

Heavy Engineering Corporation Ltd.
Marketing Division

No.: HEC/CM/2021/EOI/ 131A

Dated: 11/12/2021

Notice Inviting Expression of Interest (EOI) for collaboration with Technology provider for Design, Engineering, Retrofitting and Supervision during Erection & Commissioning of Flue Gas Desulphurization Equipment.

Heavy Engineering Corporation Ltd (HEC), a Government of India Enterprise, under Ministry of Heavy Industries & Public Enterprises, is one of the largest integrated engineering complexes in India. Over the last five decades, HEC has been manufacturing and supplying equipment and machinery for Steel Plant, Mining, Mineral processing, Machine Tools, Cranes, Railways, Defense, Space and Nuclear research as a reliable and quality product supplier.

HEC is looking for a technology collaboration / association (consortium) for Design, Engineering, retrofitting and supervision during erection & commissioning of equipment for Flue Gas Desulphurization (FGD) projects such as but not limited to; FGD Absorber, Tanks and Ducts, Agitator for Absorber, Dampers, Expansion Joints, Spraying Pipe, Spray Nozzles, Oxidation Blower, Mist Eliminator, Gypsum Hydro clone, Vacuum Belt Filter, Vacuum Pump, Cake Wash Pump, Agitator for Filtrate water tank, Limestone Vibration Feeder, Vibrating Screening Feeder, Limestone Crusher, Bucket Elevator, Gravimetric (weight belt) Feeder, Wet Ball Mill, Limestone Hydro clone, Agitator for Limestone slurry tank, , Limestone Slurry Feed Pump, Vibrator for Limestone Handling System, Piping (lined), Electrostatic Precipitator & components (Dry Technology)– New & retrofit, Electrostatic Precipitator & components (Wet Technology)– New & retrofit, Electrostatic Precipitators (Bag Filters), Marine FGD only.

Expression of Interest is invited from reputed firms having experience in Design, Engineering, Manufacturing, Erection and commissioning of FGD equipment but not limited to above and who are willing to co-operate by sharing design & technology and manufacturing guidelines/supervision and supervision during erection and commissioning with HEC.

A. Eligibility Criteria:

- 1) The company must have qualified experience of Design, Engineering, Supply and retrofitting/erection and commissioning either or all of the above equipment and machines in last 7 years from the date of EOI.
- 2) The company should have reference of successful Design, Engineering, Supply, Erection and Commissioning/Supervision of erection & commissioning and/or retrofitting of the

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same in last 7 years from the date of EOI. **Self-attested copies of work order / purchase order, project completion certificate and performance certificate issued by end user or client shall be submitted by the bidder**

- 3) 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 as per 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 regarding GFR Rule 144 (xi) and the subsequent Office Memorandum no. F. 18/37/2020-PPd dated 08th Feb 2021 and OM no. F.12/1/2021-PPD (Pt) dated 02nd March 2021 (Copies enclosed as Annexure II).

The bidder must submit an undertaking that the bidder fulfills all the requirements in this regard and is eligible to be considered.

- 4) The Company should agree to sign collaboration agreement with HEC and provide necessary Design & Engineering documents, GA drawings and depute engineers for supervision of manufacturing process of FGD and its equipment at the HEC facility as per the requirement of end customer. **The bidder must submit an undertaking regarding confirmation.**
- 5) The bidder should not have been blacklisted/ debarred by any Foreign / Indian Government /Semi-Govt./ PSU Organization in India during last 03 years. **An undertaking in this regard shall be submitted by the bidder.**
- 6) The bidder must not be under liquidation, court receivership or similar proceedings. **An undertaking has to be submitted by the bidder in this regard.**

B. Information/documents to be submitted:

Interested bidders shall submit their EOI along with the following details and documentary evidence to establish their credentials:

