

No. NH-35014/35/2020-H-Part(II) (E-196662)
Government of India
Ministry of Road Transport & Highways
(Highways Section)
Transport Bhawan, 1, Parliament Street, New Delhi-110001

Dated: 16 December, 2021

Office Memorandum

Subject: (i) Changes in standard RFP & MCA of EPC, BOT(Toll) and HAM project in order to ensure compliance of PPP-Mll Order, 2017 and Rule 144 (xi) of GFR, 2017

(ii) Change in the clause no. 2.2.2.1 of the standard RFP of EPC to include all awarded works for determination of available BID Capacity.

Consequent upon the decision taken in the meeting of the Inter Ministerial Committee (IMC) held under the chairmanship of Secretary(RT&H) on 15.11.2021 on the above subject, NHAI has issued following 3 policy circulars (**copies enclosed**) incorporating the corresponding changes in standard RFP & MCA of EPC, BOT (Toll) and HAM project :

(i) **Policy Circular no. 11.32/2021 dated 07th December, 2021:** Amendment in the Standard Request for Proposal (RFP) and Standard EPC Agreement for National Highways and other centrally sponsored road projects proposed to be implemented on EPC mode of contract to make procurement compliant of Public Procurement (Preference to Make in India) Order, 2017 , Rule 144 (xi) of GFR and Changes in determination of Bid Capacity .

(ii) **Policy Circular no. 11.33/2021 dated 07th December, 2021 :** Amendment in the Combined Single Stage Request for Proposal (RFP) and Model Concession Agreement for National Highways and other centrally sponsored road projects proposed to be implemented on BOT(Toll) mode of contract to make procurement compliant of Public Procurement (Preference to Make in India) Order, 2017 , Rule 144 (xi) of GFR.

(iii) **Policy Circular no. 11.34/2021 dated 07th December, 2021 :** Amendment in the Standard Request for Proposal (RFP) and Model Concession Agreement for National Highways and other centrally sponsored road projects proposed to be implemented on Hybrid Annuity Model (HAM) mode of contract to make procurement compliant of Public Procurement (Preference to Make in India) Order, 2017 , Rule 144 (xi) of GFR.

2. It is conveyed that the above changes are applicable for projects implemented on the aforesaid modes of contract by all the executing agencies of MoRTH.

3. This issues with the approval of the competent authority.

Encl : As above


(Rajesh Gupta)
Director (LA)
Telephone No. 011-23718527

To

1. DG(RD) & SS, MoRTH
2. MD, NHIDCL

Copy to:

The Chairperson, NHA

Copy also to:

1. Sr. PPS to Secretary (RT&H)
2. Sr. PPS to Additional Secretary (Highways)
3. Director (Technical), NIC, MoRTH to upload this OM on the website of MoRTH



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण
(सड़क परिवहन और राजमार्ग मंत्रालय)
National Highways Authority of India
(Ministry of Road Transport and Highways)
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NHAI/Policy Guidelines/ Standard Document/2021
Policy Circular no. 11.32/2021 dated 07th December, 2021
(Decision taken on e-office file No. NHAI/CMD/Misc/2021Comp. No.85726)

Sub.: Amendment in the Standard Request for Proposal (RFP) and Standard EPC Agreement for National Highways and other centrally sponsored road projects proposed to be implemented on EPC mode of contract to make procurement compliant of Public Procurement (Preference to Make in India) Order 2017, Rule 144 (xi) of GFR and Changes in determination of Bid Capacity- reg.

It may be mentioned that an Inter - Ministerial Committee meeting was held under the chairmanship of Secretary (RT&H) on 15.11.2021 to discuss the changes in Model RFP of EPC, BOT(Toll) and HAM project in order to ensure compliance of Public Procurement (Preference to Make in India) Order 2017 (amended on 16.09.2020), Rule 144(xi) of GFR, 2017 and changes in clause 2.2.2.1 of Model RFP of EPC document regarding determination of Bid Capacity. Based on the decision taken during the meeting, following amendments shall be made in the Standard Request for Proposal (RFP) and Standard EPC Agreement for National Highways and other centrally sponsored road projects proposed to be implemented on EPC mode of contract:

A. Amendment in the Standard Request for Proposal (RFP) issued by MoRTH vide letter no. RW/NH-37010/4/2010-EAP (Printing) Vol.-IV dated 05.03.2019

Sl. No.	Clause no.	Existing Provision	Proposed Provision
1	1.2.7	Generally, the Lowest Bidder shall be the selected Bidder. In case such Lowest Bidder withdraws or is not selected for whatsoever reason except the reason mentioned in Clause 2.1.12 (b) (4), the Authority shall annul the Bidding Process and invite fresh BIDs.	Generally, the Lowest Bidder shall be the selected Bidder. In case such Lowest Bidder withdraws or is not selected for whatsoever reason except the reason mentioned in Clause 2.1.12 (b) (4) & Clause 3.3.1, the Authority shall annul the Bidding Process and invite fresh BIDs.
2	1.2.10	New clause	A Bidder is required to submit, along with its technical BID, a 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. The self-certification shall also have details of the location(s) at which the local value addition is made. In case, bidder has not submitted the aforesaid certification the bidder will be treated as 'Non- Local Supplier'. In the above pretext, the Class - I Local Supplier, Class - II Local Supplier and the Non- Local Supplier are defined as under:

