



**Global
Expression of Interest**

**For Selection of Partner for Joint working / Business Share for the requirement
of Indian Railways of 9000HP Electric Locomotives**

**Bharat Heavy Electricals Limited
Transportation System Group
Industry Sector, Lodhi Road,
New Delhi - 110003**

DISCLAIMER

All information contained in this EOI provided/clarified are in good interest and faith. The information contained in this Expression of Interest document or subsequently provided to Applicant(s), whether verbally or in documentary or any other form, by or on behalf of BHEL, is provided on the terms and conditions set out in this EOI and such other terms and conditions subject to which such information is provided.

The purpose of this EOI is to provide interested parties with information that may be useful to them in the formulation of their application for qualification and subsequent selection as a consortium partner pursuant to this EOI. This EOI is not an offer by BHEL to the prospective Applicant(s) or any other person. This EOI is neither intended nor shall it be construed as creating or requiring any ongoing or continuing relationship or commitment with any party or person. This is not an offer or invitation to enter into an agreement of any kind with any party.

Though adequate care has been taken in the preparation of this EOI document, the interested firms shall satisfy itself that the document is complete in all respects. The information is not intended to be exhaustive. Interested Agencies are required to make their own enquiries and assumptions wherever required. Intimation of discrepancy, if any, should be given to the specified office immediately. If no intimation is received by this office by the date mentioned in the document, it shall be deemed that the EOI document is complete in all respects and firms submitting their interest are satisfied with the EOI Document in all respects.

The issue of this EOI does not imply that BHEL is bound to select and shortlist Applicant(s) for next stage or to enter into any agreement(s) with any Applicant(s). BHEL reserves all right to reject any applications submitted in response to this EOI document at any stage without assigning any reasons thereof. BHEL also reserves the right to withhold or withdraw the process at any stage. Neither BHEL nor its employees and associates will have any liability any loss, expense or damage which may arise from or be incurred or suffered in connection with anything contained in this EOI document or any matter deemed to form part of this EOI document, the information and any other information supplied by or on behalf of BHEL. BHEL accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance/use of any statements/information contained in this EOI by the Applicant. BHEL is not making any representation or warranty, express or implied, as to the accuracy or completeness of any information/statements made in this EOI.

The Applicant shall bear all its costs associated with or relating to the preparation and submission of its Application including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by BHEL or any other costs incurred in connection with or relating to its Application. All such costs and expenses will remain with the Applicant and BHEL shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by an Applicant in preparation or submission of the Application, regardless of the conduct or outcome of the EOI.

Bharat Heavy Electricals Limited**1.0 INTRODUCTION**

This Expression of Interest (Eoi) seeks response from an “Applicant” Original Equipment Manufacturer (OEMs) or an Affiliate of an OEM that directly or indirectly control, or are controlled by or are under common control with the firm who are involved in designing/manufacturing of locomotives including but not limited to body shell, underframe, bogies and system design and integration of the complete locomotive including electrical and mechanical packages.

For this purpose, the term “Affiliate” means, in relation to the Applicant, the entity whose credentials of experience are claimed by the Applicant in Annexure-B who controls, is controlled by, or is under common control with such applicant. The term “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% of the voting shares of such person.

2.0 About BHEL

Bharat Heavy Electricals Limited (BHEL) is a Central Public Sector Enterprise, wherein Government of India is holding 63.06% of its equity. It is an integrated power plant equipment manufacturer and one of the largest engineering and manufacturing companies of its kind in India having an average turnover of about USD 3-4 billion. The company is engaged in the design, engineering, manufacture, construction, testing, commissioning and servicing of a wide range of products and services for the core sectors of the economy, viz. Power, Transmission, Industry, Transportation, Renewable Energy, Oil & Gas and Defence with over 180 product offerings to meet the needs of these sectors.

