

P-45014/33/2021-BE-II (E-64737)
Government of India
Ministry of Commerce and Industry
Department for Promotion of Industry and Internal Trade
(Public Procurement Section)

Udyog Bhawan, New Delhi
Dated December 20th, 2022

OFFICE MEMORANDUM

Subject: Common examples of "Restrictive and discriminatory conditions against the local suppliers" and "Other conditions which make the bid non-compliant to PPP-MII Order" – reg.

The undersigned is directed to state that repeated references are being received in this Department for alleged violation of Public Procurement (Preference to Make in India) Order, 2017 (PPP-MII Order). The subject matter was reviewed in the 14th Standing Committee meeting held on 20.09.2022 (copy of minutes enclosed) on implementation of PPP-MII Order and it was decided that:-

“DPIIT, DoE and GeM may jointly draft a common advisory to be issued to all Ministries/ Departments regarding nature of grievances commonly observed in the tendering process.”

2. Accordingly, DPIIT in consultation with Department of Expenditure and GeM has identified the “Common examples of restrictive and discriminatory conditions against the local suppliers” and “Other conditions which make the bid non-compliant to PPP-MII Order”, enclosed as Annexure “A”.

3. Is requested to kindly publicize above amongst all procuring agencies under your control and direct them to ensure that their tenders are compliant with PPP-MII Order and don't include restrictive and discriminatory conditions against the local suppliers.

4. This issues with the approval of competent authority

Encl: As Above


(Pritam/Kumar)

Under Secretary to the Government of India
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To:

All Ministries/ Departments concerned

Common examples of "Restrictive and discriminatory conditions against the local suppliers" and "Other conditions which make the bid non-compliant to PPP-MII Order"

1. Restrictive and discriminatory eligibility criteria/ Tender conditions

- a) Mandatory Presence in Gartner Magic Quadrant/ Forrester Wave/ IDC/ Frost and Sullivan/ or any other similar foreign body / magazine / rating agency's certification or review or validation in procurement of IT and Telecom Products.
- b) Mandatory USFDA / European CE or any other similar Foreign Certification without specifying any equivalent Indian Certification as alternative in procurement of Medical Devices.
- c) Mandatory UL / CSA Certification or any other similar Foreign Certification without specifying any equivalent Indian Certification as alternative in procurement of Electronic Devices.
- d) Excessive turnover requirement as a pre-qualifying criteria, not commensurate with financial capacity required for executing the contract i.e. much in excess of Estimated Bid Value.
- e) Excessive past experience requirement, not commensurate with the proven experience expected from bidder for successful execution of contract.
- f) Specific experience of supplying to other Nations being sought for e.g. export experience of G8 countries
- g) Additional requirement of Bank Guarantee for local supplier
- h) Delayed Payment Terms for local suppliers

2. Restrictive and discriminatory technical specifications - Foreign brands specified either for finished products or for part of scope of work / component of scope of supply such as:

- a) CISCO, NEC, Alcatel, Siemens being asked in Telecom Products
- b) HP, Dell, Lenovo being asked in IT products
- c) OTIS, Mitsubishi, Schindler, Kone, Johnson being asked in Lifts
- d) Siemens, Schneider, GE Power being asked in Electrical Equipment

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3. Restrictive and discriminatory technical specifications - Pre-approved foreign brands in works/turnkey projects whereas local manufacturers not included in pre-approved list. Examples of pre-approved brands:-

- a) Cameras- Honeywell, Bosch, Pelco
- b) Network Switches- D-Link, Cisco, Brocade
- c) Axial Fan- Kruger, Nicotra, Greenhench

4. Restrictive discriminatory technical specifications - Foreign technical standards indicated in technical specification. Also, specification tailor made to suit foreign products like:-

- a) Minus 25-degree temperature compatibility for EPBX equipment being procured for airport in Central India
- b) Any other similar specification parameter being incorporate to eliminate MII products form competition without any recorded justification of requirement of that specification value for intended end use of the product / service.

5. Other conditions which make the bid non-compliant to PPP-MII Order

- a) Not incorporating suitable clause in the bid documents for giving purchase preference to Class-I local suppliers.
- b) Changing the minimum local content requirement for Class-I or Class-II local supplier without approval of competent authority.
- c) Stipulating in the bid document that the particular goods/ works / service category is exempted from the provisions of PPP-MII Order since concerned nodal ministry has not issued any notification for the same. It is clarified that provisions of PPP-MII Order applies on procurement of all categories of goods/ works / service, exceeding Rs. 5.0 Lakh in value. For the items, for which nodal Ministry has not issued any notification, default provisions of PPP-MII Order apply.
- d) Not evaluating bidders' status (viz. Class-I/ Class-II/ Non-local supplier) during bid evaluation process based upon documents submitted by bidders in their bid/ granting them rights/ privileges as defined in PPP-MII Order. Categorizing Class-II local supplier as MII bidder in bid evaluation process and giving them purchase preference is a very common mistake and need to be checked very diligently for proper implementation of the policy.

6. The above list is only indicative in nature.
