

**File No.1(10)/2017-CLES
Government of India
Ministry of Electronics and Information Technology**

Electronics Niketan, New Delhi
Dated: 2nd July, 2018

NOTIFICATION

Subject: Public Procurement (Preference to Make in India) Order 2018 for Cyber Security Products

Reference: Department of Industrial Policy & Promotion (DIPP) Notification No. P-45021/2/2017-B.E.-II dated 15.06.2017 and revised notification P-45021/2/2017-PP(BE-II) dated 28.05.2018

The Government has issued Public Procurement (Preference to Make in India) Order 2017 vide the Department of Industrial Policy and Promotion (DIPP) Notification No. P-45021/2/2017-B.E.-II dated 15.06.2017 and partially modified order no No.P-45021/2/2017-PP(BE-II) was issued on 28.05.2018, to encourage Make in India and to promote manufacturing and production of goods and services in India with a view to enhancing income and employment.

2. In furtherance of the Public Procurement (Preference to Make in India) Order 2017 notified vide reference cited above, the Ministry of Electronics and Information Technology (MeitY) hereby notifies that Cyber Security being a strategic sector, preference shall be provided by all procuring entities to domestically manufactured/produced Cyber Security Products as per the aforesaid Order.

3. Definition of Cyber Security Product:

For the purpose of this Notification, **Cyber Security Product** means a product or appliance or software manufactured/produced for the purpose of protecting, information, equipment, devices computer, computer resource, communication device and information stored therein from unauthorized access, use, disclosure, disruption, modification or destruction.

4. Definition of 'local supplier' of domestically manufactured/ produced Cyber Security Products

4.1 For the purpose of this Notification, the ‘**local supplier**’ is defined as follows:

(A) A company incorporated and registered in India as governed by the applicable Act (Companies Act, LLP Act, Partnership Act etc.) or startup that meet the definition as prescribed by DIPP, Ministry of Commerce and Industry Government of India under the notification G.S.R. 364 (E) dated 11th April 2018 and recognized under Startup India initiative of DIPP.

AND

(B) Revenue from the product(s) in the India and revenue from Intellectual Property (IP) licensing should accrue to the aforesaid company/Startup in India. The entity claiming benefits under the Public Procurement Order 2017 in addition to being an Indian registered/incorporated entity, and supplying products should satisfy the conditions of IP ownership as under:

(B)(i) Domestically manufactured/produced Cyber Security product means a product, whose intellectual property is owned by the Indian Company/Startup (as defined above) such that it has rights to:

- (a) Use and commercialize without third party consents; and
- (b) Distribute; and
- (c) Modify

AND

The Indian Company/Startup should demonstrate ownership of intellectual property associated with the product, in addition to trademarks applicable, if any.

(B)(ii) Even in case of open source products, all the three IP ownership rights as outlined in paragraph B(i) above should rest with the Indian entity.

(B)(iii) IP ownership rights would need to be substantiated by adequate proof, such as (a) adequate documentation evidencing ownership (evidenced by supporting proof such as documentation related to development but not limited to IP assignments, shrink wraps,

license agreements, click wraps); **OR** (b) IP registrations. It may be noted that IP registrations is not a compulsory criteria as it is not necessary to register to exercise copyright in India.

4.2 Exclusion:

(a) Resellers, Dealers, Distributors, implementation/ support services agencies of products, who may have limited rights to IP to enable transfer of rights to use, distribute and modify.

(b) Digital content is not considered a product e.g. videos, e-books, etc.

Definition of domestically manufactured/produced Cyber Security product and Indian Company should be applied in conjunction with conditions 4.1 (A) and 4.2 (B) outlined above and read along with the aforesaid exclusion criteria, to suppliers of products to identify Indian Product Company/Startup.

