

Queries received from prospective bidders during Pre-Bid Meeting held on 09.03.2022 and comments/ remarks by DFCCIL

S.No.	Clause/ Ref. of RFP	Name of the participant	Query/Suggestion	Reply
1	Clause 2 (ii); Section-I	Adani Logistics Ltd.	Period of Contract Fifteen years – Is there any provision for extension or Right of first refusal to selected developer	15 years tenure/contract period is fixed.
2	Annexure-II	Adani Logistics Ltd.	Area – 8.8 acres - a. Please advise how much additional land is available for development? b. Is it contiguous with 8.8 acres proposed for GCT development? c. Please share Autocad / kmz of land boundary for 8.8 acres plus additional land available for development d. Contact person for site visit may be advised	a. Please refer to Annexure II B of the Addendum- 1 issued on 12.03.2023 to the RFP. b. Only the continuous land available has been marked on concept plan at Annexure II B of the Addendum 1. c. It will be shared with successful bidder. Interested parties may visit the site to assess the field conditions on their own. d. Contact person for site visit is- DGM Operations Tundla, Sh. Birendra Singh Chauhan at 70608 03036.
3	Clause 26.1; Section-V	Adani Logistics Ltd.	Land Licensing – a. Kindly advise the amount of Land Licensing Fees applicable for 8.8 acres. b. We suggest LLF should be applicable from date of commercial notification	a. The land lease will be at the rates and terms & conditions, as contained in Indian Railways L&A directorate's circular no. 2021/LML/25/5 dt 04.10.2022. The interested parties may find out the applicable local circle rates for the same. b. Land License Fee will be applicable

Signature Not Verified

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NAGENDRA SINGH
BISHT
Date: 2023.03.12
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Reason: IREPS-CRIS
Location: New Delhi

				from the date of issue of LoA. (Letter of Allotment). It may be noted that the tenure period will commence from date of issue of LoA.
4	Annexure – XVI	Adani Logistics Ltd.	As per ANNEXURE – XVI (page 108) Certificate from the Statutory Auditors is asked for. It is suggested that net with certificate issued by Qualified Chartered Accountant should suffice the supporting document for eligibility criteria regarding Net worth.	Accepted. Modified vide Addendum 1 issued on 12.03.2023 of the RFP.
5	Section- III	Kataria Ecotech Pvt. Ltd.	Online submission on IREPS website: Can one of the yet-to-be registered JV member submit bid on IREPS website, without having PAN & GSTIN of said JV. If no, then can either firm/company member to JV can register and bid as per Clause 4.10 of Section III to tender document.	Clause 3 (3.1-g) and 4.3 of Section III of RFP may be read together. Clause 4.9 of same section may also be read carefully regarding timeline for registering the JV as a legal entity and other requirements. The time period of 30 days for signing of agreement with DFCCIL, as given in Clause 1.1.3 may be read as “60 days” in case bidder is a Joint Venture. Refer to Addendum 1 dt 12.03.2023 to the RFP.
6	Section – I, Clause 15	Kataria Ecotech Pvt. Ltd.	Applicable Exemption under clause 15 of Sec. I of RFP: If one of the JV member is a start-up, whether the applicability from exemptions extend to JV also?	No.
7	Clause 3.4 (1)(i); Section – III	Kataria Ecotech Pvt. Ltd.	Clause 3.4 of sec III: Essential Eligibility Criteria: 1. Experience: Kindly confirm that bidder must have two years’ experience in either manufacturing or transportation or logistics and related business unit.	Yes. The operative word is “either/or”