- i. General Information: Complete particulars of the company
- 1) Name of the registered Firm
 - 2) Details about registered office of the firm with phone, fax, email, website etc.(All currently active and shall be in use for at least 1 year)
 - 3) Name and details of contact person, competent Authority.
 - 4) Registration / License details / Official certificate of Incorporation of the firm.
 - 5) Status of the firm: Registered company / Public Limited company / Privately controlled company / partnership firm / any other
 - 6) Details about Directors/Partners
 - 7) Total qualified experience in terms of years
 - 8) List of key personnel of the organization with their background and experience in this particular field

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- 9) Reference list along with Performance certificates from Customer of completed FGD projects or FGD equipment/components authenticating successful execution of the projects duly meeting performance guarantee parameters.
 - 10) The bidder must provide the copies of audited financial statements for last three financial years ending 31/03/2021

Technical Credentials:

- 1) Documentary evidence in support to the Eligibility criteria: Unpriced Copy of major orders along with completion/commissioning certificate executed till date indicating brief scope, Technical description and Customer's name.
- 2) List of major pending orders in hand indicating value, description, Customer
- 3) List of design, manufacturing and quality engineers with their credentials.
- 4) Performance, Commissioning Certificate from end user/customer along with relevant Purchase Order/Contract Agreement of completed project in Last Seven years.

Others:

- 1) Presence in Indian market at present
- 2) **Proposed modality of tie-up, Scope Matrix, Financial criteria of Tie Up.**
- 3) The company must show its readiness to develop design, arrangement of drawing and documentation for Indian Industry condition as per HEC's given request.
- 4) A bidder has to confirm their acceptance of contract performance Bank Guarantee submission to HEC in case of Tie-up which shall be extended till all the contractual obligations have been met. This requirement however shall be waived in case of Customer demands Performance Bank Guarantee (PBG) directly from the Technology Partner.
- 5) The Bidder has to submit a Declaration signed by authorized signatory of the company along with Performance, Commissioning and Retrofitting certificates regarding satisfactory operation of FGD Equipments/Systems executed in support of PQ submitted
- 6) A bidder has to confirm their acceptance for submission of necessary Bank Guarantees for Advance payments, Performance (as applicable) on back to back basis as and when required by End Customer
- 7) Requirement of Bid Security (EMD-BG) is waived as of now considering the prevailing COVID pandemic situation in the country. However, Bidder shall be required to submit a Bid Declaration in line with Procurement Policy Notification No F. 9/4/2020-PPD dated 12.11.2020 from GOI, Ministry of Finance, Department of Expenditure. In the event Government issues new guidelines or waive off guidelines of this OM then the prevailing norms shall be applicable.

All Bank Guarantees shall be made through any RBI approved Indian Scheduled Bank.

C. Instructions for the bidders:

All correspondences shall be in English language only. Information in any other language shall be accompanied by its translation in English and duly signed by its authorized representative/competent authority.

The proposal is acceptable only in Hard Copy mode.

Offer submitted after stipulated time and date of receipt shall not be accepted.

Proposal in hard copy should be bounded and placed in an envelope with inscription over it for the bid notice number, addressed to, address of the sender. All the required document shall be in order as per the criteria mentioned in the section A & B and Annexure-I.

Response to this Expression of Interest should reach the address given below by _____, in the office of:

Deputy General Manager,
Marketing Division- Steel Group, 3rd Floor,
Heavy Engineering Corporation Ltd.
Headquarters, Plant Plaza Road,
P.O. Dhurwa, Ranchi 834004
Jharkhand, India

For any queries regarding EOI before submission could be obtained by contacting:-

Deputy General Manager, Marketing,
E-mail: steel.mktg@hecltd.com ; ssanandwar@hecltd.com
Telephone: +91 651 2446857

D. Evaluation Criteria

Evaluation of EOI shall be done by techno-commercial committee through marking system against key parameter. For any upcoming projects where collaborating party selected after evaluation as per the evaluation criteria and acceptance of all the documents submitted by the party, HEC shall act as a Lead Bidder (Primary Bidder) participating along with collaborating party (partner). For any such upcoming Projects, HEC shall execute a separate agreement specifying all the modalities as per tender requirements of the end Customer with the collaborating party (Partner) and these projects shall be executed jointly.

