RITES Ltd./Contract Policy Cell/Gurgaon

RITES Standard Tender Document for Procurement of Other (Non-Consultancy) Services, May-2023

Correction Slip No. 7

(1) Section I: Notice Inviting Tender (NIT)

I. **S. No. 5 of Clause 3 (Eligibility Criteria for Participation in this Tender) may be deleted and replaced with the following:**

5) must meet the minimum local content as mentioned in TIS and ITB Clause 4.1 (Make in India Order)

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(2) Appendix to NIT: Tender Information Summary

I. **The rows of S. No. 4.0 {Eligibility to Participate (NIT-Clause 3 and ITB-Clause 3.2)} of Appendix to NIT: Tender Information Summary may be deleted and replaced with the following:**

4.0 Eligibility to Participate (NIT-Clause 3, ITB-clause 3.2 and ITB-Clause 4.1)	
Nature of Bidders eligible	*[Individual Service Provider/ Firms]*
Entities from countries not eligible to participate on reciprocal basis ITB-clause 4.1.2 (Make in India Policy)	As per Sl. No. 1 of TIS above, this tender is open only for Domestic bidders.
Minimum local content for eligibility to participate ITB-clause 4.1.3 (Make in India Policy)	50%
Classes of Local Suppliers eligible to participate ITB-clause 4.1.3 (Make in India Policy)	Only Class I local Suppliers eligible
Mandatory Joint venture with Indian Company ITB-clause 4.1.7 (Make in India Policy)	JV Not allowed

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(3) Section II: Instructions to Bidders (ITB)

I. **The existing Clause 4.1 (Make in India Order) may be deleted and replaced with the following:**

4.1 Make in India Order

Orders issued by the Government of India regarding eligibility to participate and for purchase preference to "Local Suppliers" to encourage 'Make in India' and promote manufacturing and production of goods and services in India shall apply to this procurement, as detailed below.

4.1.1 Categories of Local Suppliers

Bidders/Contractors are divided into three categories based on Local Content. Local content in the context of this policy is the total value of the service procured (excluding net domestic indirect taxes) minus the value of imported content in the service/ incidental Goods (including all customs duties) as a proportion of the total value, in percent.

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1) 'Class-I local Supplier' with local content equal to or more than that prescribed in TIS or 50% if not prescribed.

2) 'Class-II local Supplier' with local content equal to or more than that prescribed in TIS or 20% if not prescribed, but less than that applicable for Class-I local Supplier.

3) 'Non - Local Supplier' with local content less than that applicable for Class-II local Supplier, in sub-clause above.

Explanatory notes for calculation of local content given above:

a. Imported items sourced locally from resellers/distributors shall be excluded from calculation of local content.

b. The license fees/royalties paid/ technical charges paid out of India shall be excluded from local content calculation.

c. Procurement/Supply of repackaged/refurbished/rebranded imported products as understood commonly shall be treated as reselling of imported products and shall be excluded from calculation of local content. The definition of repackaged/refurbished/rebranded imported products is as follows;

'Refurbishing' means repair or reconditioning of an imported product does not amount to manufacture because no new goods come into existence.

'Repackaging' means repacking of imported goods from bulk pack to smaller packs would not ordinarily amount to manufacture of a new item.

'Rebranding' means relabeling or renaming or change in symbol or logo/makes or corporate image of a company/organization/ firm for an imported product would amount to rebranding.

d. To ensure that imported items sourced locally from resellers/distributors are excluded from calculation of local content, RITES to obtain from bidders, the cost of such locally-sourced imported items (Inclusive of taxes) along with break-up on license/royalties paid/technical expertise cost etc. sourced from outside India. For items sold by bidder as reseller, OEM certificate for country of origin to be submitted.

e. For contracts involving supply of multiple items, weighted average of all items to be taken while calculating the local content.

Definitions

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

'Nodal Ministry' means the Ministry or Department identified pursuant to Public Procurement (Preference to Make in India), Order 2017 (Latest order being Order No. P-45021/2/2017-PP (BE-II)-Part(4)Vol.II dated 19th July, 2024) in respect of a particular item of goods or services or works.

'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.

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4.1.1A Special treatment for items covered under PLI Scheme

The manufacturers manufacturing an item under PLI scheme shall be treated as deemed Class II local supplier for that item unless they have minimum local content equal to or higher than that notified for Class-I local supplier for that item, provided the manufacturer has received incentive from the concerned PLI Ministry for the item. The above shall be applicable for the specific time period only, as notified by concerned PLI Ministry.

4.1.2 Eligibility Restrictions based on Reciprocity.

If so stipulated in the TIS, entities from such countries identified as not allowing Indian companies to participate in their Government procurement shall not be allowed to participate on a reciprocal basis in this tender. The term 'entity' of a country shall have the same meaning as under the FDI Policy of DPIIT as amended from time to time.

