

**Minutes of the Review Meeting on Implementation of Public Procurement
(Preference to Make in India) Order, 2017 for Telecom Sector held on 10.09.2018**

Review Meeting on Implementation of Public Procurement (Preference to Make in India) Order, 2017 for 'Telecom Sector' was held under the Chairmanship of Special Secretary & FA, DIPP on 10.09.2018. List of participants is **Annexed**.

2. Gist of the discussion of each agenda item is given below :-

3. Grievances related to Ministry of Housing and Urban Affairs

Agenda A1: Agartala Smart City Limited (ASCL); A2:Ahmedabad Smart City, A3:Faridabad Smart City Limited (FSCL), A4:Greater Visakhapatnam Municipal Corporation (GVSCCL), A5:Guwahati Smart City Limited (GSCL), A6:Jaipur Smart City Limited, A7:KAKINADA SMART CITY CORPORATION LIMITED (KSCCL), A9:Nagpur Smart City Project, A11:PATNA SMART CITY LIMITED, A12:Pune Smart City Project, A13:Smart City Ahmedabad Development Limited

TEPC has complained that restrictive tender conditions were placed in tender against domestic players. Further PPP-MII should have been implemented. They have further complained that restrictive conditions have been imposed in the tenders, such as following :-

- (i) OEMs of proposed equipment/components should have existence in India for last five years as on 31st Mar 2016.
- (ii) OEMs for Routers and Switches of Data center/CCC/zonal offices should be in the Leadership quadrant in the latest available Gartner Magic Quadrant
- (iii) NDPP/ EAL3 (Foreign Certification) insisted to suit foreign suppliers
- (iv) OEMs who are amongst the top five in worldwide market share in terms of revenue.
- (v) Minimum installation base of 5000 switches across the globe.

The matter was deliberated in the meeting and it was noted that as per decision taken in CoS Meeting held on 21.05.2018 "*Central Ministries/Departments may specify in all Central Sector Schemes/ Centrally Sponsored Schemes (CS/CSS) that the procurement made by States and Local Bodies would come within the purview of PPP-MII Order, if that project / scheme is fully / partly funded by Government of India.*" Accordingly, M/o Housing & Urban Affairs was requested to issue the directions to the States regarding compliance of PPP-MII Order in Smart City Projects. Directions may also be issued that inclusion of only foreign certification, such as Gartner Magic Leader Quadrant / NDPP / EAL3 is restrictive against local suppliers and should not be included in the tender/ pre-qualification documents.

(Action : Ministry of Housing & Urban Affairs)

Agenda A8: MMRDA (Mumbai Metro)

TEPC has complained that eligibility criteria is stringent in the tender issued by MMRDA for Design, Manufacture, Supply, Installation, Testing and Commissioning of Train Control & Signalling and telecommunication system for Mumbai Metro Line 2A, 2B and

7 Project and it does not allow Domestic companies to participate in the tender. Restrictive tender conditions are placed in tender against domestic players. Further PMA should have been implemented.

The matter was deliberated in the meeting and it was noted that the MMRDA Project is being funded by ADB, which does not agree to PPP-MII Order. The issue regarding compliance of PPP-MII Order will be discussed separately with D/o Economic Affairs.

(Action : DIPP)

Agenda A10: Naya Raipur Development Authority

TEPC has complained that in the tender regarding procurement of telecom items by Naya Raipur Development Authority restrictive conditions have been imposed against domestic suppliers. These include (i) OEMs who are amongst the top 5 for world-wide market share in terms of revenue as per IDC / Similar organization's latest published report, (ii) Presence in the latest Magic Quadrant by Gartner. Further, PPP-MII Order is not applicable on the Project.

Representative of M/oHUA informed that the project is being undertaken by the State Government and there is no central funding in this project. It was noted that inclusion of only foreign certifications, such as Gartner Magic Leader Quadrant is restrictive against local suppliers and is not in compliance with PPP-MII Order. Further, tender condition that OEM who are amongst top 5 for world-wide market share is restrictive and discriminatory against domestic suppliers. Since the Project is not funded by the Govt of India, it was decided that MoHUA may issue advisory to the State Government to consider implementation of PPP-MII Order in the project.