8	Clause 3.4 (1)(ii); Section – III	Kataria Ecotech Pvt. Ltd.	Performance Certificate: Will copy of GST return confirming sale value of manufactured goods serve the purpose or bidder is required to get it certified from GST/Industry department. Any prescribed format for certification?	Supporting document as listed under Clause 3.4 of sec III: Essential Eligibility Criteria are to be submitted by bidders.
9	Clause 4.10; Section – III	Kataria Ecotech Pvt. Ltd.	Authorised Member-Joint Venture Members: Can JV provide for tender submission, entering into Agreement to one of JV member company and execution/operation to other JV member company.	Clause 4.10 of section III of RFP is adequately clear that JV members shall authorize one of the members on behalf of JV.
10	Clause 4; Section – V	Kataria Ecotech Pvt. Ltd.	Ownership of infrastructure developed by GCTO on DFCCIL/IR leased land: What will be the status of ownership on closure/termination of contract.	Clause 4 of Section V and clause 6 of section VI may be referred to.
11	Clause 7; Section – V	Kataria Ecotech Pvt. Ltd.	Value added services: i. Will GCTO be free to plan/design/construct/create/operate any infrastructure on DFCCIL/IR land beyond what is mentioned in the tender document ii. If yes, whether specific approval from DFCCIL will be required for each such instance/deviation. If yes, what will be the timeline for such decisions and whose asset will be it at the time of closure of contract.	(i & ii) Yes. ESP and subsequent modifications, if any, are required to be approved by DFCCIL.
12	Clause 16 (iii); Section – V	Kataria Ecotech Pvt. Ltd.	Para 16 of Sec V of RFP: Stabling charges applicable:	

			<p>i. Will stabling due to congestion also accrue charges?</p> <p>ii. What is the design capacity of the GCT to consider congestion and subsequent imposition of loading restriction, if any ?</p> <p>iii. Can extension of track to accommodate one additional rake be considered by DFCCIL in such a situation?</p> <p>iv. Will holding of rake on the station end of the track also accrue Stabling charges?</p>	<p>i) May refer to clause 16.i of Sec V of RFP</p> <p>ii) In case, the GCT terminal is congested causing detention to rakes, a restriction from time to time may be imposed by Railway administration/DFCCIL. It is an Operational decision.</p> <p>iii) No. The GCT infrastructure has been given as per the scope of work.</p> <p>iv) Yes, in accordance with clause 16.i of Sec V of RFP</p>
13	Clause 19.2; Section – V	Kataria Ecotech Pvt. Ltd.	Electricity and Water Charges: DFCCIL will charge at what rate for electricity and water supplied, if any to GCTO.	The per unit rate will be as per the charges on actuals that DFCCIL is charged at by the State Electricity Board. If required, augmentation may be done at cost of GCTO.
14	Clause 21; Section – V	Kataria Ecotech Pvt. Ltd.	DFCCIL approved consultant at GCTO cost: What is the cost of consultant hiring and whether it is decided by DFCCIL or GCTO?	The rate and other T&C are upto the GCTO and consultant. DFCCIL has no role in these matters.
15	Clause 22.4; Section – V	Kataria Ecotech Pvt. Ltd.	<p>Commercial Notification to be processed post issuance of work completion certificate:</p> <p>i) As infrastructure development for operating Truck on Train (T-O-T) may take much lesser time, can Commercial Notification be processed on such completion of Phase I?</p>	<p>i) Yes. Phase-wise commissioning may be proposed in ESP to be submitted by the successful bidder/GCTO for consideration of DFCCIL. It may be noted that the construction timelines etc remain sacrosanct as given in the RFP.</p>