List of parameters along with marking system is attached as Annexure – I.

Note:-

HEC reserves the right to:

- i. Ask for further clarifications before/after short-listing or as and when required.

- ii. Reject any or all proposals received, at its discretion, without assigning any reason whatsoever.
- iii. HEC Ltd. will not be responsible or liable to pay for any expenses or losses which may be incurred by the Bidder's in the preparation and submission of their expression of interest.

- DGM(Strategic & Steel Mktg)/ HQ

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ANNEXURE – I: EVALUATION CRITERIA

SL No.	Requirements as per NIT	Supporting Documents to be submitted	Weightage (Scale of 1 to 3) for Marking
1	Company Details – Origin, Registered office/ Head office and Contact details Indian Origin : 3 Marks Other than Indian Origin: 2 Marks	Declaration signed by Authorized Signatory along with documents supporting the same	1
2	Whether having registered office in India. Address and Contact Details: Head Office in a Country which shares a land border with India with registered office in India: 4 Marks Head Office in a Country which shares a land border with India without registered office in India: 2 Marks Head Office in a Country which does not shares a land border with India with registered office in India: 4 Marks Head Office in Country which does not shares a land border with India without registered office in India : 2 Marks	Declaration signed by Authorized Signatory along with documents supporting the same	2
3	Type of Company – Government, Public Ltd., Private Limited, Partnership, LLP Government : 5 Marks Public Limited : 4 Marks Private Limited : 3 Marks Partnership firm and others : 2 Marks	Declaration signed by Authorized Signatory along with documents supporting the same	3
4	Company's strength - design/engineering/consultancy/manufacturing of FGD equipments. Design + Engineering + Execution : 5 Marks Design + Engineering : 4 Marks Design : 3 Marks	Declaration signed by Authorized Signatory along with documents supporting the same	2
5	In last 5 years, experience of 2 Nos. of Wet limestone based FGD of capacity of not less than 20,00,000 Nm ³ /hr in successful operation for a period of 2 years in a: TPP of 600 MW and more: 5 Marks TPP of 500 MW and more: 4 Marks TPP of less than 500 MW up to 100 MW : 3 Marks TPP of less than 100 MW : 1 Mark.	Declaration signed by Authorized Signatory along with documents supporting the same	3
7	Year of commissioning of FGD Plant last executed at least 2 nos. For Projects Commissioned <= 7 years: 4 marks For Projects Commissioned > 7 years : 3 marks	Declaration signed by Authorized Signatory along with documents supporting the same	3

8	Annual Average Turnover for Last three years financial performance data/balance sheet/AR Average Turnover more than 100 Cr : 5 Marks Average Turnover less than 100 Cr : 4 Marks	Declaration signed by Authorized Signatory along with documents supporting the same	2
9	Net Worth consecutively for last 3 financial years ending 31.03.2021 Positive net worth: 2 Marks Negative net worth: 0 Marks	Declaration signed by Authorized Signatory along with documents supporting the same	2

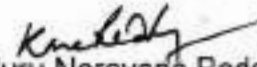
512, Lok Nayak Bhawan,
New Delhi. Dated the 2nd March, 2021

OFFICE MEMORANDUM

Subject : Restrictions under Rule 144(xi) of the General Financial Rules (GFRs) 2017.

Attention is invited to this Department's OM F.No.6/18/2019-PPD dated 23.07.2020, regarding restrictions under Rule 144(xi) of the General Financial Rules (GFRs), 2017. The OM stipulates necessity of registration of bidders, from a country which shares a land border with India, with the competent authority.