Note to Tender Preparing Authority and Tender document approving Authority:

Tender Preparing Authority and Tender document approving Authority may kindly read provisions of Reciprocity Clause as given in Public Procurement (Preference to Make in India), Order 2017 (Latest order being Order No. P-45021/2/2017-PP (BE-II)-Part(4)Vol.II dated 19th July, 2024). Para 10 (d) (i) of Public Procurement (Preference to Make in India), Order No. P-45021/2/2017-PP (BE-II)-Part(4)Vol.II dated 19th July, 2024 is reproduced below for the attention of Tender Preparing Authority and Tender document approving Authority .

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

4.1.3 Eligibility to participate

1) **Minimum local content for eligibility to participate**: Only bidders meeting the minimum prescribed local content for the product shall be eligible to participate subject to the following conditions. This threshold shall be declared in TIS and/ or Section VI: Schedule of Requirements.

2) **Classes of Local Suppliers eligible to Participate:** Based on the Make in India Policy, classes of local/ non-local Suppliers eligible to participate in the tender shall be declared in TIS/ AITB/ Schedule of Requirements. If not so declared, only Class-I and Class-II local Suppliers shall be eligible to participate and not non-local Suppliers.

4.1.4 Thresholds

1) Following thresholds shall be declared in the Tender Document.

   (a) **Minimum local content for Contractor classification:** Local content percentage prescribed to qualify as Class-I or Class-II local Suppliers for various products.

   (b) **Minimum local content for eligibility to participate:** Minimum local content percentage prescribed for eligibility for a bid to be considered.

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(c) **The margin of purchase preference:** The bid price quoted by Class-I Local Supplier should be within this percentage from the L-1 price quoted by Non-local or Class-II bidders for being eligible for purchase preference.

2) If not so declared, the default threshold shall be as follows:

(a) Local content for eligibility for Class-I; Class-II local Suppliers and Non-local Suppliers shall be 50% and above; 20% and above but less than 50%; and less than 20%, respectively.

(b) Minimum local content for eligibility to participate shall be 50%,

(c) The margin of purchase preference shall be 20%

4.1.5 Purchase preference to Class-I local Suppliers

1) Where the Services are divisible by nature:

(a) Among all qualified bids, the lowest bid shall be termed as L-1. If L-1 is 'Class-I local Supplier', the contract for full quantity shall be awarded to L-1.

(b) If the L-1 bid is not a 'Class-I local Supplier', 50% of the order quantity shall be awarded to L-1. After that, the lowest bidder among the 'Class-I local Supplier' whose quoted price falls within the margin of purchase preference shall be invited to match the L-1 price for the remaining 50% quantity, and a contract for that quantity shall be awarded to him, subject to matching the L-1 price. In case such lowest eligible 'Class-I local Supplier' fails to match the L-1 price or accepts less than the offered quantity, the next higher 'Class-I local Supplier' within the margin of purchase preference shall be invited to match the L-1 price for the remaining quantity and so on, and the contract shall be awarded accordingly. If some quantity is still left uncovered on Class-I local Suppliers, such balance quantity shall also be ordered on the L-1 bidder.

2) Where the Services are not divisible, and in the procurement of services where the bid is evaluated on price alone:

(a) Among all qualified bids, the lowest bid shall be termed as L-1. If L-1 is 'Class-I local Supplier', the contract shall be awarded to L-1.

(b) If L-1 is not 'Class-I local Supplier', the lowest bidder among the 'Class-I local Supplier' shall be invited to match the L-1 price subject to Class-I local Supplier's quoted price falling within the margin of purchase preference, and the contract shall be awarded to such 'Class-I local Supplier' subject to matching the L-1 price.

(c) If such lowest eligible 'Class-I local Supplier' fails to match the L-1 price, the 'Class-I local Supplier' with the next higher and so on, bid within the margin of purchase preference shall be invited to match the L-1 price, and the contract shall be awarded accordingly. If none of the 'Class-I local Supplier' within the margin of purchase preference matches the L-1 price, the contract shall be awarded to the L-1 bidder.

3) Where parallel contracts are to be awarded to multiple bidders: In Bids where parallel contracts are to be awarded to multiple bidders subject to matching of L-1 rates or otherwise, the 'Class-I local Supplier' shall get purchase preference over 'Class-II local Supplier' as well as 'Non-local Supplier', as per following procedure:

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(a) If there is sufficient local capacity and competition for the item to be procured, as notified by the nodal Ministry, only Class I local Suppliers shall be eligible to bid. As such, the multiple Contractors, who would be awarded the contract, should be all and only 'Class I Local Suppliers'.