			<p>ii) Will each facility require separate Commercial Notification?</p> <p>iii) What is the timeline of Commercial Notification post submission of work completion certificate?</p>	<p>ii) A corrigendum/fresh notification is required as and when an additional commodity/ies are permitted to be handled at the terminal.</p> <p>iii) Commercial notification may take upto 14 days or so. DFCCIL endeavors to be in readiness for the same, subject to timely information from the GCTO regarding likely date of submission of work completion certificate.</p>
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16	Clause 26.1; Section – V	Kataria Ecotech Pvt. Ltd.	Land Licensing Fee: Whether Land License Fee accrue from date of signing of contract or from date of Commercial Notification knowing the fact that revenue inflow will only commence post Commercial Notification of facility.	LLF shall be applicable from the date of issue of LoA.
17	Clause 64; Section – V	Kataria Ecotech Pvt. Ltd.	Force Majeure: In case of Closure of operations at GCT due to force majeure situation, will it lead to waiver of Land License fee for such period of inactivity at GCT and also subsequent extension of the Agreement Period as compensation of inactivity period.	Force Majeure will be decided as and when the case arise, on merit of the case.
18	Clause 64; Section – V	Kataria Ecotech Pvt. Ltd.	Force Majeure: Knowing the fact that on date there is only single connecting road for movement of heavy commercial vehicles from Rania town on NH to proposed GCT which have a very narrow opening at NH end, in case Local administration/Government	

			Authority impose restrictions on movement of HCV via existing road passing through Rania town, will it be considered as force majeure and whether DFCCIL provide for alternative feasible connectivity and what will be the procedure to compensate loss of time in such situation.	
19	Clause 2 (ii); Section-I	Kanpur Edibles Private Limited	As per the GCT policy tenure of the terminal is 35 years but as per your tender document it is 15 years. Kindly brief about what shall happen post the tenure ends.	The tenure is fixed for 15 years. It will be upto DFCCIL administration to decide the next course of action upon termination/ completion of tenure.
20	-	Kanpur Edibles Private Limited	Any capital investment made by us except the minimum scope of work on the railway land will be treated as GCTO's property or as the DFCCIL's property post the tenure ends?	Refer to clause 4 of sec V and clause 6 of Sec VI.
21	-	Kanpur Edibles Private Limited	The area marked by you for development is 750 mts X 33.5 mts whereas the land available at site is approximately 840 mts X 50 mts. We wish to develop the entire 840X50 mt area, how do we go ahead with this? This needs to be decided before the tender bidding since once the area of 750X33.5 mt has been developed there will be a boundary wall at 33.5mt and then it will not be possible to develop and include the rest of the area in the main functional area.	May refer to Annexure II B with the concept plan of the GCT included in Addendum
22	-	Kanpur Edibles	As per the amendment done in the GCT policy on 14/06/2022; 10% of value of	Refer to para 5.2 of the GCT Policy of IR dt 14.06.2022. The said freight rebate is not

		Private Limited	the total freight of both the inward and outward traffic shall be reimbursed till 10 years or till the time the entire capital cost is recovered by the GCTO. Kindly elaborate on this and if this is not applicable, please suggest how can a GCTO avail this.	applicable in this case.
23	Clause 7; Section – V	Kanpur Edibles Private Limited	The scope of work just covers the basics and there are many other facilities that shall be required to make this a proper unloading and loading facility. We need to make a shed for various weather conditions, tanks and pipelines to be put in place to unload liquid cargo etc. How do we go about this? How to avail permissions for the same and also the timelines for the same? All these have to be done before the bid or after allotment of the LOA?	Please refer to item 11 above
24	-	Kanpur Edibles Private Limited	Will the revenue from TC and TAC be adjusted against the capital expenditure made by the GCTO?	No. TC/TAC share with GCTO shall be as per the accepted bid. It is not a reimbursement against capital cost.
25	Clause 26.1; Section-V	Kanpur Edibles Private Limited	Please share a rough estimate of the lease rent for the railway land?	Refer to item 3 above
26	Clause 2 (x); Section-I	Kanpur Edibles Private Limited	Also we shall request you to kindly increase the timeline for the final submission since time is very less.	Date of bid submission remains unchanged.
27	-	Laul's Pvt. Ltd.	Value - added services can be provided by GCTO through submission of ESP to	