2. In this regard, it is now decided that 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 as mandated under Rule 144(xi) of GFRs 2017 and Public Procurement orders issued in this regard.


Kotluru Narayana Reddy
Deputy Secretary to the Govt. of India
Tel.: 24621305
Email: kn.reddy@gov.in

To

1. All the Secretaries and Financial Advisors to the Government of India
2. All Chief Secretaries of State Governments

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No. F.18/37/2020-PPD
Government of India
Ministry of Finance
Department of Expenditure
Procurement Policy Division

512, Lok Nayak Bhawan,
New Delhi. Dated the 8th February 2021

OFFICE MEMORANDUM

Subject: Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs), 2017.


Attention is invited to this Department's Order (Public Procurement No.1) issued vide OM F.No.6/18/2019-PPD dated 23.07.2020. As per para 11 of the Order, in case of 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. However, no such restriction is stipulated in the Order regarding other procurements i.e. procurement of Goods, Services, etc.

2. This office is in receipt of representations seeking clarification whether it is permitted for the bidders to procure raw material or components/ sub-assemblies or the finished goods etc. from the vendors from the countries sharing land borders with India.

3. In this context following is hereby clarified:

- i A bidder is permitted to procure raw material, components, sub-assemblies etc. from the vendors from countries which shares a land border with India. Such vendors will not be required to be registered with the Competent Authority, as it is not regarded as "sub-contracting".
- ii However, in case a bidder has proposed to supply finished goods procured directly/ indirectly from the vendors from the countries sharing land border with India, such vendor will be required to be registered with the Competent Authority.

4. This is issued with the approval of Secretary (Expenditure).


Kotluru Narayana Reddy
Deputy Secretary to the Govt. of India
Tel.: 24621305
Email: kn.reddy@gov.in

To

- (1) Secretaries of All Ministries/ Departments of Government of India,
- (2) Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi.

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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

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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 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;

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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.

- 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

11/12

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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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No. DPE/7(4)/2017-Fin.(Part-I)
Government of India
Ministry of Heavy Industries & Public Enterprises
Department of Public Enterprises

Public Enterprises Bhawan
Block No.14, CGO Complex
New Delhi - 110003

Date: November, 2020
19/11

OFFICE MEMORANDUM

Sub.: D/o Expenditure OMs No.9/4/2020-PPD dated 12.11.2020 on Additional Performance Security in case of Abnormally Low Bids, Bid Security /Earnest Money Deposit and Performance Security-regarding

The undersigned is directed to enclose Department of Expenditure's (DoE) OMs on the following matters for information and compliance by CPSEs:

- (i) Reduction in Performance Security from existing 5-10% to 3% of the value of the contract. (DoE OM No.9/4/2020-PPD dated 12.11.2020)
 - (ii) No provisions regarding Bid Security should be kept in the Bid Documents in future and only provisions for Bid Security Declaration should be kept in the Bid Documents. (DoE OM No.9/4/2020-PPD dated 12.11.2020)
 - (iii) No provision should be kept in the Bid Documents regarding Additional Security Deposit/ Bank Guarantee (BG) in case of Abnormally Low Bids. (DoE OM No.9/4/2020-PPD dated 12.11.2020)
2. All the administrative Ministries/ Departments of CPSEs are requested to ensure compliance of the directions issued by DoE by CPSEs under their administrative control.
 3. This issues with the approval of competent authority.


(Amit Rastogi) 19/11/20
Director
Tel.24362061

Encl.: (DoE's 3 OMs No. 9/4/2020-PPD dated 12.11.2020)

To

- i) All the Secretaries to the Administrative Ministries/Departments of CPSEs
- ii) Chief Executives of CPSEs

Copy for information to:

Secretary, D/o Expenditure, North Block, New Delhi

— LEFT INTENTIONALLY —

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No. F.9/4/2020-PPD
Government of India
Ministry of Finance
Department of Expenditure
Procurement Policy Division

512, Lok Nayak Bhawan, New Delhi
Dated the 12th November 2020

OFFICE MEMORANDUM

Subject: Performance Security.