(Action : Ministry of Housing & Urban Affairs)

Agenda A14-15 & 17-18: CPWD

TEPC has complained that in various tenders floated by CPWD for EPBX only foreign brands, such as, Nortel, Avaya, Siemens, Matrix, Panasonic, Cisco, Karel, Metal are being accepted, which is discriminatory against domestic manufacturers. They have requested that domestic manufacturers with approval of TEC for telecom products or other national specs should be considered as "approved makes" as a measure to incentivise domestic suppliers.

The matter was deliberated and it was noted that inclusion of foreign brands/companies in the 'pre-approved list' is against the spirit of 'PPP-MII Order' and only domestic 'MAKES' that meet the minimum local content should be considered for inclusion in the 'pre-approved list'. The technical specifications of the products need to be specified in NITs. DoT was requested to strengthen TEC, who should bring out specifications and list of approval of EPBX manufacturers, with requisite certification of TEC/STQC. It was also noted that various foreign companies who have set-up manufacturing facilities in India may be considered as Indian make for that particular product.

MoHUA was requested to issue directions to CPWD and the consultants associated with the projects for ensuring the above decision and also compliance of PPP-MII Order. It was also decided that the compliance of the order may also be ensured in the ongoing projects, wherever possible, by issuing a Corrigendum.

(Action : Ministry of Housing & Urban Affairs, CPWD)

Agenda A16: Construction of IIT Mandi campus

TEPC has complained that in various tenders floated by IIT Mandi are only foreign brands, such as, Nortel, Avaya, Siemens, Panasonic, which is discriminatory against domestic manufacturers. They have requested that domestic manufacturers with approval of TEC for telecom products or other national specs should be considered as "approved makes" as a measure to incentivise domestic suppliers.

The matter was deliberated and it was noted that inclusion of foreign brands/companies in the 'pre-approved list' is against the spirit of 'PPP-MII Order'; and only technical specification with benchmark of proper parameters that meet the minimum local content should be considered for inclusion in the 'pre-approved list'. Wherever it is felt that the required technical specifications and quality norms are not met indigenously, then only foreign equivalent may be included after due diligence. It was also noted that various foreign companies who have set-up manufacturing facilities in India should be considered as Indian brand for that particular product.

MoHUA was requested to issue directions to IIT, Mandi and the consultants associated with the projects for ensuring the above decision and also compliance of PPP-MII Order. DIPP may also write to Ministry of HRD for ensuring compliance of PPP-MII Order in respect of the project.

(Action : Ministry of Housing & Urban Affairs, DIPP, M/o HRD)

Agenda A19-20, 23: NBCC

TEPC has complained that in various tenders floated by NBCC, only foreign brands, such as NEC, Avaya, Alcatel, Nortel, Siemens, Panasonic are being accepted, which is discriminatory against domestic manufacturers. They have requested that domestic manufacturers with approval of TEC for telecom products or other national specs should be considered as "approved makes" as a measure to incentivise domestic suppliers.

The matter was deliberated and it was noted that inclusion of foreign brands/companies in the 'pre-approved list' is against the spirit of 'PPP-MII Order'; and only domestic brands that meet the minimum local content should be considered for inclusion in the 'pre-approved list'. Technical specifications with performance parameters as benchmarked should be provided alongwith the Certification of TEC/STQC. It was also noted that various foreign companies who have set-up manufacturing facilities in India should be considered as Indian brand for that particular product.

MoHUA was requested to issue directions to NBCC and the consultants associated with the projects for ensuring the above decision and also compliance of PPP-MII Order. It was also decided that the compliance of the Order may also be ensured in the ongoing projects, wherever possible, by issuing a Corrigendum.

(Action : Ministry of Housing & Urban Affairs)

Agenda A22: HSCC

The complaint is related to HSCC who is under Administrative control of Ministry of Health & Family Welfare (MoHFW). No representative of MoHFW was present. Hence the case was not discussed. It was decided to forward the grievance to Ministry of Health & Family Welfare for comments and necessary action.

(Action : DIPP, M/o Health & Family Welfare)

4. Grievances related to DEPARTMENT OF TELECOMMUNICATION

It was noted that Deptt. of Telecommunication has issued Notification dated for minimum local content and PMP on 29.8.2018. The notification is also applicable to all the Central Scheme/ Central Sector Schemes for which procurement is made by States and local bodies, if the project or scheme is fully or partially funded by Government of India including Universal Service Obligation Fund (USOF) funded projects.

