

## **PROCEEDINGS OF THE GOVERNMENT OF KARNATAKA**

Sub: Restrictions on Public Procurement from Bidders of certain Countries.

- Ref:
1. GO No. FD 09 PCL 2004(I) Dated: 06-08-2005.
  2. GO No. FD 09 PCL 2004(II) Dated: 06-08-2005.
  3. GO No. FD 09 PCL 2004 (III) Dated: 06-08-2005.
  4. Government of India letter no F.6/18/2019-PPD dated: 23-07-2020.
  5. GO No. FD 455 Exp-12 2020 Bengaluru Dated :25-08-2020.
  6. Government Circular No. FD455 Exp-12 Bengaluru Dated: 10-03-2021 and 29-03-2021
  7. Government of India Letter No. F-7/10/2021-PPD Dated: 06-03-2023.
  8. Government of India Order No. F.7/10/2021-PPD(1) Dated: 23-02-2023.

### **Preamble:**

Government of Karnataka, vide Government order referred at (5) above has issued the directions providing restrictions on Public procurement from bidders of certain countries in compliance with the Government of India letter referred at (4) above. Now, Government of India has issued the revised public procurement order referred at (8) above by further amending sub rule (xi) of Rule 144 of the General Financial Rules, 2017. Government of India, vide letter at reference (7) has issued a direction under Article 257(1) of the Constitution of India stipulating that the state Government is required to implement these orders. The amended provision provides for restrictions, including prior registration and/ or screening, on Procurement from bidders from, or bidders having commercial arrangements with an entity from, a Country or countries or a class of countries, on the grounds of defence of India, or matters directly or indirectly related thereto including national security and no procurement shall be made in violation of such restrictions. In view of this, the matter has been examined in detail and Government of Karnataka has decided to implement this Public Procurement Order issued by Government of India.

Hence the following order,

**Government Order No. FD 455 Exp-12 2020 Bengaluru**  
**Dated:01.04.2023.**

In view of the circumstances explained in the preamble, all the Procurement Entities, as defined in Section 2(d) of KTPP Act, are hereby ordered to procure the required goods, works (including turnkey projects) and services (including consultancy services and non consultancy services) after observing the following directions:-

**Requirement of Registration:**

1. All the Procurement Entities shall ensure that 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 as specified in **Annexure-1**.
2. Any bidder (including an Indian bidder) who has a Specified Transfer of Technology (ToT) arrangement with an entity 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 **Annexure-1**.
3. The requirement of registration for cases covered by paragraph 1 above has been applicable since 25.08.2020. The requirement of registration for cases covered by paragraph 2 will be applicable for all procurements where tenders are issued/published after 01.04.2023.
4. In tenders issued after 25.08.2020 or 01.04.2023, as the case may be, the provisions of requirement of registration of bidders and of other relevant provisions of this Order shall be incorporated in the tender conditions.



**Applicability:**

5. This order shall apply to all the Procurement Entities as defined in Section 2(d) of KTPP Act. including all autonomous bodies and Public Private Partnership Projects receiving financial support from the Government or public sector enterprises/undertakings.
6. This order will not be applicable for cases falling under **Annexure II**

**Definitions:**

7. "Bidder" for the purpose of the 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.
8. "Tender" for the purpose of the Order will include other forms of procurement, except where the context requires otherwise.
9. "Transfer of Technology" means dissemination and transfer of all forms of commercially usable knowledge such as transfer of know-how, skills, technical expertise, designs, processes and procedures, trade secrets, which enables the acquirer of such technology to perform activities using the transferred technology independently. (Matters of interpretation of this term shall be referred to the Registration Committee constituted by the Department of Promotion of Industry and Internal Trade, Government of India and the interpretation of the Committee shall be final).
10. "Specified Transfer of Technology" means a transfer of technology in the sectors and / or technologies, specified in paragraph 14, occurring on or after 25.08.2020.
11. "Bidder (or entity) from a country which shares a land border with India" for the purpose of the 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

12. Beneficial owner for the purposes of 11(d) will be as under:

- i) In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person(s), has a controlling ownership interest or who exercises control through other means.

