

ORDER

Power Supply System is a sensitive and critical infrastructure that supports not only our **national defence, vital emergency services** including health, disaster response, **critical national infrastructure** including classified data & communication services, defence installations and manufacturing establishments, logistics services but also the **entire economy** and the **day-to-day life** of the citizens of the country. Any danger or threat to Power Supply System can have catastrophic effects and has the potential to cripple the entire country. Therefore, the Power Sector is a **strategic and critical sector**.

The vulnerabilities in the Power Supply System & Network mainly arise out of the possibilities of cyber attacks through malware / Trojans etc. embedded in imported equipment. Hence, **to protect the security, integrity and reliability of the strategically important and critical Power Supply System & Network** in the country, the following directions are hereby issued :-

(1) All equipment, components, and parts imported for use in the Power Supply System and Network shall be tested in the country to check for any kind of embedded malware/trojans/cyber threat and for adherence to Indian Standards.

(2) All such testings shall be done in certified laboratories that will be designated by the Ministry of Power (MoP).

(3) Any import of equipment/components/parts from "prior reference" countries as specified or by persons owned by, controlled by, or subject to the jurisdiction or the directions of these "prior reference" countries will require prior permission of the Government of India

(4) Where the equipment/components/parts are imported from "prior reference" countries, with special permission, the protocol for testing in certified and designated laboratories shall be approved by the Ministry of Power (MoP).

This order shall apply to any item imported for end use or to be used as a component, or as a part in manufacturing, assembling of any equipment or to be used in power supply system or any activity directly or indirectly related to power supply system.

This issues with the approval of Hon'ble Minister of State for Power and New & Renewable Energy (Independent Charge).



(Goutam Ghosh)

Director

Tel: 011-23716674

To:

1. All Ministries/Departments of Government of India (As per list)
2. Secretary (Coordination), Cabinet Secretariat
3. Vice Chairman, NITI Aayog
4. Comptroller and Auditor General of India
5. Chairperson, CEA
6. CMDs of CPSEs/Chairman of DVC & BBMB/MD, EESL/DG, NPTI/DG, CPRI/DG, BEE/
7. All ASs/JSs/EA, MoP

Copy:

1. PS to Hon'ble PM, Prime Minister's Office
2. PS to Hon'ble MOS(IC) for Power and NRE
3. Sr. PPS to Secretary(Power)

F.No.6/18/2019-PPD
Ministry of Finance
Department of Expenditure
Public Procurement Division

161, North Block,
New Delhi
23rd July, 2020

Office Memorandum

Subject: Insertion of Rule 144 (xi) in the General Financial Rules (GFRs), 2017

Rule 144 of the General Financial Rules 2017 entitled 'Fundamental principles of public buying', has been amended by inserting sub-rule (xi) as under:

Notwithstanding anything contained in these Rules, Department of Expenditure may, by order in writing, impose restrictions, including prior registration and/or screening, on procurement from bidders from a country or countries, or a class of countries, on grounds of defence of India, or matters directly or indirectly related thereto including national security; no procurement shall be made in violation of such restrictions.



(Sanjay Prasad)
Joint Secretary (PPD)
Email ID: js.pfc2.doe@gov.in
Telephone: 011-23093882

To,
(1) Secretaries of All Ministries/ Departments of Government of India
(2) Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi

F.No.6/18/2019-PPD
Ministry of Finance
Department of Expenditure
Public Procurement Division

161, North Block,
New Delhi
23rd July, 2020

Order (Public Procurement No. 1)

Subject: Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs), 2017

Attention is invited to this office OM no. 6/18/2019-PPD dated 23rd July 2020 inserting Rule 144 (xi) in GFRs 2017. In this regard, the following is hereby ordered under Rule 144 (xi) on the grounds stated therein:

Requirement of registration

1. Any bidder from a country which shares a land border with India will be eligible to bid in any procurement whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority, specified in **Annex I**.
2. This Order shall not apply to (i) cases where orders have been placed or contract has been concluded or letter/notice of award/ acceptance (LoA) has been issued on or before the date of this order; and (ii) cases falling under **Annex II**.

Transitional cases

3. Tenders where no contract has been concluded or no LoA has been issued so far shall be handled in the following manner: -
 - a) *In tenders which are yet to be opened, or where evaluation of technical bid or the first exclusionary qualificatory stage (i.e. the first stage at which the qualifications of tenderers are evaluated and unqualified bidders are excluded) has not been completed: No contracts shall be placed on bidders from such countries. Tenders received from bidders from such countries shall be dealt with as if they are non-compliant with the tender conditions and the tender shall be processed accordingly.*
 - b) *If the tendering process has crossed the first exclusionary qualificatory stage: If the qualified bidders include bidders from such countries, the*

entire process shall be scrapped and initiated *de novo*. The *de novo* process shall adhere to the conditions prescribed in this Order.

