Compliance of Restrictions under Rule 144 (xi) of GFR 2017: Restrictions on procurement from a bidder of a country which shares a land border 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**, specified in Annex-I below.

II. "Tender" for the purpose of this Order will include other forms of procurement, except where the context requires otherwise.

III. "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.

IV. "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 per cent. 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 su0h 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.

Following self-declaration shall be given by all bidders along with tender.

Any false declaration and non-compliance of the above would be a ground for immediate termination of the contract and further legal action in accordance with the laws.

SELF DECLARATION CERTIFICATE FOR TENDERERS

(To be submitted on Bidders letter head)

Tender No.--------- TOD: ----------

"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*****.** The registration should be valid at the time of submission of bids **and** at the time of acceptance of bids.]

Date: Bidders Signature with Seal

Annex I: Competent Authority and Procedure for Registration

A. TheCompetentAuthorityforthepurposeofregistrationunderthisOrdershallbe the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade(DPIIT)*.

B. The Registration Committee shall have the following members*:

i. **An officer**, not below the rank of Joint Secretary, designated for this purpose by DPIIT, who shall be **the Chairman**;
ii. **Officers** (ordinarily not below the rank of Joint Secretary) representing the Ministry of Home Affairs, Ministry of External Affairs, and of those Departments whose sectors are covered by applications under consideration;
iii. **Any other officer** whose presence is deemed necessary by the Chairman of the Committee.

C. DPIIT shall lay down the method of application, format etc. for such bidders as stated in para 1 of this Order.

D. On receipt of an application seeking registration from a bidder from a country covered by para 1 of this Order, the Competent Authority shall first seek political and security clearances from the Ministry of External Affairs and Ministry of Home Affairs, as per guidelines issued from time to time. Registration shall not be given unless political and security clearance have both been received.

E. The Ministry of External Affairs and Ministry of Home Affairs 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 shall not be granted unless the representatives of the Ministries of Home Affairs and External Affairs on the Committee concur*.

H. Registration granted by the Competent Authority of the Government of India shall be valid not only for procurement by Central Government and its agencies/ public enterprises etc. but also for procurement by State Governments and their agencies/ public enterprises etc. No fresh registration at the State level shall be required.

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 registration of a bidder.

K. In transitional cases falling under para 3 of this Order, where it is felt that it will not be practicable to exclude bidders from a country which shares a land border with India, a reference seeking permission to consider such bidders shall be made by the procuring entity to the Competent Authority, giving full information and detailed reasons. The Competent Authority shall decide whether such bidders may be considered, and if so, shall follow the procedure laid down in the above paras.

L. Periodic reports on the acceptance/ refusal of registration during the preceding period may be required to be sent to the Cabinet Secretariat. Details will be issued separately in due course by DPIIT.

[*Note:

i. In respect of application of this Order to procurement by/ under State Governments, all functions assigned to DPIIT shall be carried out by the State Governmentconcernedthroughaspecificdepartmentorauthoritydesignatedby it. The composition of the Registration Committee shall be as decided by the State Government and paragraph G above shall not apply. However, the requirement of **political and security clearance as per para-Dshall remain and no registration shall be granted without suchclearance.**

ii. Registration granted by State Governments shall be valid only for procurement by the State Government and its agencies/public enterprises etc.and shall not be valid for procurement in other states or by the Government of India and their agencies/ public enterprises etc.]