As per Rule 171 of General Financial Rules (GFRs) 2017, Performance Security is to be obtained from the successful bidder awarded the contract for an amount of five to ten percent of the value of the contract to ensure due performance of the contract. Similar provisions also exist in the Manual for Procurement of Works 2019 and Manual for Procurement of Consultancy & other Services 2017 issued by this Department.

2. The Government is in receipt of many representations that on account of slowdown in economy due to the pandemic, there is acute financial crunch among many commercial entities and contractors, which in turn is affecting timely execution of the contracts. It has also been represented that this may affect the ability of contractors to bid in tenders and hence reduce competition. Requests are being received for reduction in quantum of Security Deposits in the Government contracts.

3. In view of all above, it is decided to reduce **Performance Security from existing 5-10% to 3% of the value of the contract** for all existing contracts. However, the benefit of the reduced Performance Security will not be given in the contracts under dispute wherein arbitration/ court proceedings have been already started or are contemplated.

4. Further, all tenders/ contracts issued/ concluded till 31.12.2021 should also have the provision of reduced Performance Security.

5. In all contracts where Performance Security has been reduced to 3% in view of above stipulations, the reduced percentage of Performance Security shall continue for the entire duration of the contract and there should be no subsequent increase of Performance Security even beyond 31.12.2021.

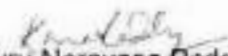
Similarly, in all contracts entered into with the reduced percentage of Performance Security of 3%, there will be no subsequent increase in Performance Security even beyond 31.12.2021.

6. Wherever, there is compelling circumstances to ask for Performance Security in excess of three percent as stipulated above, the same should be done only with the approval of the next higher authority to the authority competent to finalise the

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particular tender, or the Secretary of the Ministry/ Department, whichever is lower. Specific reasons justifying the exception shall be recorded.

7. These instructions will be applicable for all kinds of procurements viz. Goods, Consultancy, Works, non-consulting Services etc and are issued under Rule 6(1) of the GFRs 2017.


(Kotluru Narayana Reddy)
Deputy Secretary to the Govt. of India
Tel: 24621305
Email: kn.reddy@gov.in

To,

All the Secretaries and Financial Advisers to Government of India

Copy to: Secretary, Department of Public Enterprises with a request to issue the same instructions to Central Public Sector Undertakings (CPSUs).

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No. F.9/4/2020-PPD
Government of India
Ministry of Finance
Department of Expenditure
Procurement Policy Division

512, Lok Nayak Bhawan, New Delhi
Dated the 12th November 2020

OFFICE MEMORANDUM

Subject: Bid Security/ Earnest Money Deposit.

The Government is in receipt of many representations that on account of slowdown in economy due to the pandemic, there is acute financial crunch among many commercial entities and contractors, which in turn is affecting timely execution of the contracts. It has also been represented that this may affect the ability of contractors to bid in tenders and hence reduce competition. Requests are being received for reduction in quantum of Security Deposits in the Government contracts.

2. As per Rule 170 of General Financial Rules (GFRs) 2017, Micro and Small Enterprises (MSEs) and the firms registered with concerned Ministries/ Departments are exempted from submission of Bid Security. Further, in lieu of Bid Security, Ministries/ Departments may ask bidders to sign "Bid Security Declaration" accepting that if they withdraw or modify their bids during period of validity etc., they will be suspended for the time specified in the tender documents. Similar provisions also exist in the Manuals for Procurement of Works 2019 and Manual for Procurement of Consultancy & other Services 2017.

3. In this context it is noted that Bid Security (also known as Earnest Money Deposit) is still being taken from the contractors by the various Ministries/ Departments, though the relaxations have already been provided in General Financial Rules (GFRs) 2017.