			<p>DFC and further approval thus -</p> <ul style="list-style-type: none"> i. Can the GCTO further sublease to its customers for which value-added services be constructed on DFC land? As per Section - V Clause 2, GCTO shall not sub-lease. ii. pg 9. Clause 6.7 says "revenue generated from value - added service, if any, will dealt as per clause 9 of section" - this is not clear iii. Please clarify how GCTO can comply to Section V subclause 12 where "The GCTO shall ensure non-discriminatory access for all customers to such terminals" 	<ul style="list-style-type: none"> i. Section V clause 2 refers to sub-lease /sub-contract/mortgage etc of DFCCIL/Railway land. ii.It may be read as "...as per clause 9 of section V." iii.The said clause is clear. The query is not clearly understood
28	SECTION 1 - Notice inviting tender, 2 (iii) Period of Contract	DP World	<p>Given the investment requirement and moderate industry/economic outlook in the area where the GCT has to be developed, Authority is requested to extend the Contract Period to at least 35 years with automatic extension provision for another 15 years. The period of 35 years is also in line with the provisions of the GCT Policy 2022.</p> <p>The tenor provided in the GCT policy for land license is 35 years. Would the land licencing agreement be for 35 years or would it be co-terminus with the contract period (currently 15 years)?</p>	Refer to item 1 above.

29	SECTION II - TENDER FORM 7. Last date of submission of Tender	DP World	<p>Given the tender requirement for submission of:</p> <p>i. <u>detailed investment plan</u> for development of GCT, minimum infrastructure facilities, additional facilities/value added services, and preparation of other requirements of the Tender, the Authority is requested to extend the last date for submission of the Tender by at least 8 weeks from the date of receipt of response to the queries by the Authority</p>	The date of submission of tender remains unchanged.
30	Annexure IIIA - Standard cost estimate, specifications & cross sectional drawings for GCT development	DP World	<p>It is noted that in some of the cost estimates, GST has been added whereas in other cost estimates it is said 'GST extra'. The Authority is requested to confirm whether there are some items in the estimate to which GST does not apply. Also, it is requested what are the GST implications on these components in terms of the multiplying factor.</p>	GST will be applicable as per extant laws of the land.
31	SECTION-II: SCOPE OF WORK	DP World	<p>The Authority is requested to clarify exact dimension of the land to be to be provided to GCTO.</p> <p>Please advice how much additional land is available for development?</p> <p>Is it contiguous with 8.8 acres proposed for GCT development?</p> <p>Please share Autocad of land boundary for 8.8 acres plus additional land</p>	Refer to item 2 above

			available for development	
32	SECTION-II: SCOPE OF WORK	DP World	Authority is requested to clarify the amount of applicable Land License Fee, Conservancy Charges, GST and/or any other applicable charges in accordance with the extant rule & policy guidelines of Railways for approx. 35,554 sq mtrs of land offered by DFCCIL	Refer to item 3 above
33	SECTION IV - INSTRUCTIONS TO THE BIDDER	DP World	Refund of earnest money Authority is requested to provide timelines for refund of earnest money of the tenderer not found suitable after evaluation of its technical bid.	It will be normally be refunded within two weeks' time after issuing LOA.
34	SECTION IV - INSTRUCTIONS TO THE TENDERER 24. At the time of cancellation/termination / expiry of the Agreement, the Railway land, shall revert back to Railway without payment of any compensation.	DP World	Financing of the infrastructure projects is predominantly dependent on debt/loan from financial institution. As per applicable banking guidelines and operating norms, suitable termination provisions including termination compensation are pre-requisite for availing bank financing. Accordingly, Authority is requested to include the following provisions for the purpose of ensuring bankability of the project: i. Upon termination due to default by GCTO, Authority shall a. refund the land license fee for the remaining lease period (in case paid upfront)	These issues will be dealt as per Tender conditions and GCT policy '2022 of Indian Railways.