*Explanation:-*

- a. "Controlling ownership interest" means ownership of, or entitlement to, more than twenty-five per cent of shares or capital or profits of the company;
- b. "Control" shall include the right to appoint the majority of the directors or to control the management or policy decisions, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;
- ii) In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
- iii) In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more

than fifteen percent of the property or capital or profits of such association or body of individuals;

- iv) Where no natural person is identified under (i) or (ii) or (iii) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
- v) In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

13. "Agent" for the purpose of the Order is a person employed to do any act for another, or to represent another in dealings with third persons.

[Note:

- i. A Person who procures and supplies finished goods from an entity from a country which shares a land border with India will, regardless of the nature of his legal or commercial relationship with the producer of the goods, be deemed to be an Agent for the purpose of this Order.
- ii. However, a bidder who only procures raw material, components etc., from an entity from a country which shares a land border with India and then manufactures or converts them into other goods will not be treated as an Agent.]

***Sensitive Sectors / Technologies (relevant only for the provisions on ToT arrangements):***

14. (i) Certain sectors and technologies have been identified as sensitive from the national security point of view. The sectors listed in Schedule I to this Order are considered Category-I sensitive sectors. The sectors listed in Schedule II to this order are considered Category-II sensitive sectors. The technologies listed in Schedule III are considered sensitive technologies.



- (ii) For **Category-I** sensitive sectors, bidders with ToT arrangement in any technology with an entity from a country which shares a land border with India shall require registration.
  - (iii) For **Category-II** sensitive sectors, bidders with ToT arrangement in the sensitive technologies listed in schedule III, with an entity from a country which shares a land border with India shall require registration.
  - (iv) In **Category-II** sensitive sectors, the Secretary (or an officer not below the rank of Joint Secretary to Government of India, so authorized by the Secretary) of the Ministry/Department of the Government of India is empowered, after due consideration, to waive the requirement of registration for a particular item / application or a class of items/ applications from the requirement of registration, even if included in **Schedule III**. The Ministry/Department concerned shall intimate the Department for Promotion of Industry and Internal Trade(DPIIT)and National Security Council Secretariat (NSCS) of their decision to waive the requirement of registration. Ministries / Departments of the Government of India are not required to consult the DPIIT / NSCS before deciding and are only required to intimate the decision to DPIIT / NSCS. If any point is raised by DPIIT / NSCS, it should be considered in future procurements; ongoing procurement for which the waiver was granted need not be interrupted or altered.
15. Based on security considerations, a Ministry/Department in a **Category II** sensitive sector or other Ministries/Departments may recommend to DPIIT inclusion of any other technology in the list of sensitive technologies, either generally or for their Ministry/Department.

#### **Sub-contracting in works contracts**

16. In works contracts, if sub-contracting is allowed, 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 11 above. This shall not apply to sub-contracts already awarded on or before 25.08.2020.

[Note: Procurement of raw material, components, etc., does not constitute sub-contracting.]

#### **Certificate regarding compliance**

17. An undertaking shall be taken from bidders in the tender documents (**Annexure III**) that the extant guidelines for participation in the tenders (which should include conditions for implementation of this Order) have been complied with. If such certificate given by a bidder whose bid is accepted is found to be false, this would be a ground for debarment and further legal action in accordance with law.

#### **Validity of registration**

18. 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.