(b) In Bids, other than those mentioned above, 'Class II local Suppliers' or both 'Class II local Suppliers' and 'Nonlocal Suppliers' may also participate in the tender process along with 'Class I Local Suppliers'. If 'Class I Local Suppliers' qualify for the contract award for at least 50% of the tendered quantity in tender, the contract shall be awarded to all the qualified bidders as per award criteria stipulated in the Tender Documents. However, in case 'Class I Local Suppliers' do not qualify for the contract award for at least 50% of the tendered quantity as per award criteria, purchase preference should be given to the 'Class I local Supplier' over 'Class II local Suppliers'/ 'Non-local Suppliers' provided that their quoted rate falls within the margin of purchase preference of the highest bid considered for award of contract. To ensure that the 'Class I Local Suppliers' taken in totality are considered for award of contract for at least 50% of the tendered quantity, first purchase preference has to be given to the lowest among such eligible 'Class-I local Suppliers', subject to its meeting the prescribed criteria for the award of contract as also the constraint of the maximum quantity that can be sourced from any single Contractor. If the lowest among such 'Class-I local Suppliers' does not qualify for purchase preference because of aforesaid constraints or does not accept the offered quantity, an opportunity shall be given to next higher among such 'Class-I local Supplier', and so on.

Notes for Guidance of Tender Preparing Authority and Tender document approving Authority:

Note 1- Mandatory sourcing of items, with sufficient local capacity and competition, from Class-I local suppliers in SI/EPC/Turnkey Contracts/Service Tenders

a. *The items, notified as having sufficient local capacity and competition, shall mandatory be sourced from Class-I local suppliers in SI/EPC/Turnkey Contracts/ Services tenders. This provision will be applicable only for those items which have been notified by the Nodal Ministry as Class I i.e. having sufficient local capacity and competition, with specific HSN codes.*

b. *Notwithstanding above, if in any project, it is considered that it is not practically feasible to source such items from Class I local suppliers, it may take relaxation from such stipulation with the approval of Secretary of the administrative Ministry/ Department concerned or with the approval of the Competent Authority specified by the Administrative Ministry/Department, on case-specific basis.*

For RITES, Administrative ministry is 'Ministry of Railways'. Railway Board has notified the specific items for which sufficient local capacity and local competition exist through various letters/orders, which are available on Railway Board website (Railway Board Directorates → Stores → Circulars → Subject wise Circular → Make_In_India). Tender Preparing Authority and Tender document approving Authority are advised to follow the same with up-to-date amendments as notified by Railway Board from time to time.

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Railway Board has issued the latest letter No. 2020/RS(G)/779/2/Pt.1 (E3322671) dated 20.08.2024, which is available on its website.

Note 2- Minimum local content: *The 'local content' requirement to categorize a supplier as 'Class-I local supplier' is minimum 50%. For 'Class-II local supplier', the 'local content' requirement is minimum 20%. Nodal Ministry/ Department may prescribe only a higher percentage of minimum local content requirement to categorize a supplier as 'Class-I local supplier'/ 'Class- II local supplier'. For the items, for which Nodal Ministry/ Department has not prescribed higher minimum local content notification under the Order, it shall be 50% and 20% for 'Class-I local supplier'/ 'Class-II local supplier' respectively. Railway Board has notified minimum local content more than 50% for specific items through various letters/orders, which are available on Railway Board website (Railway Board Directorates → Stores → Circulars → Subject wise Circular → Make_In_India). Tender Preparing Authority and Tender document approving Authority are advised to follow the same with up-to-date amendments as notified by Railway Board from time to time. Railway Board has issued the latest letter No. 2020/RS(G)/779/2/Pt.1 (E3322671) dated 20.08.2024, which is available on its website.*

4.1.6 Verification of local content and violations:

1) The 'Class-I local Supplier'/ 'Class-II local Supplier' at the time of tender, bidding, or solicitation shall be required to indicate the percentage of local content and provide self-certification that the service offered meets the local content requirement for 'Class-I local Supplier'/ 'Class-II local Supplier', as the case may be. They shall also give details of the location(s) at which the local value addition is made.

2) In cases of procurement for a tender value above Rs. 10 crores, the 'Class-I local Supplier'/ 'Class-II local Supplier' shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or a practicing cost accountant or practicing chartered accountant (in respect of Contractors other than companies) giving the percentage of local content.

3) The bidder shall give self-certification for local content in the quoted item (goods/works/services) at the time of tendering. However, at the time of execution of the project, for all contracts above INR 10 Crore, the contractor/ supplier shall be required to give local content certification duly certified by cost/ chartered accountant in practice. For cases where it is not possible to provide certification by Cost/Chartered Accountant at the time of execution of project, the supplier shall be permitted to provide the certificate for local content from Cost/ Chartered Accountant after completion of the contract, within time limit acceptable to the RITES. In case the contractor/ supplier does not meet the stipulated local content requirement and the category of the supplier changes from Class-I to Class-II/ Non-local or from Class-II to Non-local, a penalty upto 10% of the contract value may be imposed. However, contract once awarded shall not be terminated on this account.