5. Product List

A committee headed by Additional Secretary MeitY and comprising of Group Coordinator (R & D in Electronics) MeitY, DG CERT-In, DG STQC, CEO DSCI, Additional Chief Secretary to Government of Karnataka Department of Personnel and Administrative Reforms (e-Governance), representative of Ministry of Defence and Group Coordinator (Cyber Security) MeitY as convener will be constituted to define and review framework for the evaluation of the products and will be empowered to approve the products to be included in the list of products eligible for benefit under this notification. The committee may co-opt domain specific official members for evaluation. The committee, inter-alia, is to assess capacity and capability and recommend following :

- i. The product is secure to use and its performance.
- ii. Adequate support infrastructure is available in country.
- iii. Meeting international standards/best practices wherever available.
- iv. The committee while making recommendations bear in mind the need to promote development of indigenous `Make in India` capabilities in cyber security sector.
- v. Products with multiple sub-components can be covered under this notification. Total licensing/Royalty fee going out in any such product should not exceed 50% of the total cost of the product.

6. Verification of 'local supplier' of domestically manufactured/ produced Cyber Security Products

a. The local supplier at the time of tender, bidding or solicitation shall provide self-certification that the item offered meets the definition of 'local supplier' of domestically manufactured/produced Cyber Security Products, as per Para 4 above.

b. In cases of procurement for a value in excess of Rs. 10 crores, the local supplier shall provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) that the item offered meets the definition of 'local supplier' of domestically manufactured/ produced Cyber Security Products, as per Para 4 above.

c. In case a complaint is received by the procuring agency or the concerned Ministry/ Department against the claim of a bidder regarding supply of domestically manufactured/ produced Cyber Security Product, the same shall be referred to STQC, an attached office of MeitY.

d. Any complaint referred to STQC shall be disposed off within 4 weeks. The bidder shall be required to furnish the necessary documentation in support of the domestically manufactured/ produced Cyber Security product to STQC. If no information is furnished by the bidder, STQC may take further necessary action, to establish the bonafides of the claim.

e. In order to avoid frivolous complaint designed to overreach the preference given to local supplier, it is proposed to strengthen and make accountable the entire complaint process. Accordingly, a complaint fee of Rs.2 Lakh or 1% of the value of the domestically manufactured/produced Cyber Security Product being procured (subject to a maximum of Rs. 5 Lakh), whichever is higher, shall be paid by Demand Draft to be deposited with STQC. In case, the complaint is found to be incorrect, the complaint fee shall be forfeited. In case, the complaint is upheld and found to be substantially correct, deposited fee of the complainant would be refunded without any interest.

f. False declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rules for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the General Financial Rules along with such other actions as may be permissible under law.

7. For reasons to be recorded in writing, a procuring entity may choose to procure a higher percentage of domestically manufactured electronic products than specified in the Public Procurement (Preference to Make in India), Order 2017. This would enable the procuring entities to meet their special requirements or wherever a special policy provision exists/decision is taken by the Government to meet the demand from domestic manufacturers.

8. The Notification comes into effect immediately and shall remain valid till the revised Notification is issued.

9. The Cyber Security Products notification shall also be applicable to the domestically manufactured/produced Cyber Security products covered in turnkey/system integration projects. In such cases the preference to domestically manufactured/produced Cyber Security products would be applicable only for the value of Cyber Security product forming part of the turnkey/ system-integration projects and not on the value of whole project.

10. MeitY shall be the nodal Ministry to monitor the implementation of the Cyber Security Products Notification.

11. In case of a question whether an item being procured is a Cyber Security Product to be covered under the Public Procurement (Preference to Make in India) Order 2018 for Cyber Security Products, the matter would be referred to the Ministry of Electronics and Information Technology for clarification.

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New Delhi, Dated 02.07.2018

Copy to:

- 1. All Ministries/Departments of Government of India**
- 2. Cabinet Secretariat**
- 3. PMO**
- 4. NITI Aayog**

5. **Joint Secretary (DIPP), Member-Convener of Standing Committee of Public Procurement Order 2017**
6. **Controller and Auditor General of India**
7. **AS&FA, Ministry of Electronics and Information Technology**
8. **Internal Distribution**

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