			<p>b. pay an amount equivalent to 100% of the debt due</p> <p>ii. Upon termination due to default by the Authority and/or occurrence of force majeure events, Authority shall</p> <p>a. refund the land license fee for the remaining lease period</p> <p>b. pay an amount equivalent to 100% of the debt due</p> <p>c. 100% of equity invested by the GCTO</p> <p>iii. Upon expiry of the Agreement by efflux of time, Authority shall</p> <p>a. pay an amount equivalent to 100% of the book value of the assets developed by GCTO</p>	
35	<p>SECTION V - GENERAL TERMS AND CONDITIONS Clause 63.</p> <p>Subject to the provisions in the Agreement, DFCCIL may terminate the Agreement with a GCTO operating a GCT in the event of any serious</p>	DP World	<p>Authority is requested to properly define the words highlighted viz, GCT in the event of any serious irregularity committed by the GCTO and also to clarify what is meant by or commission of an unlawful act which is not in-line with Good Industry Practices.</p>	<p>These issues will be dealt as per Tender conditions and GCT policy '2022 of Indian Railways.</p>

	irregularity committed by the GCTO. This may include any grave breach of the terms and conditions of the Agreement, any default by GCTO, violation of The Railway Act, 1989, or commission of an unlawful act which is not in-line with Good Industry Practices.			
36	Section V: Clause 13. GCTO will have the permission to expand the Terminal further by acquiring/leasing the adjacent non-DFCCIL/Railway land. However, any such acquisition/leasing of additional land will have to be managed by the GCTO through its own resources	DP World	<p>Authority is requested to properly define the words highlighted viz, will have to be managed by the GCTO through its own resources,</p> <p>Further, please confirm that appropriate and adequate non-DFCCIL/Railway land adjoining to the land being offered as part of this Tender is available.</p>	<p>The clause 13 of section V is clear and adequate.</p> <p>Assessment/acquisition of non-railway/DFCCIL land is entirely upto the GCTO. DFCCIL has no role whatsoever in that case.</p>
37	SECTION V- GENERAL TERMS AND CONDITIONS Clause 26	DP World	Authority is requested to provide draft of the agreements to be entered between Rail Administration and GCTO including Land Licensing Agreement and GCT Agreement. It appears that the draft Land Licensing agreements provided in the	The deviations, if any, may be clearly brought out.

			Tender document are not in line with the agreements that are prescribed as per the latest/current version of the GCT Policy 2022. Hence, the Authority is requested to provide the correct versions of the Land Licensing Agreement.	
38	ANNEXURE-II and IIA SKETCH OF NEW GCT ENTIRE ON RAILWAY LAND	DP World	<p>Authority is requested to provide the following:</p> <ul style="list-style-type: none"> i. Geo-technical report of the Site. ii. Topographic survey details of the Site. iii. Location plan of the facility, indicating the exact boundary of the plot with dimensions iv. Access road location. v. Take off point for proposed new rail lines vi. Location of water and power availability 	<p>i-iii- Bidders are expected to do the due diligence on their own.</p> <p>iv-v- Access road to the GCT is marked on the concept plan given at Annx II-B of the addendum 1 dt 12.03.2023.</p> <p>vi- Refer to clause 19.2 of Section V.</p>
39	ANNEXURE-II and IIA ROUGH SKETCH OF NEW GCT ENTIRE ON RAILWAY LAND AT SGTY	DP World	<ul style="list-style-type: none"> i. Are there any drainage lines / small canals passing through the facility which would be retained? ii. Is there any area / facility to be shared with existing facility / others 	All possible details are included in RFP. Further, the bidders are encouraged to undertake a site visit and location assessment on their own.
40	OTHERS	DP World	Authority is requested to provide its plan for developing other Gati Shakti Multi-	No comments. Does not pertain to RFP under discussion.