4. In view of above, it is reiterated that notwithstanding anything contained in Rule 171 of GFRs 2017 or any other Rule or any provision contained in the Procurement Manuals, **no provisions regarding Bid Security should be kept in the Bid Documents in future and only provision for Bid Security Declaration should be kept in the Bid Documents.**

5. Wherever, there are compelling circumstances to ask for Bid Security, the same should be done only with the approval of the next higher authority to the authority competent to finalise the particular tender or the Secretary of the Ministry/ Department, whichever is lower.

6. The above instructions will be applicable for all the tenders issued till 31.12.2021.

7. These instructions will be applicable for all kinds of procurements viz. Goods, Consultancy, Works, non-consulting Services etc and are issued under Rule 6(1) of the GFRs 2017.



(Kotluru Narayana Reddy)
Deputy Secretary to the Govt. of India
Tel: 24621305
Email: kn.reddy@gov.in

To,

All the Secretaries and Financial Advisers to Government of India

Copy to: Secretary, Department of Public Enterprises with a request to issue the same instructions to Central Public Sector Undertakings (CPSUs).

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No. F 9/4/2020-PPD
Government of India
Ministry of Finance
Department of Expenditure
Procurement Policy Division

512, Lok Nayak Bhawan, New Delhi
Dated the 12th November 2020

OFFICE MEMORANDUM

Subject: Additional Performance Security in case of Abnormally Low Bids (ALBs).

The Government is in receipt of many representations that on account of slowdown in economy due to the pandemic, there is acute financial crunch among many commercial entities and contractors, which in turn is affecting timely execution of the contracts. It has also been represented that this may affect the ability of contractors to bid in tenders and hence reduce competition. Requests are being received for reduction in quantum of Security Deposits in the Government contracts.

2. In this context, it is noted that Additional Performance Security in case of Abnormally Low Bids (ALBs) is being taken from the contractors by various Ministries/ Departments though there is no provision for the same in General Financial Rules (GFRs) 2017 or the Manuals for Procurement issued by this Department.

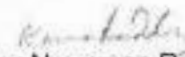
3. As per para 7.5.7 of the Manual for Procurement of Goods 2017 issued by this Department, *an Abnormally Low Bid is one in which the bid price, in combination with other elements of the Bid, appears so low that it raises material concerns as to the capability of the bidder to perform the contract at the offered price. Procuring Entity may in such cases seek written clarifications from the bidder, including detailed price analyses of its bid price in relation to scope, schedule, allocation of risks and responsibilities, and any other requirements of the bids document. If, after evaluating the price analyses, Procuring Entity determines that the bidder has substantially failed to demonstrate its capability to deliver the contract at the offered price, the Procuring Entity may reject the bid/ proposal. However, it would not be advisable to fix a normative percentage below the estimated cost, which would be automatically be considered as an abnormally low bid. Due care should be taken while formulating the specifications at the time of preparation of bid document so as to have a safeguard against the submission of abnormally low bid from the bidder.*

4. In view of above, it is reiterated that no provisions should be kept in the Bid Documents regarding Additional Security Deposit/ Bank Guarantee (BG) in case of Abnormally Low Bids.

5. Wherever, there are compelling circumstances to ask for Additional Security Deposit/ Bank Guarantee (BG) in case of ALBs, the same should be taken only with

the approval of the next higher authority to the authority competent to finalise the particular tender, or the Secretary of the Ministry/ Department, whichever is lower.

6. These instructions will be applicable for all kinds of procurements viz. Goods, Consultancy, Works, non-consulting Services etc.


(Kotluru Narayana Reddy)
Deputy Secretary to the Govt. of India
Tel: 24621305
Email: kn.reddy@gov.in

To,

All the Secretaries and Financial Advisers to Government of India

Copy to: Secretary, Department of Public Enterprises with a request to issue the same instructions to Central Public Sector Undertakings (CPSUs).