- c) As far as practicable, and in cases of doubt about whether a bidder falls under paragraph 1, a certificate shall be obtained from the bidder whose bid is proposed to be considered or accepted, in terms of paras 8, 9 and 10 read with para 1 of this Order.

Incorporation in tender conditions

4. In tenders to be issued after the date of this order, the provisions of paragraph 1 and of other relevant provisions of this Order shall be incorporated in the tender conditions.

Applicability

5. Apart from Ministries / Departments, attached and subordinate bodies, notwithstanding anything contained in Rule 1 of the GFRs 2017, this Order shall also be applicable
 - a. to all Autonomous Bodies;
 - b. to public sector banks and public sector financial institutions; and
 - c. subject to any orders of the Department of Public Enterprises, to all Central Public Sector Enterprises; and
 - d. to procurement in Public Private Partnership projects receiving financial support from the Government or public sector enterprises/ undertakings.
 - e. Union Territories, National Capital Territory of Delhi and all agencies/ undertakings thereof

Definitions

6. "Bidder" for the purpose of this Order (including the term 'tenderer', 'consultant' 'vendor' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency, branch or office controlled by such person, participating in a procurement process.
7. "Tender" for the purpose of this Order will include other forms of procurement, except where the context requires otherwise.
8. "Bidder from a country which shares a land border with India" for the purpose of this Order means

- a) An entity incorporated, established or registered in such a country; or
- b) A subsidiary of an entity incorporated, established or registered in such a country; or
- c) An entity substantially controlled through entities incorporated, established or registered in such a country; or
- d) An entity whose *beneficial owner* is situated in such a country; or
- e) An Indian (or other) agent of such an entity; or
- f) A natural person who is a citizen of such a country; or
- g) A consortium or joint venture where any member of the consortium or joint venture falls under any of the above

9. "Beneficial owner" for the purpose of paragraph 8 above will be as under:

- (i) In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person(s), has a controlling ownership interest or who exercises control through other means.

Explanation—

- a. "Controlling ownership interest" means ownership of, or entitlement to, more than twenty-five per cent of shares or capital or profits of the company;
- b. "Control" shall include the right to appoint the majority of the directors or to control the management or policy decisions, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

- (ii) In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;

- (iii) In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;

- (iv) Where no natural person is identified under (i) or (ii) or (iii) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

4/12

(v) In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

10. "Agent" for the purpose of this Order is a person employed to do any act for another, or to represent another in dealings with third persons.

Sub-contracting in works contracts

11. In works contracts, including turnkey contracts, contractors shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. The definition of "contractor from a country which shares a land border with India" shall be as in paragraph 8 above. This shall not apply to sub-contracts already awarded on or before the date of this Order.

Certificate regarding compliance

12. A certificate shall be taken from bidders in the tender documents regarding their compliance with this Order. If such certificate given by a bidder whose bid is accepted is found to be false, this would be a ground for immediate termination and further legal action in accordance with law.

Validity of registration

13. In respect of tenders, registration should be valid at the time of submission of bids and at the time of acceptance of bids. In respect of supply otherwise than by tender, registration should be valid at the time of placement of order. If the bidder was validly registered at the time of acceptance / placement of order, registration shall not be a relevant consideration during contract execution.

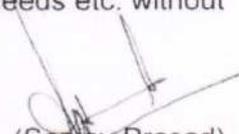
Government E-Marketplace

14. The Government E-Marketplace shall, as soon as possible, require all vendors/ bidders registered with GeM to give a certificate regarding compliance with this Order, and after the date fixed by it, shall remove non-compliant entities from GeM unless/ until they are registered in accordance with this Order.

5/12

Model Clauses/ Certificates

15. Model Clauses and Model Certificates which may be inserted in tenders / obtained from Bidders are enclosed as **Annex III**. While adhering to the substance of the Order, procuring entities are free to appropriately modify the wording of these clauses based on their past experience, local needs etc. without making any reference to this Department.


(Sanjay Prasad)
Joint Secretary (PPD)
Email ID: js.pfc2.doe@gov.in
Telephone: 011-23093882

To

- (1) Secretaries of All Ministries/ Departments of Government of India for information and necessary action. They are also requested to inform these provisions to all procuring entities.
- (2) Secretary, Department of Public Enterprises with a request to immediately reiterate these orders in respect of Public Enterprises.
- (3) Secretary DPIIT with a request to initiate action as provided under Annex I
- (4) Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi

6/12

Annex I: Competent Authority and Procedure for Registration

- A. The Competent Authority for the purpose of registration under this Order shall be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT)*.
- B. The Registration Committee shall have the following members*:
- i. An officer, not below the rank of Joint Secretary, designated for this purpose by DPIIT, who shall be the Chairman;
 - ii. Officers (ordinarily not below the rank of Joint Secretary) representing the Ministry of Home Affairs, Ministry of External Affairs, and of those Departments whose sectors are covered by applications under consideration;
 - iii. Any other officer whose presence is deemed necessary by the Chairman of the Committee.
- C. DPIIT shall lay down the method of application, format etc. for such bidders as stated in para 1 of this Order.
- D. On receipt of an application seeking registration from a bidder from a country covered by para 1 of this Order, the Competent Authority shall first seek political and security clearances from the Ministry of External Affairs and Ministry of Home Affairs, as per guidelines issued from time to time. Registration shall not be given unless political and security clearance have both been received.
- E. The Ministry of External Affairs and Ministry of Home Affairs may issue guidelines for internal use regarding the procedure for scrutiny of such applications by them.
- F. The decision of the Competent Authority, to register such bidder may be for all kinds of tenders or for a specified type(s) of goods or services, and may be for a specified or unspecified duration of time, as deemed fit. The decision of the Competent Authority shall be final.
- G. Registration shall not be granted unless the representatives of the Ministries of Home Affairs and External Affairs on the Committee concur*.
- H. Registration granted by the Competent Authority of the Government of India shall be valid not only for procurement by Central Government and its agencies/ public enterprises etc. but also for procurement by State Governments and their agencies/ public enterprises etc. No fresh registration at the State level shall be required.

7/12

- I. The Competent Authority is empowered to cancel the registration already granted if it determines that there is sufficient cause. Such cancellation by itself, however, will not affect the execution of contracts already awarded. Pending cancellation, it may also suspend the registration of a bidder, and the bidder shall not be eligible to bid in any further tenders during the period of suspension.
- J. For national security reasons, the Competent Authority shall not be required to give reasons for rejection / cancellation of registration of a bidder.
- K. In transitional cases falling under para 3 of this Order, where it is felt that it will not be practicable to exclude bidders from a country which shares a land border with India, a reference seeking permission to consider such bidders shall be made by the procuring entity to the Competent Authority, giving full information and detailed reasons. The Competent Authority shall decide whether such bidders may be considered, and if so shall follow the procedure laid down in the above paras.
- L. Periodic reports on the acceptance/ refusal of registration during the preceding period may be required to be sent to the Cabinet Secretariat. Details will be issued separately in due course by DPIIT.

[*Note:

- i. In respect of application of this Order to procurement by/ under State Governments, all functions assigned to DPIIT shall be carried out by the State Government concerned through a specific department or authority designated by it. The composition of the Registration Committee shall be as decided by the State Government and paragraph G above shall not apply. However, the requirement of **political and security clearance as per para D shall remain and no registration shall be granted without such clearance.**
- ii. Registration granted by State Governments shall be valid only for procurement by the State Government and its agencies/ public enterprises etc. and shall not be valid for procurement in other states or by the Government of India and their agencies/ public enterprises etc.]

8/12

Annex II: Special Cases

- A. Till 31st December 2020, procurement of medical supplies directly related to containment of the Covid-19 pandemic shall be exempt from the provisions of this Order.
- B. *Bona fide* procurements made through GeM without knowing the country of the bidder till the date fixed by GeM for this purpose, shall not be invalidated by this Order.
- C. *Bona fide* small procurements, made without knowing the country of the bidder, shall not be invalidated by this Order.
- D. In projects which receive international funding with the approval of the Department of Economic Affairs (DEA), Ministry of Finance, the procurement guidelines applicable to the project shall normally be followed, notwithstanding anything contained in this Order and without reference to the Competent Authority. Exceptions to this shall be decided in consultation with DEA.
- E. This Order shall not apply to procurement by Indian missions and by offices of government agencies/ undertakings located outside India.

9/12

Annex III

Model Clause /Certificate to be inserted in tenders etc.

(While adhering to the substance of the Order, procuring entities and GeM are free to appropriately modify the wording of the clause/ certificate based on their past experience, local needs etc.)

Model Clauses for Tenders

- I. Any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority.
- II. "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.
- III. "Bidder from a country which shares a land border with India" for the purpose of this Order means: -
 - a. An entity incorporated, established or registered in such a country; or
 - b. A subsidiary of an entity incorporated, established or registered in such a country; or
 - c. An entity substantially controlled through entities incorporated, established or registered in such a country; or
 - d. An entity whose *beneficial owner* is situated in such a country; or
 - e. An Indian (or other) agent of such an entity; or
 - f. A natural person who is a citizen of such a country; or
 - g. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above
- IV. The *beneficial owner* for the purpose of (iii) above will be as under:
 1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.