Since its inception in 1964, BHEL has been the solid bedrock of evolution of India’s Heavy Electrical Equipment industry. BHEL has a widespread network of 16 manufacturing units, 2 repair units, 4 regional offices, 8 service centres, 1 subsidiary, 2 overseas offices, 3 active joint ventures, 15 regional marketing centres and current project execution at more than 150 project sites across India and abroad corroborates the humongous scale and size of its operations.

With key focus on project execution, the worldwide installed base of power generating equipment supplied by BHEL has exceeded 185 GW. BHEL’s global competitiveness has established its footprint in all the inhabited continents with references in 83 countries.

The high level of quality & reliability of BHEL products is a testimony of its adherence to international standards by acquiring and adapting some of the best technologies

from leading companies in the world including General Electric, Siemens AG, Mitsubishi Heavy Industries Ltd. etc., together with technologies developed in its own R&D centres. BHEL invests more than 2.5% of turnover on R&D and innovation.

BHEL has been designing and manufacturing rolling stock for rail and urban transportation. BHEL has also been manufacturing Motors, Power electronics and Controllers for various transportation applications at its various factories. BHEL also has a Battery Packaging facility for space applications.

In transportation sector, BHEL is into the manufacture of complete electric and diesel electric locomotives and electrical assemblies/components including traction motors, traction transformers, power & auxiliary converters and controls, gear wheels etc.

At our Jhansi plant, we manufacture complete Electric Locomotives upto 6000 HP rating for mainline application of Indian Railways, Diesel Electric Locomotives from 350 HP to 2600 HP rating. Till date, we have supplied more than 370 nos. of main line electric locomotives to Indian Railways and more than 250 nos. of diesel electric locomotives for shunting operations to different industries. We are currently executing an order for manufacture of complete Electric Locomotive of 6000 HP. Our Jhansi plant with an installed capacity of 75 nos. locomotives per year, we have state-of-the-art facilities for manufacturing and fabrication of bogies, loco shells, under frames and other mechanical components of locomotives. BHEL has recently developed India's first state-of-the-art WAG7 Electric Locomotive with regenerative capabilities.

Among electrical propulsion equipment, BHEL manufactures and supplies traction motors, traction transformers, power converters (IGBT/GTO) & controls, auxiliary converters (IGBT/GTO) and vehicle control units for electric locomotives, diesel electric locomotives, EMUs, DEMUs & and metros trains of Indian Railways. Manufacturing range includes conventional DC drive, IGBT based 3-phase drive equipment upto 9000HP rating. BHEL has also been in the forefront of providing maintenance and spares/replacement support to Indian Railways for their locomotive fleet. We have full-fledged service department located at major centres in the country.

More details about the entire range of BHEL's products and operations can be obtained by visiting our web site www.bhel.com.

3.0 PURPOSE

- 3.1 Indian Railway is on a rapid expansion and modernisation drive for its rolling stock to increase the average speed of operations and to enhanced safety and comfort of passengers. In this regard they intend to move to high power 9000HP Electric Locomotives.
- 3.2 BHEL is a regular supplier of traction propulsion equipment to Indian Railways' production units for manufacturing of Locomotives by them.

Ministry of Railways, Railway Board in this regard is expected to come out with a global RFQ 9000HP Electric Locomotives.

3.3 The intent of this Expression of Interest hereinafter referred to as the "EOI" is to:

3.3.1 Invite applications from interested organizations / companies who are willing to form a consortium with BHEL for offer submission against the future RFQ of Railway Board.

3.3.2 Joint development and execution of the project for supply and maintenance of 9000HP Electric Locomotives.

3.4 It is envisaged that the consortium consisting of selected partner and BHEL shall jointly fulfil all the requirements of the Railway Board's RFQ for 9000HP Locomotives. This EOI shall also serve to fulfil the requirements of designing/ manufacturing complete 9000HP Locomotives as per draft RDSO specification no RDSO/2010/EL/SPEC/0108, Rev.'2' ([https://rdso.indianrailways.gov.in/uploads/files/20201207 Specs%20%26%20Standards_7MW_108_Rev_2_Final%20Draft.pdf](https://rdso.indianrailways.gov.in/uploads/files/20201207_Specs%20%26%20Standards_7MW_108_Rev_2_Final%20Draft.pdf)) and its modifications thereof.