Agenda B1 :Defence Ministry through BSNL

TEPC has raised following grievances in the IMPLS Tender floated by BSNL for Defence Ministry:-

1. Eligibility Condition Clause No.14.2.1 calls for submission of Type Approval Certification within 90 days from Date of submission of Bid
2. This Army IP-MPLS Tender CA/NFS/IP-MPLS/T-620/2018 dated 27/04/2018 is a re-tender of Army IP MPLS tender CA/CNP/NFS_IP-MPLS/T-454/2013 which was floated on 19 Nov 2013. In the latest tender, new TEC GR references are included just 15 days before the tender and gives no time to industry to get certification as per new GRS and domestic players become not eligible for the bids. [Only one foreign bidder would qualify because of this Type Approval certificate in 90 days]

TEPC has requested that BSNL could be asked to seek Type Approval Certification only after financials bids are opened or at the time of LOI so that domestic players get time to get their equipment type approved as per latest TEC GRs.

It was suggested that normally Type Test Certificate or any technical certification should be called before opening of the tender.

Representative of Ministry of Defence informed that there was no change in specification in the new tender. Further, 90 days' time for getting TEC certificate is sufficient and there is no need for any changes in the tender conditions.

Representative of D/o Telecommunication informed that they will examine the issue and send their comments to the Standing Committee.

The matter was deliberated and it was decided that any tender for telecom products will have to comply with the notification issued by D/o Telecommunication.

(Action : D/o Telecommunication)

Agenda B2 & B3: USOF

TEPC has raised the grievance regarding non applicability of PPP-MII Order in various tenders floated by USOF. It was noted that Deptt of Telecommunication has already issued notification for minimum local content and PMP on 29.08.2018. As per the notification, PPP-MII Order is applicable to projects under USOF.

Agenda B4 to B6: USOF, BSNL & BBNL

It was noted that these issues pertain to outstanding payment by USOF, BSNL and BBNL to the domestic companies as such do not come under the domain of PPP-MII Order.

Agenda B7: BSNL

TEPC has complained about restrictive clauses in BSNL Tender No. CA/IT-CFA/CDR/T-631/2018 on 08/06/2018, giving preference to foreign software OEMs.

It was noted that grievance has just been received. Representative of DoT informed that they will provide the comments once the grievance is received in their Department.

(Action: DIPP, TEPC)

5. Grievances related to Ministry of Railways

Agenda C1 : Railway Workshop at PATNA, CENTRAL RAILWAY, Bhusawal

TEPC has complained that Tender seeks OEM to be listed in Gartner's Magic Leader quadrant which is a foreign private. Clause is restrictive. Make & model suggested Cambium for Wi Fi & Mitel or equivalent for PBX. DECT support required when there is no frequency allocation for DECT in India. This is inserted to create entry barrier for domestic players & not a part of required BOQ.

The matter was deliberated in the fourth Standing Committee Meeting held on 27.08.2018 and it was decided that specifying one certification body, and that a foreign one like the Gartner leader magic quadrant, appears to be a restrictive clause against local suppliers. The Ministry of Railways should review the tender for suitable modification of this clause. Comments from Ministry of Railways are awaited.

(Action : M/o Railways)

Agenda C2 : (Central Railway, Bhusawal purchase of PBX system tender number BSL-SNT 07 2018 19 for Nasik Closing on 03.07.2018)

Agenda C3 : (Tender for IP PBX South East Central Railway, Bilaspur, Tender number 11185384 closing Date 06/09/2018)

TEPC has complained that only imported brands AVAYA, CISCO or NEC are allowed in above. Specifications are exact replica of a one imported brand Specifications are exact replica of a one imported brand.

It was noted that Inclusion of foreign brands/companies in the 'pre-approved list' is against the spirit of 'PPP-MII Order'; and only domestic brands that meet the minimum local content should be considered for inclusion in the 'pre-approved list'. Only technical specifications with performance parameters and /or Certification by TEC/STQC should be incorporated in NIT. Ministry of Railways was requested to review the Tender and provide their comments at the earliest.

(Action : M/o Railways)

6. Grievances related to Department of Financial Services

Agenda D : LIC (Tender number LIC-CO/IT-BPR/NW/RFP/2018-19/01 Dated: 06/08/2018 due on 11th September)

Seeks OEM to be listed in the latest Gartner's Magic Quadrant, which is an established discriminatory practice. Eligibility of OEM with 100 customer installations with IP phones and other pre qualifications are discriminatory.