			Modal Cargo Terminal (GCT facilities) in the regions over next 10 years.	
41	SECTION VI - SPECIAL CONDITIONS OF CONTRACT No payment whatsoever shall be made for any damage caused by rain, flood or any other natural calamity during the execution of the work. The GCTO shall be fully responsible for any damage to the Govt. Property.	DP World	In case of natural calamity GCTO should not be responsible for Railways.	RFP has adequate provisions for Force majeure as well as dispute resolution.
42	Clause 65 page 35 - Pre-contract Integrity Pact Said clause says that the Pre-Contract Integrity Pact should be endorsed from DFCCIL office and notarised to be attached to the Bid.	DP World	Please clarify how endorsement from DFCCIL is to be done considering that bidders are not necessarily located in Delhi, but at various locations in the country hence it is not physically possible for bidders located out of Delhi. It is requested for the Authority consider an option that bidders could fill up the Pre-Contract Integrity Pact as per the proforma provided in the Tender document and the same could then be emailed to DFCCIL for endorsement.	Not accepted.
43	Clause 20 (v) (b). The last line in this clause says that 'evidence of	DP World	Please advise who is the 'competent authority' referred to here.	Section IV- para 20.v- "Restrictions on procurement from bidders

	valid registration by the Competent Authority is attached'.			from countries sharing land borders with India" Please refer to Indian Railways letter no. 2020/RS(G)/779/2 dt 06.08.2020 and other attached letters/orders (Annexure-II)
44	Electricity and Water Charges	DP World	Authority to confirm the per unit Electricity and Water charges that will be applicable.	Refer to item 13 above.
45	Approach Road	DP World	It is understood that the approach road is not suitable for overloaded, commercial vehicles and is designed as a village road. Authority to confirm that commercial vehicles are allowed to ply on the approach road.	Bidders are encouraged to undertake site visit and assess the feasibility.
46	-	DFCCIL	Clarification on calculation of financial bid parameters i.e. percentage of TAC	Please refer to Annexure VIII- Financial bid of the RFP. 1) quoting rates by selecting “%above” option in IREPS shall render the bid invalid and it will summarily rejected. 2) Quoting bid by selecting “At par” option would mean that the bidder claims to be allocated the entire/100% of the TC and/or TAC amount. In this case, Railway share will be “Nil”. 3) Quoting the bid by selecting the “%below” option would mean that the bidder claims to be allocated (100 minus the % amount quoted). i. For eg., if it quotes “Below 30”, it means that it offers to claim (100-30) = 70% of TC and/or TAC amount. In

				<p>this case, Railway share will be 30% of TC and/or TAC amount; while rest shall goto the bidder.</p> <p>ii. In case, a bidder quotes “Below 140”, it means that it offers to claim (100-140) = (-40)% of TC and/or TAC amount. In this case, entire TC and/or TAC amount shall be retained by Indian Railway. Over and above, the bidder shall pay an amount equivalent to 40% of TC and/or TAC to DFCCIL.</p> <p>4) Hypothetically considering that if five bids are received with quotes “At par”, “ Below 30%”, “Below 100%”, “Below 120%” and “Below 140%” ; in such case “Below 140%” is the minimum bid. In this case, the bidder is offering to take nil share in TC and/or TAC and is offering to pay an amount equivalent to 40% of TC and/or TAC to DFCCIL.</p>
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Note:

- 1. List of participants attended the Pre-Bid Meeting on 09.03.2023 is attached as Annexure.**
- 2. Please see Addendum/ Corrigendum issued on IREPS Portal and DFCCIL's website for more clarification/ information.**

Annexure – I

S.N o.	Name of Participants	Organization's Name
Off-line Participants		
1	Rajat Gayal, DGM	DP World
2	Prabhakar Mishra, Consultant	J M Baxi
3	Manish Kataria	Kataria Carriers
4	Bikramjit Datta, DGM	DP World
5	Rishabh Jain, Director	Max Blocks
On-line participants		
1	Atirav Gupta	Lauls Pvt Ltd
2	M.S. Meel	
3	Mohit Tiwari	
4	Nazbon Mehta	
5	Neha	
6	Rahul Bhagwat	Adani Logistics
7	Samresh Kumar, DM/Projects	CONCOR
8	Sudarshan Balaji	
9	Vikas Kumar	
10	Yash	
11	Rajesh Singh	
12	Rohit Ahuja	DP World

