

# UPDATE ON THE REQUIREMENT OF REGISTRATION WITH DPIIT IN PUBLIC PROCUREMENT FOR BIDDERS BELONGING TO COUNTRY, WHICH SHARES LAND BORDER WITH INDIA

On 23 July, 2020, the Department of Expenditure ("DoE"), Ministry of Finance, Government of India (GOI) vide its office memorandum and following **Order (Public Procurement No. 1)** provided for mandatory registration with the Department for Promotion of Industry and Internal Trade ("DPIIT"), Ministry of Commerce and Industry, GOI for all bidders who are participating in public procurement and are from a country, which shares land border with India. This was issued on the grounds of defence and/or national security considerations.

We have summarised below few key orders and office memorandums issued by DoE and DPIIT on the subject:

## Relevant Orders and Office Memorandums

**23 July, 2020**

- DoE issues office memorandum, inserting a new sub-rule (xi) in Rule 144 of the General Financial Rules, 2017 ("GFR").
- Rule 144 (xi) of the GFR provides that DoE, on grounds of defence or national security, may impose restrictions including requirement of prior registration and/or screening on procurement from bidders belonging to certain countries/class of countries.

**23 July, 2020**

DoE issues Order (Public Procurement No. 1) ("**DoE Order**"), the key requirements of which are as under:

- Applies to all bidders, who are from a country which shares land border with India.
- "Bidder from a country which shares land border with India" have been defined as under:
  - a. an entity incorporated, established or registered in such a country;
  - b. a subsidiary of an entity incorporated, established or registered in such a country;
  - c. an entity substantially controlled through entities incorporated, established or registered in such a country;
  - d. an entity whose beneficial owner<sup>1</sup> is situated in such a country;
  - e. an Indian (or other) agent of such an entity;
  - 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.
- The Competent Authority for the purpose of registration is DPIIT.
- All subsequent procurement tenders to mandatorily contain clauses on DPIIT registration and other relevant requirements of the DoE Order and further, the bidder will be required to furnish certificate of compliance of DoE Order. In this regard, Annex III to the DoE Order contains model tender clause and model compliance certificate to be given by bidders.

<sup>1</sup>

"Beneficial Owner" with respect to a company, has been defined to include 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.

"Controlling ownership interest" means ownership of or entitlement to, more than twenty-five per cent of shares or capital or profits of the company.

"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.

- DPIIT registration is also required for sub-contractors, from a country which shares land border with India for works/ turnkey contracts.
- All registered Government E-Marketplace ("**GeM**") vendors/ bidders are also required to give certificate of compliance of DoE Order.
- Non-compliant entities from GeM will be removed from GeM portal, until they are registered in accordance with the DoE Order.
- Provided for certain special cases as listed in Annex II, for which DoE Order shall not be applicable. For instance, procurement of medical supplies for COVID-19 containment.

23 July, 2020



- DoE issues Order (Public Procurement No. 2) providing that DoE Order will not apply to bidders from those countries (even if sharing land border with India) to which GOI has extended lines of credit or in which GOI is engaged in development projects.

14 October 2020

- DPIIT issues revised format for registration of bidders from countries sharing land border with India.
- Form *inter alia* requires Indian Chartered Accountant to certify financials and beneficial ownership details of both bidder and manufacturer (if it is not the bidder itself).

8 February, 2021

- Office memorandum issued by DoE, which clarified the requirement of DPIIT registration for sub-contractors of the bidder under para 11 of the DoE Order, as under.

DPIIT registration requirement for Bidder's vendor	
	
Vendor from countries, which share land border with India and supplying <u>finished goods, whether</u> directly/indirectly, to the bidder, will be required to be registered.	Vendor from countries, which share land border with India, and supplying raw material, components, sub-assemblies, etc. to the bidder, need not be registered.

2 March 2021






- DoE issues office memorandum providing that procurement of spare parts and other essential service support like annual or comprehensive maintenance contract, consumables for closed system from OEM or their authorized agents, are exempted from the requirement of DPIIT registration.

30 March 2021

- DPIIT issues office memorandum containing instructions for applicants seeking DPIIT registration. Only one hard copy of the application (along with a soft copy) to be submitted now, unless required at a later stage.
- The format for registration of bidders from countries sharing land border with India can be accessed [here](#).

## Conclusion

The summary effect of all these orders and office memorandum is that registration is now required for the following categories:

Entity	Entity which shares land border with India	Finished Goods supplied / Services provided by	Whether DPIIT registration is required
Bidder/ Manufacturer	None	Bidder	
Bidder/ Manufacturer	Bidder	Bidder	
Bidder/ Manufacturer	Manufacturer	Bidder	 (both Bidder and manufacturer to get registered)
Bidder/ Sub-Contractor/ Service Provider	Sub-Contractor/ Service Provider	Sub-Contractor/ Service Provider	 (both Bidder and Sub-Contractor/ Service Provider to get registered)
Deemed Indian OEM on behalf of foreign OEM (for the purposes of GeM)	None	Deemed Indian OEM	

The subsequent office memorandums have overstretched the intention and purpose conveyed in the original order and office memorandums. Based on interpretation, practical aspect of these subsequent office memorandums, does not strictly adhere to the original scope and purpose.

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