Sl. No.	Clause no.	Existing Provision	Proposed Provision
			<p>(i) '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 RFP. The 'local content' requirement to categorize a supplier as 'Class - I local Supplier' is minimum 50%.</p> <p>(ii) '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' under this RFP. The 'local content' requirement to categorize a supplier as 'Class - II local Supplier' is minimum 20%.</p> <p>(iii) '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 RFP.</p> <p>(iv) 'Local content' means the amount of value added in India which shall be the total value of 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</p> <p>In case of procurement for a value in excess of Rs. 10 crores, the 'Class - I local supplier' / 'Class - II local supplier' shall provide a certificate from the statutory auditor or cost auditor of the company (in 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.</p>
3	2.1.15	New Clause	All Orders of Ministry of Finance/DPIIT/any other Government agencies, as applicable and prevalent on the date of LOA, shall be applicable.
4	2.1.16	New Clause	Entities of countries which have been identified by Ministry of Road Transport & Highways as not allowing Indian companies to participate in their Government procurement for any item related to

Sl. No.	Clause no.	Existing Provision	Proposed Provision
			Ministry of Road Transport & Highways shall not be allowed to participate in Government procurement in India for all items related to Ministry of Road Transport & Highways, except for the list of items published by the Ministry of Road Transport & Highways permitting their participation.
5	2.2.1 (d)	New Clause	<p>For determining the eligibility of Bidder from a country which shares a land border with India the following shall apply:</p> <p>(i) Any Bidder from a country which shares a land border with India will be eligible to bid, only if the Bidder is registered with the Competent Authority, specified in Annexure-I of Order (Public Procurement No. 1) issued by Ministry of Finance, Department of Expenditure Public Procurement Division vide F. No. 6/18/2019-PPD, dated 23rd July 2020, which shall form an integral part of RFP and DCA (Copy enclosed).</p> <p>(ii) “Bidder from a country which shares a land border with India” means:</p> <ol style="list-style-type: none"> 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. <p>(iii). Beneficial owner for the purpose of (ii) above means:</p> <ol style="list-style-type: none"> 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 judicial person, has a controlling ownership interest or who exercises control through other means.



Sl. No.	Clause no.	Existing Provision	Proposed Provision
			<p>Explanation:</p> <p>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.</p> <p>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 shareholding agreements or voting agreements;</p> <p>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 one or more juridical person: has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;</p> <p>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 individual;</p> <p>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;</p> <p>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.</p> <p>(iv). An Agent is a person employed to do any act for another, or to represent another in dealings with third person.</p>

Sl. No.	Clause no.	Existing Provision	Proposed Provision
			<p>(v) The Selected 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. The definition of "contractor from a country which shares a land border with India" shall be as in Clause 2.2.1(d)(ii) above.</p> <p><u>Certificate regarding Compliance:</u></p> <p>A certificate on the letterhead of the Bidder shall be required to be submitted by the bidders certifying the following:</p> <p style="padding-left: 40px;">"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 a country or, if from such a country, has been registered with the Competent Authority as defined in Public Procurement Order no. F.no.6/18/2019- PPD dated 23rd July 2020. I hereby certify that this bidder fulfils all requirements in this regard and is eligible to be considered."</p> <p>It may be noted that in case the above certification is found to be false, this would be a ground for immediate rejection of Bid/termination and further legal action in accordance with law.</p> <p><u>Validity of Registration:</u></p> <p>In respect of RFP, registration should be valid at the time of submission of bids and at the time of acceptance of bids. If the Bidder was validly registered at the time of acceptance, registration shall not be a relevant consideration during contract execution.</p>



Sl. No.	Clause no.	Existing Provision	Proposed Provision
6	2.2.2.1	<p>Bidders who <i>inter alia</i> meet the minimum qualification criteria will be qualified only if their available BID capacity is more than the total BID value (value as per Clause 1.1.1). The available BID capacity will be calculated as per following, based on information mentioned at Annexure-VI of Appendix-IA:</p> <p>Assessed Available BID capacity = $(A*N*2.5 - B + C)$, Where</p> <p>N= Number of years prescribed for completion of work for which Bid is invited.</p> <p>A = Maximum value of civil engineering works excluding the amount of bonus received, if any, in respect of EPC Projects executed in any one year during the last five years (updated to the price level of the year indicated in table at Note- 3 below) taking into account the completed as well as works in progress. The EPC projects include turnkey project/ Item rate contract/ Construction works.</p> <p>B = Value (updated to the price level of the year indicated in table at Note-3 below) of existing commitments, works for which Appointed Date/ Commencement Date has been declared or on-going works to be completed during the period of completion of the works for which BID is invited. For the sake of clarification, it is mentioned that works for which LOA has been issued but Appointed Date/ Commencement Date not declared as on Bid Due Date shall not be considered while calculating value of B.</p> <p>C = The amount of bonus received, if any, in EPC Projects during the last 5 years (updated to the price level of the year indicated in table at Note-3 below).</p> <p>Note: 1. The Statement showing the value of all existing commitments, works for which Appointed Date/ Commencement Date has been declared and ongoing works as well as the stipulated period of completion remaining for each of the works listed should be countersigned by the Client or its Engineer-in-charge not below the rank of Executive Engineer or equivalent in respect</p>	<p>Bidders who <i>inter alia</i> meet the minimum qualification criteria will be qualified only if their available BID capacity is more than the total BID value (value as per Clause 1.1.1). The available BID capacity will be calculated as per following, based on information mentioned at Annexure-VI of Appendix-IA:</p> <p>Assessed Available BID capacity = $(A*N*2.5 - B + C)$, Where</p> <p>N= Number of years prescribed for completion of work for which Bid is invited.</p> <p>A = Maximum value of civil engineering works excluding the amount of bonus received, if any, in respect of EPC Projects executed in any one year during the last five years (updated to the price level of the year indicated in table at Note- 3 below) taking into account the completed as well as works in progress. The EPC projects include turnkey project/ Item rate contract/ Construction works.</p> <p>B = Value (updated to the price level of the year indicated in table at Note-3 below) of existing commitments, works for which the bidder has emerged as the winner of the bids or on-going works to be completed during the period of completion of the works for which BID is invited. For the sake of clarification, it is mentioned that works for which bidder has emerged as the winner of the bids but LOA has not been issued as on the day before opening the financial bids shall also be considered while calculating value of B.</p> <p>C = The amount of bonus received, if any, in EPC Projects during the last 5 years (updated to the price level of the year indicated in table at Note-3 below).</p> <p>Note: 1. The Statement showing the value of all existing commitments, works for which the contractor has emerged as the winner of the bid as given by bidder and ongoing works as well as the stipulated period of completion remaining for each of the works listed should be countersigned by the Client or its Engineer-in-charge not below</p>

Sl. No.	Clause no.	Existing Provision	Proposed Provision																								
		<p>of EPC Projects or Concessionaire / Authorised Signatory of SPV in respect of BOT Projects and verified by Statutory Auditor.</p> <p>2. The amount of bonus received, if any, in EPC Projects should be countersigned by the Client or its Engineer-in-charge not below the rank of Executive Engineer or equivalent in respect of EPC Projects.</p> <p>3. The factor for the year for updation to the price level is indicated as under:</p> <table border="1"> <thead> <tr> <th>Year</th> <th>Year-1</th> <th>Year-2</th> <th>Year-3</th> <th>Year-4</th> <th>Year-5</th> </tr> </thead> <tbody> <tr> <td>Up-dation factor</td> <td>1.00</td> <td>1.05</td> <td>1.10</td> <td>1.15</td> <td>1.20</td> </tr> </tbody> </table>	Year	Year-1	Year-2	Year-3	Year-4	Year-5	Up-dation factor	1.00	1.05	1.10	1.15	1.20	<p>the rank of Executive Engineer or equivalent in respect of EPC Projects or Concessionaire / Authorised Signatory of SPV in respect of BOT Projects and verified by Statutory Auditor.</p> <p>2. The amount of bonus received, if any, in EPC Projects should be countersigned by the Client or its Engineer-in-charge not below the rank of Executive Engineer or equivalent in respect of EPC Projects.</p> <p>3. The factor for the year for updation to the price level is indicated as under:</p> <table border="1"> <thead> <tr> <th>Year</th> <th>Year-1</th> <th>Year-2</th> <th>Year-3</th> <th>Year-4</th> <th>Year-5</th> </tr> </thead> <tbody> <tr> <td>Up-dation factor</td> <td>1.00</td> <td>1.05</td> <td>1.10</td> <td>1.15</td> <td>1.20</td> </tr> </tbody> </table> <p>4. The Bid capacity status of the bidder to be updated as on the day before opening the financial bids.</p>	Year	Year-1	Year-2	Year-3	Year-4	Year-5	Up-dation factor	1.00	1.05	1.10	1.15	1.20
Year	Year-1	Year-2	Year-3	Year-4	Year-5																						
Up-dation factor	1.00	1.05	1.10	1.15	1.20																						
Year	Year-1	Year-2	Year-3	Year-4	Year-5																						
Up-dation factor	1.00	1.05	1.10	1.15	1.20																						
7	3.3.1	<p>Subject to the provisions of Clause 2.16.1, the Bidder whose BID is adjudged as responsive in terms of Clause 3.1.6 and who quotes lowest price shall be declared as the selected Bidder (the "Selected Bidder").</p>	<p>Subject to the provisions of Clause 2.16.1, the Bidder whose BID is adjudged as responsive in terms of Clause 3.1.6. The bidder shall be declared as the selected Bidder (the "Selected Bidder") in pursuance to the procedure defined hereunder:</p> <p>(i) Among all the responsive bidder, the lowest bidder will be termed as L1. If L1 is 'Class - I Local Supplier', the contract will be awarded to L1.</p> <p>(ii) If L1 is not 'Class - I local supplier', the lowest bidder among the 'Class - I local supplier', will be invited to match L1 price subject to Class - I local supplier's quoted price falling within the margin of purchase preference, and the contract will be awarded to such 'Class - I local supplier' subject to matching the L1 price.</p> <p>(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</p>																								

Sl. No.	Clause no.	Existing Provision	Proposed Provision
			supplier' within the margin of purchase preference matches the L1 price, the contract shall be awarded to the L1 bidder. '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. The margin of purchase preference shall be 20%.
8	2.11.1:	New Clause <u>Self-Certification</u> (to be inserted below the heading Financial Bid)	Self- certification by the Bidder that its Bid meets the Local Content requirement for 'Class - I Local supplier' / 'Class - II Local supplier', as the case may be. The Self-certification shall also have details of the location(s) at which the local value addition is made. In case, bidder do not submit the aforesaid Certification, the bidder will be summarily treated as 'Non Local Supplier'. In case of procurement for a value in excess of Rs. 10 crores, the 'Class - I Local supplier' / 'Class - II Local supplier' shall have to provide a Certificate from the Statutory Auditor or Cost Auditor of the Company (in 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 upon Construction of the Project.

B. Amendment in the Standard EPC Agreement issued by MoRTH vide letter no. RW/NH-37010/4/2010-EAP(Printing) Vol.-IV dated 05.03.2019

Sl. No.	Clause no.	Existing Provision	Proposed Provision
1	4.14	New Clause 4.14 Obligations relating to Local Content	The Contractor [Class I Local Supplier/ Class II Local Supplier/ Non Local Supplier] undertakes to ensure minimum Local Content in the Project Highway of at least [50%/20%] duly complying with the provisions of Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India Order No. P-45021/2/2017-PP (BE- II) dated September 16, 2020, as amended or modified till Bid Due Date and the provisions under Rule 144(xi) of GFR, 2017.



1604658/2021/O/o JS (Highways)

2. This issues with the approval of Competent Authority.



(Sanjay Kumar Patel)
General Manager (Coord.)

To:

All Officers of NHAI HQ/ ROs/ PIUs/ CMUs/ Site Offices

Copy to:

1. Hindi Officer for translation in Hindi.
2. Library for hosting the circular on library site.
3. Web Admin for circulation.

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



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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

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- 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 or 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 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;

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(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.



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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



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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.

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- 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.]



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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.



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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;



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- 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

[Handwritten signature] 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.]"

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भारतीय राष्ट्रीय राजमार्ग प्राधिकरण
(सड़क परिवहन और राजमार्ग मंत्रालय)
National Highways Authority of India

(Ministry of Road Transport and Highways)

जी-5 एवं 6, सेक्टर-10, द्वारका, नई दिल्ली-110075

G-5 & 6, Sector-10, Dwarka, New Delhi-110075

दूरभाष / Phone : 91-11-25074100/25074200

फैक्स / Fax : 91-11-25093507 / 25093514

NHAI/Policy Guidelines/ Standard Document/2021
Policy Circular no. 11.33/2021 dated 07th December, 2021
(Decision taken on e-office file No. NHAI/CMD/Misc/2021Comp. No.85726)

Sub.: Amendment in the Combined Single Stage Request for Proposal (RFP) and Model Concession Agreement for National Highways and other centrally sponsored road projects proposed to be implemented on BOT (Toll) mode of contract to make procurement compliant of Public Procurement (Preference to Make in India) Order 2017 and Rule 144 (xi) of GFR- reg.

It may be mentioned that an Inter - Ministerial Committee meeting was held under the chairmanship of Secretary (RT&H) on 15.11.2021 to discuss the changes in Model RFP of EPC, BOT(Toll) and HAM project in order to ensure compliance of Public Procurement (Preference to Make in India) Order 2017 (amended on 16.09.2020) and Rule 144(xi) of GFR, 2017. Based on the decision taken during the meeting, following amendments shall be made in the Combined Single Stage Request for Proposal (RFP) and Model Concession Agreement for National Highways and other centrally sponsored road projects proposed to be implemented on BOT (Toll) mode of contract:

A. Amendment in the Combined Single Stage Request for Proposal (RFP) issued by MoRTH vide F. No. NH-35014/25/2017-H (Pt. II) dated 25.08.2020.

Sl. No.	Clause no.	Existing Provision	Proposed Provision
1	1.2.7	Generally, the Highest Bidder shall be the Selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Clause 3 of this RFP, be invited to match the Bid submitted by the Highest Bidder in case such Highest Bidder withdraws or is not selected for any reason. In the event that none of other Bidders match the Bid of the Highest Bidder, the Authority may, in its discretion, either invite fresh bids from the remaining Bidders or annul the Bidding Process.	Generally, the Highest Bidder in terms of percentage of revenue offered as Premium payable to the Authority or the lowest Grant amount payable by the Authority, shall be the Selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Clause 3 of this RFP, be invited to match the Bid submitted by the Selected Bidder in case such Selected Bidder withdraws or is not Selected for any reason except the reason mentioned in Clause 3.8. In the event that none of other Bidders match the Bid of the Selected Bidder, the Authority may, in its discretion, either invite fresh bids from the remaining Bidders or annul the Bidding process.

Sl. No.	Clause no.	Existing Provision	Proposed Provision
2	1.2.11	New clause	<p>A Bidder is required to submit, along with its technical BID, a self- certification that its Bid meets the local content requirement for 'Class - I local supplier' / 'Class - II local supplier', as the case may be. The self-certification shall also have details of the location(s) at which the local value addition is made. In case, bidder has not submitted the aforesaid certification the bidder will be treated as 'Non Local Supplier'.</p> <p>In the above pretext, the Class - I Local Supplier, Class - II Local Supplier and the Non- Local Supplier are defined as under:</p> <p>(i) '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 RFP. The 'Local Content' requirement to categorize a supplier as 'Class - I local supplier' is minimum 50%.</p> <p>(ii) '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' under this RFP. The 'Local Content' requirement to categorize a supplier as 'Class - II Local supplier' is minimum 20%.</p> <p>(iii) '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 RFP.</p> <p>(iv) 'Local Content' means the amount of value added in India which shall be the total value of items procured/ proposed to be procured (excluding net domestic indirect taxes) minus the value of Imported Content in the items (including all customs duties) as a proportion of the total value, in percent.</p> <p>In case of procurement for a value in excess of Rs. 10 crores, the 'Class - I local supplier' / 'Class - II local supplier' shall provide a certificate from the statutory auditor or cost auditor of the company (in 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.</p>
3	2.1.24	New Clause	All Orders of Ministry of Finance/DPIIT/any other Government agencies, as applicable and prevalent on the date of LOA, shall be applicable.
4	2.1.25	New Clause	Entities of countries which have been identified by Ministry of Road Transport & Highways as not

Sl. No.	Clause no.	Existing Provision	Proposed Provision
			<p>allowing Indian companies to participate in their Government procurement for any item related to Ministry of Road Transport & Highways shall not be allowed to participate in Government procurement in India for all items related to Ministry of Road Transport & Highways, except for the list of items published by the Ministry of Road Transport & Highways permitting their participation.</p>
5	2.2.1 (e)	New Clause	<p>For determining the eligibility of Bidder from a country which shares a land border with India the following shall apply:</p> <p>(i) Any Bidder from a country which shares a land border with India will be eligible to bid, only if the Bidder is registered with the Competent Authority, specified in Annexure-I of Order (Public Procurement No. 1) issued by Ministry of Finance, Department of Expenditure Public Procurement Division vide F. No. 6/18/2019-PPD, dated 23rd July 2020, which shall form an integral part of RFP and DCA (Copy enclosed).</p> <p>(ii) “Bidder from a country which shares a land border with India” means:</p> <ol style="list-style-type: none"> 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. <p>(iii). Beneficial owner for the purpose of (ii) above means:</p> <ol style="list-style-type: none"> 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



Sl. No.	Clause no.	Existing Provision	Proposed Provision
			<p>judicial person, has a controlling ownership interest or who exercises control through other means.</p> <p>Explanation:</p> <p>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.</p> <p>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 shareholding agreements or voting agreements;</p> <p>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 one or more juridical person: has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;</p> <p>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 individual;</p> <p>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;</p> <p>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.</p>



Sl. No.	Clause no.	Existing Provision	Proposed Provision
			<p>(iv). An Agent is a person employed to do any act for another, or to represent another in dealings with third person.</p> <p>(v) The Selected 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. The definition of "contractor from a country which shares a land border with India" shall be as in Clause 2.2.1(d)(ii) above.</p> <p><u>Certificate regarding Compliance:</u></p> <p>A certificate on the letterhead of the Bidder shall be required to be submitted by the bidders certifying the following:</p> <p style="padding-left: 40px;">"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 a country or, if from such a country, has been registered with the Competent Authority as defined in Public Procurement Order no. F.no.6/18/2019- PPD dated 23rd July 2020. I hereby certify that this bidder fulfils all requirements in this regard and is eligible to be considered."</p> <p>It may be noted that in case the above certification is found to be false, this would be a ground for immediate rejection of Bid/termination and further legal action in accordance with law.</p> <p><u>Validity of Registration:</u></p> <p>In respect of RFP, registration should be valid at the time of submission of bids and at the time of acceptance of bids. If the Bidder was validly registered at the time of acceptance, registration shall not be a relevant consideration during contract execution.</p>
6	2.11.1	New Clause <u>Self-Certification</u>	Self- certification by the Bidder that its Bid meets the Local Content requirement for 'Class - I Local supplier' / 'Class - II Local supplier', as the case may be. The Self-certification shall also have details of the location(s) at which the local value