भारतसरकार BHARAT SARKAR
रेलमंत्रालय MINISTRY OF RAILWAYS
रेलवेबोर्ड RAILWAY BOARD

No. 2020/RS(G)/779/2

नई दिल्ली New Delhi Dated: 06.08.2020.

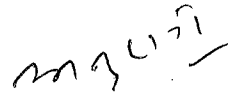
The General Managers, All Indian Railways/PUs, NF(C), CORE
DG/RDSO/Lucknow, NAIR/Vadodara,
PCAO, DMW/Patiala, COFMOW
CAO, WPO/Patna, RWP/ Bela.

Sub.: Insertion of Rule 144 (xi) in the General Financial Rules (GFRs), 2017.

- Ref.: i. Ministry of Finance OM No. F.No. 6/18/2019-PPD dated 23/07/2020.
ii. Ministry of Finance, Order (Public Procurement No. 1), F.No. 6/18/2019-PPD dated 23/07/2020.
iii. Ministry of Finance, Order (Public Procurement No. 2), F.No. 6/18/2019-PPD dated 23/07/2020.
iv. Ministry of Finance, Order (Public Procurement No. 3), F.No. 6/18/2019-PPD dated 24/07/2020.

- 1.0 Ministry of Finance, vide OM at ref. i, has inserted Rule 144 (xi), in Rule 144 of the General Financial Rules, 2017. Rule 144 is entitled as 'Fundamental principles of public buying.'
2.0 The Ministry of Finance, has also issued three Public Procurement Orders, which complement the Rule 144 (xi).
3.0 The OM and Public Procurement Orders (referred above and attached herewith) are hereby circulated for strict compliance.

This is issued with the approval of Railway Board (MMM and FC).



(Anurag Grover)
Deputy Director Railway Stores(G)
Railway Board

No. 2020/RS(G)/779/2

Dated: 06.08.2020

1. PFAs, All Indian Railways & Production Units
2. The ADAI(Railways), New Delhi
3. The Directors of Audit, All Indian Railways



For Financial Commissioner/Railways

LIST FOR DISTRIBUTION

Directors of all CTIs,
CMDs /MDs of all Railway PSUs/ autonomous bodies/ societies,
PCMMs, PCEs, PCMEs, PCEEs, PCSTEs, All Indian Railways & PUs, COFMOW, CORE, WPO/Patna and RWP/Bela
Sr. Prof. (Material Management), NAIR, Vadodara, Executive Director (Stores), RDSO, Lucknow
Chief Commissioner, Railway Safety, Lucknow
Zonal Railway Training Institute, Sukadia Circle, Udaipur

Copy to:

The Genl. Secy., AIRF, Room No. 248, & NFIR Room No. 256-C, Rail Bhavan
The Secy. Genl., IRPOF, Room No. 268, FROA, Room No. 256-D & AIRPOA, Room No. 256-D Rail Bhavan.

Copy to:- PSOs/Sr. PPSs / PPSs / PSs to :

MR, MoS(R)
CRB, FC, ME, MTR, MRS, MS, MT, SECY., DG (RHS), DG (RPF)
All AMs, PEDs & Executive Directors of Railway Board

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

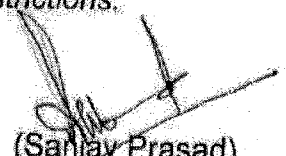
161, North Block,
New Delhi
23rd July, 2020

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

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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
 - 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



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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

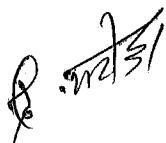
- (1) Secretaries of All Ministries/ Departments of Government of India for information and necessary action. They are also requested to inform these provisions to all procuring entities.
- (2) Secretary, Department of Public Enterprises with a request to immediately reiterate these orders in respect 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.

