

SPECIAL CONDITIONS OF CONTRACT

1.0 Eligibility of suppliers to participate in tender (as per Make In India Order-2017):

The tendered item is an item for which no communication in regard to sufficient local capacity and local competition from the Nodal Ministry/Department has been received till date. Further, the estimated value is less than Rs 200 Crores. **Therefore, the present tender case is an Open Tender of Non-Global category/type and in this tender only 'Class-I Local Supplier' and 'Class-II Local Supplier', as defined in Para 4.1 of the Instructions to tenderers, shall be eligible to bid (as per provisions in Para 4.2 (b) of Instructions to tenderers). Further, Purchase preference to 'Class-I local supplier' over 'Class-II Local Supplier' shall be applicable as per provisions of Para 4.3 of Instructions to tenderers**

In regard to local content calculation it is to be noted that **Bidders offering imported products will fall under the category of Non-local suppliers. They can't claim themselves as Class-I local supplier/Class-II local suppliers by claiming the services such as transportation, Insurance, Installation, Commissioning, Training and after sales service support like AMC/CMC etc as local value addition.**

2.0 Margin of Purchase Preference: 20%

3.0 Earnest Money Deposit: EMD will be Rs 1,00,000/-

4.0 QUALIFYING REQUIREMENTS OF TENDERERS:

As mentioned in clause no. 2.0 of Instruction to tenderer of tender (including sub paras).

4.1 For Regular/Bulk order the Average Annual Financial Turnover during the last 3 years, ending 31st March of the previous financial year should be at least **Rs 16.69 Lakh.**

5.0 VALIDITY OF OFFER: **The** offer shall be kept valid for acceptance for a minimum period of 90 days from the date of opening of the tender.

6.0 Payment terms: Shall be 100% payment after receipt & acceptance of the material.

7.0 Delivery: As per tender.

8.0 Percentage local content and verification of local contents (in regard to provisions of Make in India Order 2017-- refer Clause 4.1 to 4.5 of Instructions to tenderers)

- a) The 'Class-I Local Supplier'/Class-II Local Supplier at the time of tender, bidding or solicitation shall be required to indicate percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I Local supplier/ 'Class-II local supplier', as the case may be. They shall also give details of the location(s) at which the local value addition is made. **In this regard the supplier/bidder shall mandatorily fill the specific percentage of Local Content in the additional field of Local content (in percentage) included in the format of all e-tenders on IREPS website. Further, the bidders are also mandatorily required** to indicate local content activity-wise/component-wise and give details of the location(s) at which local value addition for the activity/component is made as per the format included as Annexure-SA1 included in these Special Conditions of Contract.

In cases of procurement for a value up to Rs 10 Crore no further certification from any other agency would be required and the case shall be finalized based on the local content indicated/certified by the bidder and provisions of Public Procurement (Preference to Make in India), Order 2017.

- b) In cases of procurement for a value in excess of Rs. 10 crores, the 'Class-I local supplier & 'Class-II local supplier shall **also be mandatorily required** to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content

In case bidder do not uploaded the requisite information in this regard as per Annexure-SA1 or do not submit requisite certificate from the statutory auditor/cost auditor/practicing cost accountant/ practicing chartered accountant with their technical bid, local content will be adopted as 'Nil' in tender evaluation.

- c) False declarations will be in breach of the code of integrity under Rule 175(1) I (h) of General Finance Rules for which a bidder or its successors can be debarred for up to 2 years as per Rule 151(III) of General Financial Rules along with such other actions as may be permissible under law.
- d) A supplier who has been debarred by any procuring entity for violation of this order shall not be eligible for preference under this order for procurement by any other procuring entity for the duration of the debarment. In respect of procuring entities other than the one which has carried out the debarment, the debarment shall take effect prospectively from the date of uploading on the website(s) in such a manner that ongoing procurements are not disrupted.
- e) **Complaints and Fees for Complaints:** Complaints in regard to provisions of Public Procurement (Preference to Make in India) Order-2017 can be filed with the Office of Controller of Stores, DO Building, Metro Train Depot, Shastri Park, DMRC, Delhi - 110053. The fees for filing a complaint under the order shall be Rs 10,000/- per case and the same shall be deposited with the office of GM/Finance/O&M in DMRC. Any complaint not accompanied with the requisite complaint fees shall not be entertained. Further, the Controller of Stores, if he deems fit may also subsequently ask for deposition of further amount from complainant, if felt necessary, to cover the cost of verification.

The percentage limits of Local Content for classification of supplier either as 'Class-I Local Supplier' or as 'Class-II Local Supplier' or as 'Non-Local Supplier' shall remain as per limits mentioned in Para 4.1 of Instructions to tenderers.

9.0. Restrictions in regard to procurement from the bidders from countries sharing land borders with India

- 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. The Competent Authority for registration will be the Registration Committee constituted by the Department for Promotion of Industry and Internal trade (DPIIT). The application format for registration in this regard is available on DPIIT website (under Public Procurement head). Political & Security clearance from the Ministries of External and Home Affairs respectively will be mandatory part/step in the registration by the Competent Authority. However, above condition shall 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. 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.

- 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 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 or 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. 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 [applicable in tenders for Works contracts, including Turnkey contracts].

10. Certificate regarding compliance of restrictions in regard to procurement from the bidders from countries sharing land borders with India

All the participating tenderers are mandatorily required to submit a certificate along with the tender regarding their compliance with this clause/order in regard to restrictions of procurement from the bidders from countries sharing land borders with India as per the format included in **Annexure-SA2** to these special conditions of Contract. 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.

Annexure SA-1

PROFORMA FOR STATEMENT OF LOCAL CONTENT

- a) The 'Class-I LocalSupplier'/Class-II LocalSupplier at the time of tender, bidding or solicitation shall be required to indicate percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I Local supplier/ 'Class-II local supplier', as the case may be. They shall also give details of the location(s) at which the local value addition is made. In this regard the supplier/**bidder shall mandatorily fill the specific percentage of Local Content in the additional field of Local content (in percentage) included in the format of all e-tenders on IREPS website. Further, the bidders are also mandatorily required** to indicate local content activity-wise/component-wise and give details of the location(s) at which local value addition for the activity/component is made as per above format.

In cases of procurement for a value uptoRs 10 Crore no further certification from any other agency would be required and the case shall be finalised based on the local content indicated/certified by the bidder and provisions of Public Procurement (Preference to Make in India), Order 2017.

- b) In cases of procurement for a value in excess of Rs. 10 crores, the 'Class-I local supplier& 'Class-II local supplier shall **also be mandatorily required** to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content

In case bidder do not uploaded the requisite information in this regard as per above Annexureor do not submit requisite certificate from the statutory auditor/cost auditor/practicing cost accountant/ practicing chartered accountant (if required as per para 8(b) of Special Conditions of Contract with their technical bid, local content will be adopted as 'Nil' in tender evaluation.

- c) False declarations will be in breach of the code of integrity under Rule 175(1) I (h) of General Finance Rules for which a bidder or its successors can be debarred for up to 2 years as per Rule 151(III) of General Financial Rules along with such other actions as may be permissible under law.
- d) Firm shall furnish the %age of the local content, **for each item**, as per the details below:

Sr. No	Description of item	Details of the locations at which the local value addition is made	% local content

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**Signature and seal of
Tenderer**

**Certificate for compliance of restrictions in regard to procurement from
bidders from countries sharing land borders with India**

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 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).

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***Signature and seal of
Tenderer***