The issue regarding inclusion of Gartner Magic Quadrant requirement was EARLIER deliberated in the fourth Standing Committee Meeting held on 27.08.2018 and it was decided that specifying one certification body, and that a foreign one like the Gartner leader magic quadrant, appears to be a restrictive clause against local suppliers. Department of Financial Services was requested to accordingly review the tender and issue necessary directions for compliance of PPP-MII Order.

(Action : D/o Financial Services)

7. Grievances related to Department of Commerce

Agenda E : GEM

Government marketplace GEMs allows space for imported PBX systems. This adds to confusion because Min. of Environment, Shillong is on record stating that they have bought from GEMs and it is Min of Commerce responsibility to ensure compliance. Why cannot GEMs restrict the marketplace for only PPP MII compliant products that meet Value Addition norms.

The matter was deliberated and it was noted that GEM has been directed to make the necessary changes in the GEM portal for compliance of PPP-MII Order. TEPC was also requested to provide specific details of the grievance so that the same may be taken up with GEM.

(Action : D/o Commerce)

8. Grievances related to MINISTRY OF PETROLEUM & NATURAL GAS

F1 – EIL [Tender for purchase of communication system for RFCL Tender No: SM/A747-555-YZ-MR-1510/163 dated 20th April 2018]

TEPC has complained that EIL has restricted the participation to select foreign OEMs. Further, tremendous entry barriers erected for domestic players to join that club. Tender supposedly under fast track monitored by PMO at DIPP intervention was scrapped but despite urgency not been floated again.

The matter was deliberated and it was noted that inclusion of foreign brands/companies in the 'pre-approved list' is against the spirit of 'PPP-MII Order'; and only domestic brands that meet the minimum local content should be considered for inclusion in the 'pre-approved list'. Only technical specifications with performance parameters and /or Certification by TEC/STQC should be incorporated in NIT. It was also noted that the tender was cancelled after the grievance was raised with EIL by DIPP. Ministry of Petroleum & Natural Gas was requested to review the pre-approved list of EIL including the procedure for selection of vendors and take the necessary action for compliance of PPP-MII Order.

(Action : M/o Petroleum & Natural Gas)

F2 - ONGC :

TEMA has complained that M/oPNG Public Procurement policy based on Local Content (PP LC) is not concurrently applicable with the MSME Policy, particularly regarding tender fee exemption & EMD waiver. TEMA has complained that clause 3.3 of PP-LC Policy stipulates that "the policy shall not include goods/services covered under MSME or Domestically Manufactured Electronic Products (DMEP) as those are already covered under specific policy. However, an option would be given in the tender for bidder to declare preference for seeking benefit under PP-LC/MSME/ DMEP.

The matter was deliberated and it was noted that PPP-MII Policy and MSME Policy for preference in Public Procurement is applicable concurrently and benefits of both the policies should be given to the domestic manufacturers. M/oPNG may accordingly make necessary changes in their PPLC Order, if required.

(Action : M/o Petroleum & Natural Gas)

F3 – ONGC : (PBX purchase at ONGC Dehradun & Mumbai in in 2013 & 2014. Followed up extensively by Coral, DOT as well as MeiTY. ONGC replied to DOT after 2 years that case is being examined. DOT wrote back implementation not discretionary yet ONGC did not relent Documentation evidence submitted.)

TEPC has complained that ONGC has asked for foreign certification, such as DECT interfaces and have circumvented the PPP-MII policy.

The matter was deliberated and it was noted that inclusion of only foreign certifications, such as NDPP/ EAL3 is restrictive against local suppliers and is not in compliance with PPP-MII Order. M/oPNG may review the grievance and provide their comments at the earliest.

(Action : M/o Petroleum & Natural Gas)

F4 – ONGC : ONGC tender No D16JC18014 for Supply, Installation, Commissioning & Integration of Wi-Fi system and Server Based VoIP Telephony system at ONGC, Ahmedabad Asset

TEPC has complained that only foreign brands, such as Cisco, Alcatel, Mitel, Awaya, Microsoft are acceptable in the tender. They have also complained that when the grievance was raised with them through DIPP, these foreign brands were removed but certification of Gartner Magic Quadrant was inserted. On further intervention the tender was cancelled.

The matter was deliberated and it was noted that inclusion of foreign brands/companies in the 'pre-approved list' is against the spirit of 'PPP-MII Order'; and only domestic brands that meet the minimum local content should be considered for inclusion in the 'pre-approved list'. Only technical specifications with performance parameters and /or Certification by TEC/STQC should be incorporated in NIT. It was also noted that inclusion of only foreign certifications, such as Gartner Magic Leader Quadrant, NDPP/ EAL3 is restrictive against local suppliers and is not in compliance with PPP-MII Order. M/oPNG may review the matter and may give directions to all the PSUs under them for strict compliance of PPP-MII Order particularly on above issues.