4.0 BRIEF DESCRIPTION OF EOI PROCESS

4.1 The EOI process involves qualification of interested parties/ groups who make an application in accordance with the provisions of this EOI (the "Applicant"). Parties that fulfill the basic requirements of this EOI shall be invited for further deliberations to arrive at mutually acceptable terms of collaboration. At the end of this process, BHEL expects to short-list the Applicant for forming a consortium for joint participation against Railway Board's forthcoming RFQ. The EOI can be submitted via email in non editable digital format (PDF) by 22nd January'2021 at the below mentioned email address. EOI received after the due date for submission (and any extension thereof) will not be considered.

The Sr. Deputy General Manager
Transportation Business & Systems Group,
Bharat Heavy Electricals Limited – Industry Sector
Integrated Office Complex - Lodhi Road,
New Delhi-110 003
Telephone: +91-11-41793338
Telefax: +91-11-41793167
Email: pramodk@bhel.in; ani@bhel.in

- 4.2 Any request for further information or clarification on the EOI document may be submitted in writing to The Sr. DGM (Transportation Business & Systems Group) at the above address. BHEL may respond to the queries raised/clarifications sought to the best of its ability. However, no extension of the time or date of EOI submittal would be granted on the ground that BHEL has not responded to any query/clarification raised by any party. BHEL at its discretion may extend the due date for submission of EOI and the decision of BHEL in this respect would be final & binding on the respondents.
- 4.3 No oral modification or interpretation of any provisions of this EOI shall be valid. Written communication shall be issued by BHEL when changes, clarifications or amendment to the EOI document is deemed necessary by BHEL at its sole discretion.
- 4.4 EOI submittals should be in English. Duly authorized representative shall sign on each page of the documents and submit the non editable document (PDF) via email. EOI should be prepared in such a way so as to provide a straight forward, concise description of Applicants capabilities to satisfy the requirements of this EOI. Emphasis should be on (a) conformance to EOI instructions; (b) responsiveness to the EOI requirements; (c) completeness and clarity of content.
- 4.5 If at any time during the evaluation of EOI, BHEL requires any clarification on the documents submitted by the prospective parties, it reserves the right to request a clarification so as to complete the evaluation.
- 4.6 EOI which is found to be incomplete in content and/or attachments and/or authentication etc is liable to be rejected.
- 4.7 The responsibility for system design and integration of all mechanical and electrical component and sub systems in the locomotive will rest with the Applicant.

5.0 INSTRUCTION TO APPLICANTS

5.1 Eligibility of Applicants:

For determining the eligibility of Applicants for their pre-qualification hereunder, the following shall apply:

- 5.1.1 The "Applicant" for pre-qualification under the EOI shall be as defined in Clause 1.0 of the EOI. The consortium agreement would be entered into with the qualifying entity as per the requirements of the RFQ to be issued by Railway Board. The OEM i.e. whose credentials have been used would be

responsible to BHEL for the entire scope of his work. The OEM or its Affiliates has to meet the Technical & Financial Capability criteria under 5.1.3 below.

5.1.2 An Applicant shall not have a conflict of interest that affects the EOI Process. Any Applicant found to have a conflict of interest shall be disqualified. An Applicant shall be deemed to have a conflict of interest if a constituent of such Applicant is also a constituent of another Applicant or the Applicant intends to directly participate in the RFQ.

5.1.3 For being eligible to pre-qualify and short-listed, an Applicant shall fulfil the following conditions of eligibility:

A) Technical Capability: For demonstrating technical capability and experience, the Applicant shall have:

Designed, manufactured and supplied Mechanical System comprising of body shell, bogies, transmission and suspension system for locomotive/ high speed rail cars or complete trainsets and system design & integration of mechanical and electrical components and sub systems of the locomotive in the last 10 years and providing satisfactory service in the last 2 years as on 30th Nov'2020.