Explanation—

 - a. "Controlling ownership interest" means ownership of or entitlement to more than twenty-five per cent. of shares or capital or profits of the company;

10/12

- b. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;
2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
 3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;
 4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
 5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.
- V. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.
- VI. *[To be inserted in tenders for Works contracts, including Turnkey contracts]* The successful bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority.

Model Certificate for Tenders (for transitional cases as stated in para 3 of this Order)

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I hereby certify that this bidder is not from such a country and is eligible to be considered."

Model Certificate for Tenders

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this bidder is not from such a country or, if from such a country, has been registered with the

11/12

Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]”

Model Certificate for Tenders for Works involving possibility of sub-contracting

“I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]”

Model Certificate for GeM:

“I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this vendor/ bidder is not from such a country or, if from such a country, has been registered with the Competent Authority. I hereby certify that this vendor/ bidder fulfills all requirements in this regard and is eligible to be considered for procurement on GeM. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]”

12/12

F.No.6/18/2019-PPD
Ministry of Finance
Department of Expenditure
Public Procurement Division

161, North Block
New Delhi
23rd July, 2020

Order (Public Procurement No. 2)

Subject: Exclusion from restrictions under Rule 144 (xi) of the General Financial Rules (GFRs), 2017 –regarding.

In Order (Public Procurement No. 1) dated 23rd July 2020, orders have been issued requiring registration of bidders from a country sharing a land border with India in order to be eligible to bid in public procurement.

2. Notwithstanding anything contained therein, it is hereby clarified that the said Order will not apply to bidders from those countries (even if sharing a land border with India) to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects.

3. Updated lists of countries to which lines of credit have been extended or in which development projects are undertaken are given in the website of the Ministry of External Affairs.


(Sanjay Prasad)
Joint Secretary (PPD)
Email ID: js.pfc2.doe@gov.in
Telephone: 011-23093882

To,

- (1) Secretaries of All Ministries/ Departments of Government of India for information and necessary action. They are also requested to inform these provisions to all procuring entities.
- (2) Secretary, Department of Public Enterprises with a request to immediately reiterate these orders in respect of Public Enterprises.
- (3) Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi

F.No.6/18/2019-PPD
Ministry of Finance
Department of Expenditure
Public Procurement Division

161, North Block,
New Delhi
24th July, 2020

Order (Public Procurement No. 3)

Subject: Clarification to Order (Public Procurement No.1) dated 23rd July 2020

Attention is invited to paragraph 3(b) of the Order (Public Procurement No.1), under the heading "Transitional provisions" which reads as follows:

- b) *If the tendering process has crossed the first exclusionary qualificatory stage: If the qualified bidders include bidders from such countries, the entire process shall be scrapped and initiated *de novo*. The *de novo* process shall adhere to the conditions prescribed in this Order.*

It is hereby clarified that for the purpose of paragraph 3 (b), "qualified bidders" means only those bidders who would otherwise have been qualified for award of the tender after considering all factors including price, if Order (Public Procurement No. 1) dated 23rd July 2020 had not been issued.

2. If bidders from such countries would not have qualified for award for reasons unconnected with the said Order (for example, because they do not meet tender criteria or their price bid is higher or because of the provisions of purchase preference under any other order or rule or any other reason) then there is no need to scrap the tender / start the process de novo.

3. The following examples are given to assist in implementation of the Order.

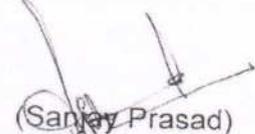
Example 1: Four bids are received in a tender. One of them is from a country which shares a land border with India. The bidder from such country is found to be qualified technically by meeting all prescribed criteria and is also the lowest bidder. In this case, the bidder is qualified for award of the tender, except for the provisions of the Order (Public Procurement No. 1) dated 23rd July. In this case, the tender should be scrapped and fresh tender initiated.

Example 2: The facts are as in Example 1, but the bidder from such country, though technically qualified is not the lowest because there are other technically qualified bidders whose price is lower. Hence the bidder from such country would not be

qualified for award of the tender irrespective of the Order (Public Procurement No. 1) dated 23rd July 2020. In such a case, there is no need to scrap the tender.

Example 3: The facts are as in Example 1, but the bidder from a country which shares a land border with India, though technically qualified, is not eligible for award due to the application of price preference as per other orders/ rules. In such a case, there is no need to scrap the tender.

Example 4: Three bids are received in a tender. One of them is a bidder from a country sharing a land border with India. The bidder from such a country does not meet the technical requirements and hence is not qualified. There is no need to scrap the tender.


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To,

- (1) Secretaries of All Ministries/ Departments of Government of India for information and necessary action. They are also requested to inform the clarification to all procuring entities.
- (2) Secretary, Department of Public Enterprises with a request to immediately circulate this clarification among Public Enterprises.
- (3) Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi