

**RITES Ltd. /Contract Policy Cell/Gurugram
E-Tendering Document for works Feb 2023**

Correction Slip No. 1

(1) Section 1 -Notice Inviting Tender and Instruction to Tenderers

Clause 2.4 (b) (I) (v) : The existing clause may be deleted and replaced with the following:

- v. Indication of the precise responsibility of all the Partners/Members of the Joint Venture in respect of planning, design, construction equipment, key personnel and work execution of the Project duly indicating the percentage participation in JV by each Partner.

Clause 2.4 (b) (I) (vi) . : The existing clause may be deleted and replaced with the following:

- vi. In case of JV, the maximum number of Partners can be only three and the Partner-in-Charge/Lead Member shall have more than 50% participation in the JV and each of the other Members minimum 20% participation in the JV.

(2) Section 1 -Notice Inviting Tender and Instruction to Tenderers

Clause 12.16 : The existing clause may be deleted and replaced with the following:

12.16 Restrictions on procurement from a bidder of a country which shares a land border with India

Orders (Order No. F-7/10/2021-PPD(1) Dated 23.02.2023 issued by Department of Expenditure, Ministry of Finance ,Govt. of India (Order No. F-7/10/2021-PPD(1) Dated 23.02.2023) or any other latest order on the subject matter; also referred to as "the Order" in this clause) restricting procurement of Works from Bidders from certain countries that share a land border with India shall apply to this procurement.

Salient provisions of the policy are given below. However it will be the responsibility of the bidder to go through the complete policy and see if it is eligible in terms of the policy and meets the criteria required as per the policy. In case of any contradiction of the provisions mentioned herein below and the original policy as mentioned above, the provisions of the policy issued by Department of Expenditure, Ministry of Finance, Government of India shall take precedence.

Any bidder from the countries sharing a land border with India, will be eligible to bid in any procurement of works (including turnkey projects) only if the bidder is registered with the Competent Authority **and if otherwise eligible to Bid as per eligibility conditions.**



Any bidder (including an Indian bidder) who has a Specified Transfer of Technology (ToT) arrangement with an entity 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 and **if otherwise eligible to Bid as per eligibility conditions.**

The Competent Authority for registration will be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT), Government of India.

The provision of the Order on restrictions based on land borders will not be applicable for cases mentioned in Para 12 hereinunder:

Definitions

1. **"Bidder"** for the purpose of the 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 herein before, including any agency, branch or office controlled by such person, participating in a procurement process.
2. **"Tender"** for the purpose of the Order will include other forms of procurement, except where the context requires otherwise.
3. **"Transfer of Technology"** means dissemination and transfer of all forms of commercially usable knowledge such as transfer of know-how, skills, technical expertise, designs, processes and procedures, trade secrets, which enables the acquirer of such technology to perform activities using the transferred technology independently. (Matters of interpretation of this term shall be referred to the Registration Committee constituted by the DPIIT and the interpretation of the committee shall be final)
4. **"Specified Transfer of Technology"** means a transfer of technology in the sectors and/ or technologies, specified in the order.
5. **"Procuring entity"** means RITES Ltd.
6. **"Bidder (or entity) from a country which shares a land border with India"** for the purpose of the 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.

7. **"Beneficial owner"** for the purpose of paragraph 6 (d) 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 percent of shares or capital or profits of the company;
 - b) "Control" shall include the right to appoint the majority of the directors or to control the management or policy decisions, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;
- ii. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
 - iii. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;
 - iv. Where no natural person is identified under (i) or (ii) or (iii) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
 - 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.
8. **"Agent"** for the purpose of the Order is a person employed to do any act for another, or to represent another in dealings with third persons.

Note:

1. A person who procures and supplies finished goods from an entity from a country which shares a land border with India will, regardless of the nature of his legal or commercial relationship with the producer of the goods, be deemed to be an Agent for the purpose of this Order.
2. However, a bidder who only procures raw material, components etc. from an entity from a country which shares a land border with India and then manufactures or converts them into other goods will not be treated as an Agent

9. Sensitive Sectors/ Technologies (relevant only for the provisions on ToT arrangements):

The Order may be referred for sectors/Technologies which have been identified as sensitive from the National Security Point of View. The bidder with ToT

arrangement in any sensitive Sector/Technology with a country which shares a land border with India shall require registration as indicated in Para 11 below. The Order may be referred for details of sensitive sectors/Technologies.

Requirement of registration

10. 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 i.e. Department for Promotion of Industry and Internal Trade (DPIIT).

11. Further, any bidder (including bidder from India) having Specified Transfer of Technology (ToT) arrangement with an entity 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 i.e. Department for Promotion of Industry and Internal Trade (DPIIT). The requirement of registration for bidders covered in this paragraph shall apply to all tenders are issued/published after 01.04.2023.

12. The provision of the Order on restrictions based on land borders will not be applicable for cases mentioned herein under:
 - a. 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.
 - b. This order shall not apply to procurement by Indian mission and by offices of government agencies/undertaking located outside India.
 - c. This order will not apply to bidders (or entities) from those countries (even if sharing a land border with India) to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects. Updated lists of countries to which lines of credit have been extended or in which development projects are undertaken are given in the website of the Ministry of External Affairs.
 - d. Procurement of spare parts and other essential service support like Annual Maintenance Contract (AMC) / Comprehensive Maintenance Contract (CMC), including consumables for closed systems, from Original Equipment Manufacturers (OEMs) or their authorized agents, shall be exempted from the requirement of registration.