(Action : M/o Petroleum & Natural Gas)

9. Grievances related to DEPARTMENT OF DEFENCE/ DEPTT. OF DEFENCE PRODUCTION

G1 – Deptt. of Defence : (Tender 3036/ TAG Proj/ Replacement of EPABX/Sigs/2017-18 issued by Counter Insurgency Force (Delta) Signal Regiment)

TEMA has complained that reimbursement of Customs Duty, which is discriminatory against domestic manufacturers, was allowed. The matter was deliberated and it was noted that presently no more reimbursement of Custom Duty is allowed. The same was confirmed by representative of Deptt. of Defence. It was also noted that PPP-MII Order is applicable to all the Ministries including the Ministry of Defence. Further, if there is any tender where PPP-MII Order is not complied same may be brought before the Standing Committee.

G2 - Department of Defence Production : (Ordinance factories in tender No 109 PMETT18000063 Dt 6/7/2018 for supply, installation and commissioning of IP based epabx system at high explosives factory khadki & Similar tender for Kanpur factory)

TEPC has complained that purchase process restricted for imported brands NEC, Panasonic, Alcatel Karel in the abovementioned tender. Further, specifications tender are not generic. Features of KTS and operator are of the preferred make mentioned in the tender example number of keys, size and type of display, LED keys etc. which are frivolous.

The matter was deliberated and it was noted that inclusion of foreign brands/companies in the 'pre-approved list' is against the spirit of 'PPP-MII Order'; and only domestic manufacturers that meet the minimum local content should be considered for inclusion in the 'pre-approved list'. Only technical specifications with performance parameters and /or certification by TEC/STQC should be incorporated in NIT.

Representative of D/o Defence Production informed that the concerned agency has withdrawn the above tender.

G3 - Department of Defence/ Department of Defence R&D : (Tender enquiry CCE (R&D)N/NAV/ENQ II/MAJ/CCE 01/MAY/2016 17 for construction of Nau Sena Bhawan at Delhi Cantt)

TEPC has complained that approved vendor list has names of only foreign suppliers Toshiba Polycom & Siemens. Their grievance has been closed by Ministry of Defence, DSIR with the comment that it is a composite tender and building is being constructed using state of the art futuristic innovative latest equipment. Reply also states that PMA policy of DOT is not applicable on Defence.

It was categorically clarified that PPP-MII Order is applicable to all the Ministries including the Ministry of Defence. The matter was deliberated and it was noted that inclusion of foreign brands/companies in the 'pre-approved list' is against the spirit of 'PPP-MII Order'; and only domestic manufacturers that meet the minimum local content should be considered for inclusion in the 'pre-approved list'. Only technical specifications with performance parameters and /or certification by TEC/STQC should be incorporated in NIT.

(Action : Department of Defence R&D)

10. Grievances related to MINISTRY OF POWER

H1 – PGCIL : (Tender for Telecom Equipment (DWDM) Package-U under Augmentation of Telecom Backbone and access Network, E-Tender No. : CC-CS/842-SR2/TELE-3791/3/G6)

TEPC has complained that restrictive clause on prior experience through predatory qualifying criteria has been included in the above-referred Tender.

Representative of PGCIL informed that they are following DOT Policy for preference to domestic manufacturers. They have modified the tender conditions after receipt of the grievance of TEPC and the same has been issued recently.

The matter was deliberated and TEPC was requested to go through the revised tender conditions issued by PGCIL. If they have still any grievance in the revised tender conditions they may report the same to the Standing Committee.

(Action : TEPC)

H2 – PGCIL : (BSNL, PGCIL are at present in the process of upgrading their High Speed Communication Networks and Government will be major user)

TEPC has raised issue related to security concerns with potential selection of Chinese suppliers. They have stated that these Networks are used by organizations like DRDO, Intelligence Bureau, Indian Defense Forces, National Knowledge Networks and all Central/State Ministries for day to day confidential transactions. If we are dependent on Chinese products, Network enhancements, up-gradations, spares and services, we carry a threat of sabotage at the time of need.

Department of Telecommunication may examine this issue for further action, as necessary.

The meeting ended with the vote of thanks to the Chair.