Sl. No.	Clause no.	Existing Provision	Proposed Provision
		(to be inserted below the heading Financial Bid)	<p>addition is made. In case, bidder do not submit the aforesaid Certification, the bidder will be summarily treated as 'Non Local Supplier'.</p> <p>In case of procurement for a value in excess of Rs. 10 crores, the 'Class - I Local supplier' / 'Class - II Local supplier' shall have to provide a Certificate from the Statutory Auditor or Cost Auditor of the Company (in 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 upon Construction of the Project.</p>
7	3.8	<p>Subject to the provisions of Clause 2.16.1, the Bidder whose Bid is adjudged as responsive in terms of Clause 3.2 and who quotes highest percentage of revenue offered as Premium to the Authority, and in the event that no Bidder offers a Premium, then the Bidder quoting the lowest grant to be paid by the Authority in accordance with Appendix-IB shall be declared as the selected Bidder (the "Selected Bidder"). In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bid hereunder.</p>	<p>Subject to the provisions of Clause 2.16.1, the Bidder whose Bid is adjudged as responsive in terms of Clause 3.2 and who quotes highest percentage of revenue offered as Premium to the Authority, and in the event that no Bidder offers a Premium, then the Bidder quoting the lowest Grant to be paid by the Authority in accordance with Appendix-IB, the Bidder shall be declared as the selected Bidder (the "Selected Bidder") in pursuance to the procedure defined hereunder:</p> <p>(i) Among all the responsive Bidders, the Bidder whose Bid quote is the Highest in terms of Premium payable to the Authority and in the event that no Bidder offer a Premium then the Bidder who has quoted Lowest Grant to be paid by the Authority will be termed as L1. If L1 is 'Class -I Local Supplier', the Contract will be awarded to L1, the Selected Bidder.</p> <p>(ii) If L1 is not 'Class - I Local Supplier', the Lowest Bidder among the 'Class - I Local Supplier', will be invited to match the Highest/ Lowest amounts of Premium/ Grant quoted by the L1, the Selected Bidder subject to Class - I Local Supplier's quoted price falling within the margin of Purchase Preference, the Contract will be awarded to such 'Class - I Local Supplier' subject to matching the quote of L1 for Premium or the Grant as the case may be.</p> <p>(iii) In case, such eligible 'Class - I Local Supplier' fails to match the Premium/ Grant amount quoted by L1 Bidder, the 'Class - I Local Supplier' with the next Lower/ Higher quote for Premium/ Grant in the Bid within the margin of Purchase Preference shall be invited to match the quoted Premium/ Grant amount of L1 and so on and the Contract shall be awarded to such Bidder matching the L1 quote. In case none of the 'Class - I Local Supplier' within the Margin of Purchase Preference</p>



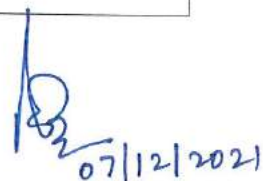
1604661/2021/O/o JS (Highways)

Sl. No.	Clause no.	Existing Provision	Proposed Provision
			<p>matches the L1 quoted Premium/ Grant amount, the Contract shall be awarded to the L1 Bidder.</p> <p>'Margin of Purchase Preference' in the above pretext 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. The margin of Purchase Preference shall be 20%.</p>

B. Amendment in the Model Concession Agreement issued by MoRTH vide letter no. NH-35014/25/2017-H dated 24.08.2020

Sl. No.	Clause no.	Existing Provision	Proposed Provision
1	5.9	<p>New Clause</p> <p>5.9 Obligations relating to Local Content</p>	<p>The Concessionaire [Class I Local Supplier/ Class II Local Supplier/ Non Local Supplier] undertakes to ensure minimum Local Content in the Project Highway of at least [50%/20%] duly complying with the provisions of Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India Order No. P-45021/2/2017-PP (BE- II) dated September 16, 2020, as amended or modified till Bid Due Date and the provisions under Rule 144(xi) of GFR, 2017.</p>

2. This issues with the approval of Competent Authority.


 (Sanjay Kumar Patel)
 General Manager (Coord.)

To:

All Officers of NHAI HQ/ ROs/ PIUs/ CMUs/ Site Offices

Copy to:

1. Hindi Officer for translation in Hindi.
2. Library for hosting the circular on library site.
3. Web Admin for circulation.

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

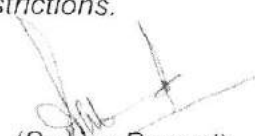
161, North Block,
New Delhi
23rd July, 2020

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

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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
- to all Autonomous Bodies;
 - to public sector banks and public sector financial institutions; and
 - subject to any orders of the Department of Public Enterprises, to all Central Public Sector Enterprises; and
 - to procurement in Public Private Partnership projects receiving financial support from the Government or public sector enterprises/ undertakings.
 - 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



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- 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 or 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 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;

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(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.

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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



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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.**



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- 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.]

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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.



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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,

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- 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

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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.]"