13. Sub-contracting in works contracts

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 i.e. Department for Promotion of Industry and Internal Trade (DPIIT). The definition of “contractor from a country which shares a land border with India” shall be as in paragraph 6 above. This shall not apply to sub-contracts already awarded on or before 23.07.2020.

[Note: Procurement or raw material, components, etc. does not constitute sub-contracting.]

14. Validity of registration

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.

15. Model Certificates

Model Certificates, which may be inserted in tenders/obtained from Bidders are given asunder:

a. 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 competent Authority i.e. DPIIT. 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 i.e. DPIIT shall be attached)”.

b. 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 i.e. DPIIT and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority i.e. DPIIT. 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 i.e. DPIIT shall be attached.)”

c. Model additional Certificate by Bidders in the cases of Specified ToT:

"I have read the clause regarding restrictions on procurement from a bidder having Transfer of Technology (ToT) arrangement. I certify that this bidder does not have any ToT arrangement requiring registration with the competent authority."

OR

"I have read the clause regarding restrictions on procurement from a bidder having Transfer of Technology (ToT) arrangement. I certify that this bidder has valid registration to participate in this procurement." (Evidence of valid registration by the Competent Authority i.e. DPIIT shall be attached)

Bidder's attention is invited to Para xiv of Proforma-1 in this regard

(3) The following may be added in the Para xiv) of 'Declaration By The Bidder' in Performa 1 to Section 1 (Notice Inviting Tender and Instruction to Tenderers)

(c)* "I have read the clause regarding restrictions on procurement from a bidder having Transfer of Technology (ToT) arrangement. I certify that this bidder does not have any ToT arrangement requiring registration with the competent authority."

OR

*"I have read the clause regarding restrictions on procurement from a bidder having Transfer of Technology (ToT) arrangement. I certify that this bidder has valid registration to participate in this procurement." (Evidence of valid registration by the Competent Authority i.e. DPIIT shall be attached)

* Delete whichever is not applicable



(4) ANNEXURE – I (QUALIFYING CRITERIA FOR WORKS CONTRACTS) to Section 1 (Notice Inviting Tender and Instruction to Tenderers)

1. ANNUAL FINANCIAL TURNOVER- Sub para (g) under 'Notes' may be deleted and replaced with the following:

e) In case JV is permitted the following provisions will apply:

i) Large Works

For each Partner, the average Annual Turnover during the last three Financial Years will be considered. This should not be less than the figure arrived at by multiplying the minimum **Average** Annual Turnover stipulated for the Bidder in Qualification Criterion multiplied by the percentage participation by that partner in the JV. Each partner should satisfy this requirement and thus automatically JV will satisfy the criterion of minimum average Annual Turnover.

ii) Normal Works

The Partner-in-charge/Lead.Member shall singly meet this criterion.

3. SERVICING OF LOAN/CREDIT LIMIT- Sub para (c) under 'Notes' may be deleted and replaced with the following:

c) In case JV is permitted the following provisions will apply:

Large Works

Each partner shall sign the declaration.

Normal Works

Each partner shall sign the declaration.

4. PROFITABILITY- The Text under 'Notes' may be deleted and replaced with the following:

-In case JV is permitted, the following provisions will apply:

Large Works

All the partners shall meet individually this criterion.

Normal Works

All the partners shall meet individually this criterion.



(5) ANNEXURE II (DRAFT MEMORANDUM OF UNDERSTANDING EXECUTED BY MEMBERS OF THE JOINT VENTURE) to Section 1 (Notice Inviting Tender and Instruction to Tenderers):

Last para immediately above the table may be deleted and replaced with the following:

The precise responsibility of the Lead Member and other Members of the Joint Venture in respect of planning, design, construction equipment, key personnel and work execution including Percentage participation by each Member will be as indicated below and these shall not be varied/ modified subsequently without your prior approval.

The text in column 'Item' against Sl. No. 6. in the table may be deleted and replaced with the following:

% Participation** (This shall be as per sub clause 2.4(b)(I)(vi))

First para in Notes to bidders immediately below the table may be deleted and replaced with the following:

The above table has been given to give an idea to bidders. However, bidders may modify the details depending upon type of work and sharing of responsibilities as per JV agreement. **The bidder shall mention Percentage Participation at Sl. No. 6 in the above table as per sub clause 2.4 (b)(I)(vi)**

(6) Schedule 'F' (Proforma of Schedules) in Section 4 of E-Tender Document for Works-

Whether Clause 31A or 32 is applicable

31A*/32* is applicable
*(Strike out whichever is not
Applicable)*

The above provision in Schedule 'F' may be deleted and replaced with the following:

Whether Clause 31 or 32 is applicable


31*/32* is applicable
*(Strike out whichever is not
Applicable)*



No. RITES/CPC/Correction Slip No. 1 (E-Tendering Document For Works)

Date: 27.03.2023

The above Correction Slip No. 1 to RITES E-Tendering Document for Works, February-2023 is issued with the approval of the competent authority.

 27/3/23

(Pawan Chowdhry)

ED/B&A and Head/CPC

Copy to:

1. Secy. to CMD/DP/DT/DF for kind information please.
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