

RITES Ltd. / Contract Policy Cell / Gurgaon

E-Tendering – Tender and Contract Document for Works July 2019

Correction Slip No. 9

In order to give effect to the order of Govt. of India, Department of Expenditure, Public Procurement Division, Ministry of Finance vide Office Memorandum No. 6/18/2019-PPD dated 23.07.2020 and Orders (Public Procurement No. 1 & 2) vide F. No. 6/18/2019-PPD dated 23.07.2020 and Order (Public Procurement No. 3) vide F. No. 6/18/2019-PPD dated 24.07.2020 and forwarded to CPSEs through Office Memorandum No. DPE/7(4)/2017-Fin. (Part-I) dated 30.07.2020 of Department of Public Enterprises, Ministry of Heavy Industries & Public Enterprises regarding imposing restrictions under Rule 144(xi) of the General Financial Rules (GFRs), 2017 and its compliance, a new sub-clause 12.16 in Section-I may be inserted as under:

12.16

Definitions

1. "**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.
2. "**Tender**" for the purpose of this Order will include other forms of procurement, except where the context requires otherwise.
3. "**Procuring entity**" means RITES Ltd.
4. "**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.

5. "Beneficial owner" for the purpose of paragraph 4 above will be as under:
- i. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person(s), has a controlling ownership interest or who exercises control through other means
Explanation---
 - a) "Controlling ownership interest" means ownership of, or entitlement to, more than twenty-five per cent of shares or capital or profits of the company;
 - b) "Control" shall include the right to appoint the majority of the directors or to control the management or policy decisions, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;
 - ii. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership:
 - iii. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals.
 - iv. Where no natural person is identified under (i) or (ii) or (iii) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
 - 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..
6. "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.

Requirement of registration

7. 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).

8. This Order will not apply to bidders from those countries (even if sharing a land border with India) to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects.
9. Updated lists of countries to which lines of credit have been extended or in which development projects are undertaken are given in the website or the Ministry of External Affairs.
10. 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) in special cases mentioned hereinunder:
 - A. Till 31st December 2020, procurement of medical supplies directly related to containment of the Covid 19 pandemic shall be exempt from the provision 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 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 office of government agencies / undertakings located outside India.

Transitional cases

11. 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 7, a certificate shall be obtained from the bidder whose bid is proposed to be considered or accepted, in terms of Paras 4, 5 & 6 read with Para 7 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.

Sub-contracting in works contracts

13. 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).
14. The definition of "Contractor from a country which shares a land border with India" shall be as in paragraph 4 above. This shall not apply to sub-contracts already awarded on or before the date of this Order.

Validity of registration

15. 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-Market place

16. 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.

Model Certificates

17. Model Certificates which may be inserted in tenders / obtained from Bidders are as under;

- a. Model Certificate for Tenders (for transitional cases as stated in Para 10 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."

- b. 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 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 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 fulfils 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.)"

- d. Model Certificate for GeM:


"I have read the clause regarding restrictions on procurement from a bidder of 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.e DPIIT. I hereby certify that this vendor/ bidder fulfill all requirements in this regard and is eligible to be considered from procurement on GeM (Where applicable, evidence of valid registration by the Competent Authority i.e DPIIT shall be attached.)”

Note: In case of any clarification is needed, the Office Memorandums / Orders issued by Govt. of India, Department of Expenditure, Public Procurement Division, Ministry of Finance and Department of Public Enterprises, Ministry of Heavy Industries & Public Enterprises as mentioned above in this Correction Slip may be referred.

No. RITES/CO/CPC/T&CD/CS 09 (E-Tendering)
Dated, 25.08.2021

The above Correction Slip No. 9 to Tender and Contract Document for Works (E-Tendering, July 2019) is issued with the approval of the competent authority.


26/8/21

(Pawan Chowdhry)
ED/ B&A and Head
Contract Policy Cell

All Divisional Heads and SBU heads: As per standard mailing list of dispatch.

Copy to:

1. Secy. to CMD/DP/DT/DF. The above correction slip may be inserted in the copy of E-Tendering – Tender and Contract Document for Works, July-2019 for kind information of CMD and Directors.
2. CVO for kind information please.
3. AGM/ IT for uploaded on RITES website: Tender/RITES/GCC/ Tender and Contract Document for E-Tendering, July 2019 (Correction slip No. 9).