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भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

(सड़क परिवहन और राजमार्ग मंत्रालय)

National Highways Authority of India

(Ministry of Road Transport and Highways)

जी-5 एवं 6, सेक्टर-10, द्वारका, नई दिल्ली-110075

G-5 & 6, Sector-10, Dwarka, New Delhi-110075

दूरभाष / Phone : 91-11-25074100/25074200

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NHAI/Policy Guidelines/ Standard Document/2021 Policy Circular no. 11.34/2021 dated 07th December, 2021 (Decision taken on e-office file No. NHAI/CMD/Misc/2021Comp. No.85726)

Sub.: Amendment in the Standard Request for Proposal (RFP) and Model Concession Agreement for National Highways and other centrally sponsored road projects proposed to be implemented on Hybrid Annuity Model (HAM) mode of contract to make procurement compliant of Public Procurement (Preference to Make in India) Order 2017 and Rule 144 (xi) of GFR- reg.

It may be mentioned that an Inter - Ministerial Committee meeting was held under the chairmanship of Secretary (RT&H) on 15.11.2021 to discuss the changes in Model RFP of EPC, BOT(Toll) and HAM projects in order to ensure compliance of Public Procurement (Preference to Make in India) Order 2017 (amended on 16.09.2020) and Rule 144(xi) of GFR, 2017. Based on the decision taken during the meeting, following amendments shall be made in the Standard Request for Proposal (RFP) and Model Concession Agreement for National Highways and other centrally sponsored road projects proposed to be implemented on Hybrid Annuity Model (HAM) mode of contract:

A. Amendment in the Standard Request for Proposal (RFP) issued by MoRTH (version 24.11.2015)

Sl. No.	Clause no.	Existing Provision	Proposed Provision
1	Clause 1.2.7	Generally, the Lowest Bidder shall be the selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in clause 3 of this RFP, be invited to match the Bid submitted by the Lowest Bidder in case such Lowest Bidder withdraws or is not selected for whatsoever reason. In the event that none of other Bidders match the Bid of the Lowest Bidder. The Authority may, in its discretion, either invite fresh	Generally, the Lowest Bidder shall be the selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in clause 3 of this RFP, be invited to match the Bid submitted by the Lowest Bidder in case such Lowest Bidder withdraws or is not selected for whatsoever reason except the reason mentioned in Clause 3.3.1. In the event that none of other Bidders match the Bid of the Lowest Bidder. The Authority may, in its discretion, either invite fresh bids from the remaining Bidders or annul the Bidding Process.

Sl. No.	Clause no.	Existing Provision	Proposed Provision
		bids from the remaining Bidders or annul the Bidding Process.	
2	Clause 1.2.12	New clause	<p>A Bidder is required to submit, along with its technical BID, a 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. The self- certification shall also have details of the location(s) at which the local value addition is made. In case, bidder has not submitted the aforesaid certification the bidder will be treated as 'Non- Local Supplier'.</p> <p>In the above pretext, the Class - I Local Supplier, Class - II Local Supplier and the Non- Local Supplier are defined as under:</p> <p>(i) '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 RFP. The 'local content' requirement to categorize a supplier as 'Class - I local Supplier' is minimum 50%.</p> <p>(ii) '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' under this RFP. The 'local content' requirement to categorize a supplier as 'Class - II local Supplier' is minimum 20%.</p> <p>(iii) '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 RFP.</p> <p>(iv) 'Local content' means the amount of value added in India which shall be the total value of 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</p> <p>In case of procurement for a value in excess of Rs. 10 crores, the 'Class - I local supplier' / 'Class - II local supplier' shall provide a certificate from the statutory auditor or cost</p>

Sl. No.	Clause no.	Existing Provision	Proposed Provision
			auditor of the company (in 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.
3	2.1.23	New Clause	All Orders of Ministry of Finance/DPIIT/any other Government agencies, as applicable and prevalent on the date of LOA, shall be applicable.
4	2.1.24	New Clause	Entities of countries which have been identified by Ministry of Road Transport & Highways as not allowing Indian companies to participate in their Government procurement for any item related to Ministry of Road Transport & Highways shall not be allowed to participate in Government procurement in India for all items related to Ministry of Road Transport & Highways, except for the list of items published by the Ministry of Road Transport & Highways permitting their participation.
5	Clause 2.2.1 (e)	New Clause	<p>For determining the eligibility of Bidder from a country which shares a land border with India the following shall apply:</p> <p>(i) Any Bidder from a country which shares a land border with India will be eligible to bid, only if the Bidder is registered with the Competent Authority, specified in Annexure-I of Order (Public Procurement No. 1) issued by Ministry of Finance, Department of Expenditure Public Procurement Division vide F. No. 6/18/2019-PPD, dated 23rd July 2020, which shall form an integral part of RFP and DCA.</p> <p>(ii) "Bidder from a country which shares a land border with India" means:</p> <ol style="list-style-type: none"> An entity incorporated, established or registered in such a country, or A subsidiary of an entity incorporated, established or registered in such a country; or An entity substantially controlled through entities incorporated, established or registered in such a country; or An entity whose beneficial owner is situated in such a country; or An Indian (or other) agent of such an entity; or A natural person who is a citizen of such a country; or

Sl. No.	Clause no.	Existing Provision	Proposed Provision
			<p data-bbox="858 248 1426 344">g) A Consortium or joint venture where any member of the consortium or joint venture falls under any of the above.</p> <p data-bbox="810 371 1426 434">(iii). Beneficial owner for the purpose of (ii) above means:</p> <ol data-bbox="858 439 1426 663" style="list-style-type: none"> 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 judicial person, has a controlling ownership interest or who exercises control through other means. <p data-bbox="839 696 1002 723">Explanation:</p> <ol data-bbox="847 728 1426 1933" style="list-style-type: none"> 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 majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholding 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 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 individual; 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



Sl. No.	Clause no.	Existing Provision	Proposed Provision
			<p>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.</p> <p>(iv). An Agent is a person employed to do any act for another, or to represent another in dealings with third person.</p> <p>(v) The Selected 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. The definition of "contractor from a country which shares a land border with India" shall be as in Clause 2.2.1(d)(ii) above.</p> <p><u>Certificate regarding Compliance:</u></p> <p>A certificate on the letterhead of the Bidder shall be required to be submitted by the bidders certifying the following:</p> <p>"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 a country or, if from such a country, has been registered with the Competent Authority as defined in Public Procurement Order no. F.no.6/18/2019-PPD dated 23rd July 2020. I hereby certify that this bidder fulfils all requirements in this regard and is eligible to be considered."</p> <p>It may be noted that in case the above certification is found to be false, this would be a ground for immediate rejection of Bid/termination and further legal action in accordance with law.</p> <p><u>Validity of Registration:</u></p> <p>In respect of RFP, registration should be valid at the time of submission of bids and at the time of acceptance of bids. If the Bidder was validly</p>

Sl. No.	Clause no.	Existing Provision	Proposed Provision
			registered at the time of acceptance, registration shall not be a relevant consideration during contract execution.
6	2.11.1:	New Clause <u>Self-Certification</u> (to be inserted below the heading Financial Bid)	Self- certification by the Bidder that its Bid meets the Local Content requirement for 'Class - I Local supplier'/ 'Class - II Local supplier', as the case may be. The Self-certification shall also have details of the location(s) at which the local value addition is made. In case, bidder do not submit the aforesaid Certification, the bidder will be summarily treated as 'Non Local Supplier'. In case of procurement for a value in excess of Rs. 10 crores, the 'Class - I Local supplier' / 'Class - II Local supplier' shall have to provide a Certificate from the Statutory Auditor or Cost Auditor of the Company (in 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 upon Construction of the Project.
7	3.8.1	Subject to the provisions of Clause 2.16.1, the Bidder whose BID is adjudged as responsive in terms of Clause 3.2 and who's assessed Bid Price is the lowest, shall be declared as the selected Bidder (the "Selected Bidder").	Subject to the provisions of Clause 2.16.1, the Bidder whose BID is adjudged as responsive in terms of Clause 3.2. The bidder shall be declared as the selected Bidder (the "Selected Bidder") as per procedure defined as under: (i) Among all the responsive bidder, who's assessed Bid Price is the lowest 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 L1 price subject to Class - I local supplier's quoted price falling within the margin of purchase preference, and the contract will 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,

1604663/2021/O/o JS (Highways)

Sl. No.	Clause no.	Existing Provision	Proposed Provision
			<p>the contract shall be awarded to the L1 bidder.</p> <p>'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. The margin of purchase preference shall be 20%.</p>

B. Amendment in the Model Concession Agreement issued by MoRTH vide letter no. NH-24028/14/2014-H (Vol. II) dated 10.11.2020

Sl. No.	Clause no.	Existing Provision	Proposed Provision
1	5.9	<p>New Clause</p> <p>5.9 Obligations relating to Local Content</p>	<p>The Concessionaire [Class I Local Supplier/ Class II Local Supplier/ Non Local Supplier] undertakes to ensure minimum Local Content in the Project Highway of at least [50%/20%] duly complying with the provisions of Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India Order No. P-45021/2/2017-PP (BE- II) dated September 16, 2020, as amended or modified till Bid Due Date and the provisions under Rule 144(xi) of GFR, 2017.</p>

2. This issues with the approval of Competent Authority.


07/12/2021

(Sanjay Kumar Patel)
General Manager (Coord.)

To:

All Officers of NHAI HQ/ ROs/ PIUs/ CMUs/ Site Offices

Copy to:

1. Hindi Officer for translation in Hindi.
2. Library for hosting the circular on library site.
3. Web Admin for circulation.

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

1/12

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. 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

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- 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 or 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 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;

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(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.

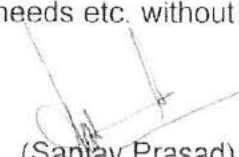
Government E-Marketplace

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.

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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

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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.

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- 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.]

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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.

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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;

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- 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

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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.]"

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