#### **Model Clauses / Certificates**

19. Model Clauses and Model Certificates which may be inserted in tenders / obtained from Bidders are given at **Annexure-III** and there is no change in remaining clauses of the Standard Tender Documents.
20. The clauses as in **Annexure - III** enclosed herewith this order are to be inserted mandatorily by all the Procurement Entities, as defined in section 2(d) of the Act, under Eligibility conditions in all the Tender Documents including Standard Tender Documents wherever applicable for procurement of goods, works (including Turnkey Projects) and services (including consultancy and non-consultancy services).
21. All procurement Entities, as defined in section 2(d) of the Act, shall ensure that the above instructions are followed strictly in respect of all procurements. It may

be noted that any violation of KTPP Act 1999 and Rules, 2000 attracts the penal provision under Section 23 of the Act.

22. This order comes into effect from 01.04.2023 in supersession of earlier orders, circulars issued in this regard.

By order and in the name of  
Governor of Karnataka

(I.S.N.PRASAD)

Additional Chief Secretary to Government  
Finance Department

**To:**

The Compiler, Karnataka Gazette for publication in the next issue of the Gazette.

**Copy to:**

1. The Chief Secretary/Additional Chief Secretaries to Government
2. The Principal Secretaries and Secretaries to Government.
3. The Accountant General (A&E), Karnataka Bengaluru.
4. The Secretary, Karnataka Legislative Assembly/Council.
5. The Registrar, Karnataka High Court, Bengaluru.
6. The Registrar, Karnataka Lokayukta, Bengaluru.
7. The Secretary, Karnataka Public Services Commission, Bengaluru.
8. All Deputy Commissioners.
9. All the CEOs of Zilla Panchayats.
10. All Registrars of Universities.
11. All the Heads of Departments.
12. All the CEOs of Boards and Corporations.
13. All Internal Financial Advisors.
14. All Joint Secretaries/Deputy Secretaries/Special Officers/Under Secretaries to Government, Finance Department.
15. Section Guard File/Spare Copies.



## Schedule I

### List of Category-I Sensitive Sectors:

Sl.No.	Sector
(i)	Atomic Energy
(ii)	Broad casting/ Print and Digital Media
(iii)	Defence
(iv)	Space
(v)	Telecommunications

## Schedule II

### List of Category –II Sensitive Sectors:

Sl No.	Sector
(i)	Power and Energy (including exploration/generation/ transmission /distribution /pipeline)
(ii)	Banking and Finance including Insurance
(iii)	Civil Aviation
(iv)	Constructions of Ports and dams & river valley projects
(v)	Electronics and Microelectronics
(vi)	Meteorology and Ocean Observation
(vii)	Mining and extraction (including deep sea projects)
(viii)	Railways
(ix)	Pharmaceuticals & Medical Devices
(x)	Agriculture
(xi)	Health
(xii)	Urban Transportation

### Schedule III

#### List of Sensitive Technologies:

Sl.no	Sensitive Technologies
(i)	Additive Manufacturing (e.g. 3D Printing)
(ii)	Any equipment having electronic programmable components or autonomous systems(e.g., SCADA systems)
(iii)	Any technology used for uploading and streaming of data including broadcasting, satellite communication etc.
(iv)	Chemical Technologies
(v)	Biotechnologies including genetic engineering and biological Technologies
(vi)	Information and Communication Technologies
(vii)	Software



### **Annexure-1**

#### **Competent Authority and Procedure for Registration**

- A. The Competent Authority for the purpose of registration under this order shall be/continue to be the Registration Committee constituted in the Department of Commerce & Industries, Government of Karnataka vide GO No. FD 455 Exp-12/2020, Dated:25-08-2020.
- B. The Registration Committee shall have the following members:
- i. Principal Secretary/Secretary to Govt., Department of Commerce and Industries shall be the Chairman;
  - ii. An officer not below the rank of Secretary to Govt., Home Department;
  - iii. An officer not below the rank of Secretary to Govt., of those Departments whose Procurements are covered by applications under consideration;
  - iv. Any other officer whose presence is deemed necessary by the Chairman of the Committee.
  - v. With effect from 01.4.2023, an officer (Ordinarily not below the rank of Joint Secretary) representing the National Security Council Secretariat.
- C. Department of Commerce and Industries shall lay down the method of application, format etc., for such bidders as covered by the Order.
- D. On receipt of an application seeking registration from a bidder covered by para (1) and (2) of this Order, the Competent Authority shall first seek political and security clearances from the Ministry of External Affairs and Ministry of Home Affairs, Government of India as per guidelines issued from time to time. Registration shall not be given unless political and security clearance have both been received.