B) Financial Capability: The applicant (OEM or its affiliate shall have a positive Net Worth at the close of the preceding financial year. Details to be provided as per Attachment II of Annexure-B. For conversion of foreign currency, the exchange rate for the currency on 30th Nov'2020, as per RBI may be used.

5.1.4 One of the mandatory requirement for selection of the Applicant will be that the consortium should meet the eligibility requirement of forthcoming RFQ of Railway Board.

5.1.5 Any Applicant from any country which share a land border with India will be eligible to participate only if Applicant is registered with concerned authorities as per the notification on Public Procurement No.1 dated 23rd July 2020 of Govt. of India. Copy of notification is enclosed as Annexure - C.

5.2 Right to accept or reject any or all Applications:

5.2.1 Notwithstanding anything contained in this EOI, BHEL reserves the right to accept or reject any Application and to annul the EOI Process and reject all Applications, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons

there for. In the event that BHEL rejects or annuls all the Applications, it may, at its discretion, invite all eligible Bidders to submit fresh Applications.

5.2.2 BHEL reserves the right to disqualify any Applicant during or after completion of EOI process, if it is found there was a material misrepresentation by any such Applicant or the Applicant fails to provide, within the specified time, supplemental information sought by BHEL.

5.2.3 BHEL reserves the right to verify all statements, information and documents submitted by the Applicant in response to the EOI. Any such verification or lack of such verification by BHEL shall not relieve the Applicant of his obligations or liabilities hereunder nor will it affect any rights of BHEL.

5.3 Documents to be submitted with EOI:

5.3.1 Letter comprising the Application as per format enclosed at Annexure B along with information and data required as per Attachments and supporting documents thereof.

5.3.2 Copy of Articles & Memorandum of Association or partnership deed;

5.3.3 Copies of Applicant's duly audited balance sheets and profit and loss accounts for the preceding five years.

6.0 MISCELLANEOUS

6.1 The EOI process shall be governed by, and construed in accordance with, the laws of India and the Courts at New Delhi shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the EOI process.

INDICATIVE SCOPE OF WORK FOR THE APPLICANT

- i) Joint working under a consortium agreement, with rights to continue using the same even after expiry of agreement, for:
 - Design and engineering of Body Shell, Bogie & Suspension for 9000HP Electric Locomotive including system design and integration of complete locomotive (including electrical and mechanical components and subsystems), as per customer specifications and to provide technology for manufacture.
- ii) Facilitate Prototype manufacture at BHEL works and conduct testing of complete Locomotive as per customer specification.
- iii) Transfer of complete set of final customer approved design & manufacturing documentation. Subsequent updates required due to component obsolescence or updates implemented by Applicant due to safety consideration would also be provided.

Note: Above scope of works is indicative, detailed scope shall be finalised with successful applicant after issue of RFQ and finalization of specifications by Customer.

EXPRESSION OF INTEREST LETTER

(To be submitted on the letter head of the party submitting the EOI)

To,

The Sr. Deputy General Manager
Transportation Business & Systems Group,
Bharat Heavy Electricals Limited – Industry Sector
Integrated Office Complex-Lodhi Road,
New Delhi-110 003

Subject: EOI for Joint working / Business Share For 9000HP Electric Locomotives

With reference to your EOI document dated _____, we have examined the EOI document and understood its contents and hereby submit our Application for pre qualification for the aforesaid project.

1. We acknowledge that BHEL will be relying on the information provided in the Application and the documents accompanying such Application for pre-qualification of the Applicants for the aforesaid project, and we certify that all information provided in the Application and in Attachments I to II is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Application are true copies of their respective originals.
2. We confirm to make available to BHEL, within the stipulated time, any additional information it may find necessary or require to supplement or authenticate the pre qualification statement.
3. We confirm our willingness to meet the pre / post qualification criteria from Indian Railways / Customer to enable joint bidding for a tender
4. We certify that the technology and design for the projects for which experience is claimed is our own technology.
5. We agree and undertake to abide by all the terms and conditions of the EOI document.

In witness thereof, I/ we submit this application under and in accordance with the terms of the EOI document.

Yours faithfully,

(Signature, name and designation of the Authorised Signatory

Name and seal of the Applicant)

Date:

Place:

INFORMATION ON APPLICANT – TECHNICAL DETAILS

General Information :

1. Name of the Company:
2. Legal status of the Company:
3. Brief description of the Company including details of its business groups/subsidiaries/ affiliates:
4. Date of Incorporation:
5. Date of Commencement of Business:
6. Full address including Telephone nos. / Fax nos.:

Registered Office:

Head Office:

Address for communication:

SN	Description	Confirmation	Remark
1	Confirm that applicant(s) has Designed, integrated, prototype tested Locomotives/ High Speed Rail Cars or Trainsets in the last 10 years.	PI Confirm [Mandatory]	
2	The Applicant accepts to work on the lines of the broad scope listed.	PI Confirm [Mandatory]	
3	Willingness for entering into consortium for 9000HP E- Loco sub-assemblies as per Agreement	PI Confirm [Mandatory]	
4	Confirm that IPR(s) are the sole property of the Applicant or its group company.	PI Confirm [Mandatory]	
5	Confirm that Applicant agrees to provide during the term of the agreement, updates required to meet component obsolescence & safety requirements	PI Confirm [Mandatory]	
6	Willingness to provide BHEL with manufacturing know how for the product pursuant to a successful bid in IR tender	PI Confirm	

Data in respect of Locomotives/ High Speed Rail Cars or Trainsets					
SN	Year of Supply	No. of locomotives/ High Speed Rail Cars or Trainsets produced	Description of Items	Name of customers	Remarks
1	2019-2020				
2	2018-2019				
3	2017-2018				
4	2016-2017				
5	2015-2016				
6	2014-2015				
7	2013-2014				
8	2012-2013				
9	2011-2012				
10	2010-2011				
	Total				

Following supporting documents are provided:

- i) Reference list with details of customers
- ii) Recent Customer Certificates / Self Declaration for satisfactory performance

INFORMATION ON APPLICANT – FINANCIAL DETAILS

	Cash accruals Year 1	Cash accruals Year 2	Cash accruals Year 3	Cash accruals Year 4	Cash accruals Year 5	Net Worth Year 1
Applicant						
Affiliate						

Instructions:

1. The Applicant shall attach copies of the balance sheets, financial statements and Annual Reports for 5 (five) years preceding the Application Due Date. The financial statements shall:
 - (a) Reflect the financial situation of the Applicant;
 - (b) Have been audited by a statutory auditor;
 - (c) Be complete, including all notes to the financial statements; and
 - (d) Correspond to accounting periods already completed and audited.
2. Net Cash Accruals shall mean Profit after tax + Depreciation.
3. Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders).
4. Year 1 will be the latest completed financial year, preceding the EOI. Year 2 shall be the year immediately preceding Year 1 and so on.
5. The Applicant shall specify the methodology adopted for calculating net worth.

F.No.6/18/2019-PPD
Ministry of Finance
Department of Expenditure
Public Procurement Division

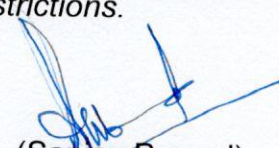
161, North Block,
New Delhi
23rd July, 2020

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

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

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
 - a. to all Autonomous Bodies;
 - b. to public sector banks and public sector financial institutions; and
 - c. subject to any orders of the Department of Public Enterprises, to all Central Public Sector Enterprises; and
 - d. to procurement in Public Private Partnership projects receiving financial support from the Government or public sector enterprises/ undertakings.
 - e. 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

- 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.

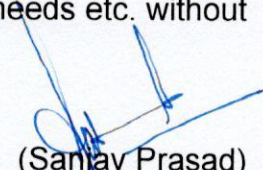
Government E-Marketplace

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.**

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- 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

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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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