4) Complaints about Local content declarations may be made through the channels of Procuring Entity. Procuring Entities and Nodal Ministries may prescribe fees for such complaints. Complaints about local content declarations/verification of local content shall be processed/addressed as per Public Procurement (Preference to Make in India), Order No. P-45021/2/2017-PP (BE-II)-Part(4)Vol.II dated 19th July, 2024.

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5) Bids with false declarations regarding local contents shall be rejected as non-responsive, in addition to punitive actions under the MII orders and for violating the Code of Integrity as per Clause 14 along with its sub-clauses of GCC of tender document.

4.1.7 Manufacture under license/ technology collaboration agreements with phased indigenization

1) If so, declared in TIS and/ or AITB, foreign companies shall enter into a joint venture with an Indian company to participate.

2) The Procuring Entity reserves its right, but without being under any obligation to do so, to grant exemption from meeting the stipulated local content to Bidders manufacturing indigenously a product developed abroad under a license from a foreign manufacturer (who holds intellectual property rights) under a technology collaboration agreement/ transfer of technology agreement with a precise phasing of increase in local content. Bidder must obtain such an exemption letter and submit it along with his bid to avail such an exemption.

4.1.8 Information to be provided by Bidders regarding Make in India policy

Bidder shall provide required self-declaration as detailed in Form 1.2 – Eligibility Declarations:

1) Self-declaration of their local content (and required certificate, in case of procurements above Rs 10 Crores) and their status as Class-I/ Class-II/ Non-local Supplier and their eligibility to participate as per this clause.

2) If the Tender Document indicates countries identified as not allowing Indian companies to participate in their Government procurement, then a declaration that they are not an 'Entity' of such countries (as per criteria of the FDI Policy of DPIIT as amended from time to time) and are therefore eligible to participate in this tender.

3) If a Bidder is claiming exemption (as obtained from relevant authorities) from meeting the stipulated local content on account of manufacturing the product in India under a license from a foreign manufacturer with the precise phasing of increase in local content, he must provide proof thereof.

4.1.9 Exemption of small purchases: Notwithstanding anything contained in paragraph 4.1 to 4.1.8 above, procurements where the estimated value to be procured is less than Rs. 5 lakhs shall be exempt from the Public Procurement (Preference to Make in India), Order 2017 dated 19.07.2024 (with latest amendment if any) issued by DPIIT, Ministry of Commerce and Industry, GOI. However, it shall be ensured by procuring entities that procurement is not split for the purpose of avoiding the provisions of this Order.

4.1.10 Exemption in sourcing of spares and consumables of closed systems:

Procurement of spare parts, consumables for closed systems and Maintenance/Service contracts with Original Equipment Manufacturer/Original Equipment Supplier/Original Part Manufacturer shall be exempted from Public Procurement (Preference to Make in India), Order 2017 (Latest order being Order No. P-45021/2/2017-PP (BE-II)-Part(4)Vol.II dated 19th July, 2024).

II. The first line of Sub Clause 4.4.1 of Section II: Instructions to Bidders (ITB) starting from "As indicated ....." and ending with "..... applicable for the tender", as mentioned at S. No. 6 of Correction Slip No. 01 dated 20.06.2023 of RITES Standard E-

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Tender Document for Procurement of Other (Non-Consultancy) Services, May-2023 may be deleted and replaced with the following:

As indicated in Clause 4.1 & 4.2 above, Public Procurement (Preference to Make in India) Order 2017 (PPP-MII Order), revised on 19.07.2024 (with upto date amendments) and Public Procurement Policy for the Micro and Small Enterprises (MSEs) Order, 2012 (PPP-MSE Order), revised on 09-11-2018 (with upto date amendments), are applicable for the tender.

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No. RITES/CPC/Correction Slip No. 7 (Standard E-Tender Document for Other (Non-Consultancy) Services)
Date: 17.09.2024

The above Correction Slip No. 7 to Standard E-Tender Document for procurement of Other (Non-Consultancy) Services, May-2023 is issued with the approval of the competent authority.

17/09/2024

(Murali Krishna Krovvidi)
GGM/CPC

Copy to:

1. Secy. to CMD/DP/DT/DF for kind information of CMD/DP/DT/DF please.
2. CVO for kind information please.
3. All Country Heads, Vertical Heads, Regional Heads & PU/SUB-Unit/RIO Heads
4. GM/IT for getting uploaded on RITES website under Tenders → Standard Tender Documents for Services → RITES Standard E-Tender Document for procurement of Other (Non-Consultancy) Services, May-2023 (Correction slip No. 7) and on RITES ESS portal/ CPC Documents Tab