- E. The Department of Commerce & Industries in consultation with Home Department 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 granted by the Competent Authority of the Government of India shall be valid not only for procurement by the Central Government and its bodies but also for procurement by State Governments and their agencies / public enterprises etc. No fresh registration at the State level shall be required.
- H. Registration granted by the Competent Authority of the Government of Karnataka shall be valid only for procurements by the Procurement Entities as defined in Section 2(d) of Karnataka Transparency in Public Procurements Act, 1999 and shall not be valid for procurement in other states or by the Government of India and their agencies/public enterprises etc.,
- 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 a bidder.
- K. The Competent Authority is required to send a quarterly report to the Cabinet Secretary, Government of India regarding the cases of registration given and denied.

## Annexure-II

### **Special Cases**

- A. 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.
- B. This order shall not apply to procurement by Indian missions and by offices of government agencies / undertakings located outside India.
- C. This order will not apply to bidders (or entities) 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. Updated lists of countries to which lines of credit have been extended or in which development projects are undertaken are given on the website of the Ministry of External Affairs.
- D. Procurement of spare Parts and other essential service support like Annual Maintenance Contract (AMC) / Comprehensive Maintenance Contract (CMC), including consumables for closed systems, from Original Equipment Manufacturers (OEMs) or their authorized agents, shall be exempted from the requirement of registration.

  
**I.S.N. PRASAD**  
Additional Chief Secretary to Govt  
Finance Department



### Annexure III

#### Model Clause / Certificate / Undertaking to be inserted in tenders etc.

##### **A. Model Clauses for Tenders (including tenders issued manually or any electronic portal including GeM):**

- I. 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. *Further, any bidder (including bidder from India) having specified Transfer of Technology (ToT) arrangement with an entity from a country which shares a land border with India, shall also require to be registered with the same competent authority.*

*Note:* The conditions relating to specified ToT (as shown in italics) should be incorporated only in the tenders which attract the restrictions due to specified ToT.

- 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 (or entity) from a country which shares a land border with India" for the said purpose 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 percent of shares or capital or profits of the company;
  - 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 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. 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.

*Note: To be inserted in tenders for Works contracts, including Trunk contracts*

- VII. The registration shall be valid at the time of submission of bid and at the time of acceptance of bid.
- VIII. If the bidder was validly registered at the time of acceptance / placement of order, registration shall not be a relevant consideration during contract execution.

**Model Certificate for Tenders:**

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority. I hereby certify that this bidder fulfils all requirements in this regard and is eligible to be considered. (Where applicable, evidence of valid registration by the Competent Authority shall be attached.)"



**Model Certificate for Tenders for Works wherever sub-contracting is allowed as per rules:**

"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 fulfils all requirements in this regard and is eligible to be considered. (Where applicable, evidence of valid registration by the Competent Authority shall be attached)."

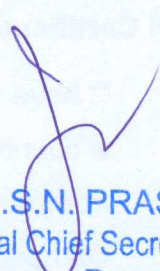
**Model additional certificate by Bidders in the cases of specified ToT:**

*"I have read the clause regarding restrictions on procurement from a bidder having Transfer of Technology (ToT) arrangement. I certify that this bidder does not have any ToT arrangement requiring registration with the competent authority".*

OR

*"I have read the clause regarding restrictions on procurement from a bidder having Transfer of Technology (ToT) arrangement. I certify that this bidder has valid registration to participate in this procurement".*

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**I.S.N. PRASAD**  
Additional Chief Secretary to Govt  
Finance Department