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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.

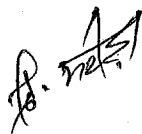
(While adhering to the substance of the Order, procuring entities and GeM are free to appropriately modify the wording of the clause/ certificate based on their past experience, local needs etc.)

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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A handwritten signature in black ink, appearing to be 'S. N. S.', written over a horizontal line.

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

161, North Block
New Delhi
23rd July, 2020

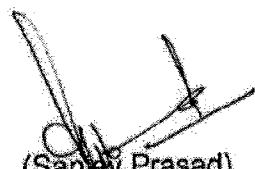
Order (Public Procurement No. 2)

Subject: Exclusion from restrictions under Rule 144 (xi) of the General Financial Rules (GFRs), 2017 –regarding.

In Order (Public Procurement No. 1) dated 23rd July 2020, orders have been issued requiring registration of bidders from a country sharing a land border with India in order to be eligible to bid in public procurement.

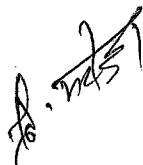
2. Notwithstanding anything contained therein, it is hereby clarified that the said Order will not apply to bidders from those countries (even if sharing a land border with India) to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects.

3. Updated lists of countries to which lines of credit have been extended or in which development projects are undertaken are given in the website of the Ministry of External Affairs.


(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) 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
24th July, 2020

Order (Public Procurement No. 3)

Subject: Clarification to Order (Public Procurement No.1) dated 23rd July 2020

Attention is invited to paragraph 3(b) of the Order (Public Procurement No.1), under the heading "Transitional provisions" which reads as follows:

- 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.*

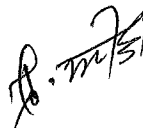
It is hereby clarified that for the purpose of paragraph 3 (b), "qualified bidders" means only those bidders who would otherwise have been qualified for award of the tender after considering all factors including price, if Order (Public Procurement No. 1) dated 23rd July 2020 had not been issued.

2. If bidders from such countries would not have qualified for award for reasons unconnected with the said Order (for example, because they do not meet tender criteria or their price bid is higher or because of the provisions of purchase preference under any other order or rule or any other reason) then there is no need to scrap the tender / start the process de novo.

3. The following examples are given to assist in implementation of the Order.

Example 1: Four bids are received in a tender. One of them is from a country which shares a land border with India. The bidder from such country is found to be qualified technically by meeting all prescribed criteria and is also the lowest bidder. In this case, the bidder is qualified for award of the tender, except for the provisions of the Order (Public Procurement No. 1) dated 23rd July. In this case, the tender should be scrapped and fresh tender initiated.

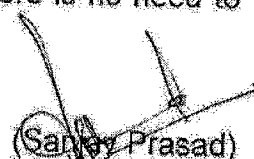
Example 2: The facts are as in Example 1, but the bidder from such country, though technically qualified is not the lowest because there are other technically qualified bidders whose price is lower. Hence the bidder from such country would not be



qualified for award of the tender irrespective of the Order (Public Procurement No. 1) dated 23rd July 2020. In such a case, there is no need to scrap the tender.

Example 3: The facts are as in Example 1, but the bidder from a country which shares a land border with India, though technically qualified, is not eligible for award due to the application of price preference as per other orders/ rules. In such a case, there is no need to scrap the tender.

Example 4: Three bids are received in a tender. One of them is a bidder from a country sharing a land border with India. The bidder from such a country does not meet the technical requirements and hence is not qualified. There is no need to scrap the tender.


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Joint Secretary (PPD)
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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 the clarification to all procuring entities.
- (2) Secretary, Department of Public Enterprises with a request to immediately circulate this clarification among Public Enterprises.
- (3) Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi

