

RITES Ltd./Contract Policy Cell/Gurgaon

RITES Standard Tender Document for Procurement of Goods, December 2022

Correction Slip No. 02

Section-II: Instructions To Bidders (ITB)

1. The existing sub-clause 3.3 may be deleted and replaced with the following:

3.3 Eligibility of bidders from specified countries

3.3.1 Restrictions Based on Land Borders

- (i) Orders 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 from bidders from certain countries that share a land border with India shall apply to this procurement.
- (ii) Any bidder from a country that shares a land border with India¹, excluding countries as listed on the website of the Ministry of External Affairs², to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects (hereinafter called 'Restricted Countries') shall be eligible to bid in this tender only if Bidder is registered³ with the Competent Authority i.e. Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT). Bidders shall enclose the certificate in this regard in Form 1.2 – Eligibility Declarations.
- (iii) Further, any bidder (including bidder from India) 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 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. Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT). The provisions of requirement of registration of bidders and of other relevant provisions of Specified Transfer of Technology (ToT) arrangement as per the Order at Para 3.3.1(i) shall apply to this Tender (Applicable to all bids/tenders issued after 01.04.2023). Bidders shall enclose the certificate in Form 1.2 - Eligibility Declarations.
- (iv) The provision of the Order on restrictions based on land borders will not be applicable for cases mentioned hereinunder:
 - 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

¹ <https://mea.gov.in/india-and-neighbours.htm>

² <http://meadashboard.gov.in/indicators/92>

³ <https://dipp.gov.in/sites/default/files/Revised-Application-Format-for-Registration-of-Bidders-15Oct2020.pdf>



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 missions and by offices of government agencies/ undertakings 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 on 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.

3.3.2 Compliance with Above Restrictions

- 1) In Bids for Turnkey contracts, including Works contracts, the successful bidder shall not be allowed to sub-contract works to any contractor from such Restricted Countries unless such contractor is similarly registered. In such cases, the bidders shall enclose the certificate in Form 1.2- Eligibility Declarations.
- 2) If Bidder has proposed to sub-contract Services or incidental Goods directly/ indirectly from the vendors from such countries, such vendor shall be required to be registered with the Competent Authority. However, if Bidder procures raw material, components, and sub-assemblies from such countries' vendors, such vendors shall not require registration.

Definitions:

- 3) "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 hereinbefore, including any agency, branch or office controlled by such person, participating in a procurement process.
- 4) "Bid/Tender" for the purpose of the Order will include other forms of procurement, except where the context requires otherwise.
- 5) "*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 Department for Promotion of Industry and Internal Trade, and the interpretation of the Committee shall be final.)



- 6) "Specified Transfer of Technology" means a transfer of technology in the sectors and/ or technologies, specified in the order.
- 7) "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/ joint venture where any member falls under any of the above
- 8) The beneficial owner shall mean:
- (a) 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 persons, has a controlling ownership interest or who exercises control through other means.
- Explanation-*
- (i) "Controlling ownership interest" means ownership of or entitlement to more than twenty-five percent of the company's shares or capital, or profits of the Company.
 - (ii) "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 shareholder agreements or voting agreements;
- (b) 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 persons, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership.
 - (c) 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;
 - (d) Where no natural person is identified under (a) or (b) or (c) above, the beneficial owner is the relevant natural person who holds the position of senior managing official.
 - (e) 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.



- 9) "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:

- i. 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.
- ii. 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.]
- 10) **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 3.3.1(iii) above. The Order may be referred for details of sensitive sectors/Technologies.
- 11) **Validity of Registration:** In respect of bids/tenders, 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/ placement of order, registration shall not be a relevant consideration during contract execution.

2. The existing sub-clause 1.6 may be deleted and replaced with the following:

1.6 Other Formats

- 1) Format 1: Contract Form (Not to be filled by Bidders)
- (a) Format 1.1: Bank Guarantee Format for Performance Security
- (b) Format 1.2: No Claim Certificate
- (c) Format 1.3: Certification by Prospective Arbitrators
- 2) Format 2: Authorization for Attending Pre-bid Conference. (To be filled up, if required, by Bidder)

Section IV: General Conditions of Contract (GCC)

3. The existing sub-clause 2(b) under clause '5.8 Performance Bond/ Security' may be deleted and replaced with the following:

(b) Bank Guarantee issued by a commercial bank in India, in the prescribed form provided in **Format 1.1.**

Bidding Forms:

4. The existing sub-clause (5) of 'Form 1.2: Eligibility Declarations' may be deleted and replaced with the following:

- 5) Restrictions on procurement from bidders from a country or countries, or a class of countries as per Orders 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: We certify as under:

"We have read the clause 3.3 of ITB 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, and solemnly certify that we fulfil all requirements in this regard and are eligible to be considered. We certify that:

- (a) *we are not from such a country or, if from such a country, we are registered with the Competent Authority (Where applicable, evidence of valid registration by the Competent Authority i.e. DPIIT shall be attached).*
- (b) *we shall not subcontract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. (Where applicable, evidence of valid registration by the Competent Authority i.e. DPIIT shall be attached.)*
- (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."*

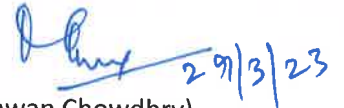
OR

"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)

** Note : Delete whichever is not applicable.*

No. RITES/CO/CPC/STDG/Correction Slip No. 02 (Tender Document Goods)
Date:29.03.2023

The above Correction Slip No. 02 to RITES Standard Tender Document for Procurement of Goods, December-2022 is issued with the approval of the competent authority.

 29/3/23

(Pawan Chowdhry)
ED/B&A and Head/CPC

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1. Secy. to CMD/DP/DT/DF for kind information please.
2. CVO for kind information please.
3. All Country Heads, Vertical Heads, Regional Heads & SBU Heads
4. AGM/IT for getting uploaded on RITES website: Goods Tender Document (Correction slip No. 2) and on RITES ESS portal/ CPC Documents Tab