

प्रशान्त कुमार सिंह, भा.प्र.से.
मुख्य कार्यकारी अधिकारी
P. K. SINGH, IAS
Chief Executive Officer



भारत सरकार
वाणिज्य एवं उद्योग मंत्रालय
गवर्नमेंट ई-मार्केटप्लेस
Government of India
Ministry of Commerce & Industry
Government e-Marketplace

DO No. 22/CEO-GeM/2024

1st March, 2024

Respected Madam/Sir,

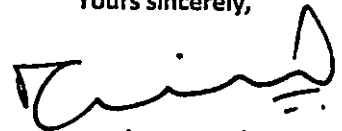
You are aware that GeM is the largest Central Public procurement platform for procurement of goods and services. In the current fiscal year GeM has already crossed yet another significant milestone of INR 3.5 Lakh Crore procurement GMV and over INR 7.5 Lakh Crore GMV since inception. This has only been possible with the support of all stakeholders including buyers and sellers. GeM continues to grow, and State Government Departments and State PSUs alike have been increasing their procurement via GeM, year on year.

2. However, of late, GeM has been receiving multiple complaints and representations with respect to violation of GeM General Terms & Conditions (GTCs) by different buyer organisations.
3. A majority of these pertain to seeking of EMDs from exempted sellers, seeking samples before award of order, mandating foreign certifications, and seeking tender fees, etc. by way of adding specific clauses in the Additional Terms and Conditions (ATCs) / Special Terms & Conditions (STCs), at the time of bid creation by the Buyer.
4. It may please be noted that the Additional Terms and Conditions are to be incorporated by the Buyer after approval of its Competent Authority in the Buyer Organisation, where the Buyer organisation is solely responsible for the impact of these additional clauses on the bidding process. Such impact may include restricting competition, enabling cartel formation leading to higher procurement cost and lack of transparency. It is reiterated that any clause(s) incorporated by the Buyer regarding the following shall be treated as null and void and would not be considered part of the bid:
 - i. Seeking Earnest Money Deposits (EMDs) in contravention to the exemption provided to such sellers under GeM GTCs (List of exempt categories as given in Annexure-I).
 - ii. Asking for any Tender fee/Bid Participation fee/Auction fee in case of bid/Forward Auction, as the case may be.
 - iii. Publishing Custom/BoQ bids for items for which regular GeM categories are available without any Category item bunched with it.
 - iv. Creating a BoQ bid for a single item.
 - v. Seeking samples with the bid or approval of samples during the bid evaluation process.
 - vi. Mentioning specific Brand or Make or Model or Manufacturer or Dealer name.
 - vii. Mandating submission of documents in physical form as a pre-requisite to qualify bidders.
 - viii. Creation of works contracts as Custom Bids/BoQ bids in the Services category.
 - ix. Mandating foreign/international certifications even in case of existence of Indian Standards without specifying equivalent Indian Certification/standards.
 - x. Seeking experience from a specific organisation/department/institute only or foreign/export experience.
 - xi. Creating bids for items that are from irrelevant categories.
 - xii. Incorporating any clause against the MSE policy and Preference to Make in India Policy.
 - xiii. Reference of conditions published on any external site or reference to external documents/clauses.
 - xiv. The definition of Class I and Class II suppliers in the bid is not in line with the extant Order/Office Memorandum issued by DPIIT in this regard.

5. Further, should any seller have any objection/grievance against these additional clauses or otherwise on any aspect of a bid, they can represent against the same by using the Representation Window provided in the bid details field in the Seller dashboard after logging in as a seller within 4 days of bid publication on GeM. The Buyer is duty bound to reply to all such representations and would not be allowed to open bids if he/she fails to reply to such representations.
6. The above-mentioned points are also printed on every single bid created on GeM and are an integral part of a bid.
7. Further, when representations are received regarding bid conditions not conforming to GeM GTCs, GeM is bound to scrap such bids, when clauses mentioned in the bids are restrictive in nature or are in violation of procurement rules of the Government of India. It has also been noted that when a response is sought from the buyer for such bids, some of the buyers justify these wrongly created bids citing the State's procurement policy/rules.
8. It is pertinent to mention that the State Government has also signed a Memorandum of Understanding (Annexure II) with GeM wherein the State Government has committed to:
- The procurement rules/procedures of the State Government shall be amended in such a way that, to the maximum extent possible, they shall be in sync with the procurement rules/procedures of the Government of India.
 - Make changes to the procurement rules of the State Government, in line with Rule 149 of GFR, 2017 of the Government of India.
9. Therefore, in order to ensure fair and transparent procurement, the State Government may remove any enabling provision in its procurement policy that may lead to inclusion of any of the conditions mentioned under para (4) above. All Buyer organisations may also be adequately sensitized accordingly.
10. Looking forward to your continued support and cooperation.

warm regards,

Yours sincerely,



(P.K. Singh)

To,

All Chief Secretaries of all States/UTs.

Annexure I

Following categories of Sellers shall be exempted from furnishing Bid Security/EMD:

- i. Micro and Small Enterprises (MSEs) who are holding valid Udyam Registration and are manufacturer of the offered Product General Terms and Conditions on GeM 4.0 (Version 1.14) dt 31st Jan 2024 or Service (Primary Product / Service - in case of bunch bid with total value wise evaluation) and give specific confirmation to this effect at the time of bid submission and claim EMD exemption and whose credentials are validated online through Udyam Registration website of Ministry of MSME and also through supporting document uploaded during bidding process and validated by the Buyer. State Government Buyers may, however, choose to exempt only MSEs from the State of Bid Inviting Authority by specifying the same in ATC of the Bid. In case no such ATC is included, eligible MSEs of all states are exempted.
- ii. Start-ups as recognized by Department for Promotion of Industry and Internal Trade (DPIIT), holding valid Startup Recognition Certificate which is to be uploaded while bidding and claiming EMD exemption and to be validated by the Buyer. Bidder to ensure that turnover for any of the financial years has not exceeded beyond limits prescribed in the certificate / Start Up scheme of DPIIT.
- iii. KVIC, ACASH, WDO, Coir Board, TRIFED and Kendriya Bhandar.
- iv. Sellers who have got their credentials verified through the process of Vendor Assessment by Vendor Assessment Agencies for the Primary Product / Primary Service for which Bid / RA has been invited and holding valid Vendor Assessment or Vendor Assessment Exemption Report / confirmation (Seller to upload VA report / VAE confirmation to be validated by the Buyer).
- v. Sellers / Service Provider having annual turnover of INR 500 Crore or more, at least in one of the past three completed financial year(s)
- vi. Sellers / Service Providers holding valid BIS License for the Primary Product Category whose credentials are validated through BIS database and through uploaded supporting documents to be validated by the buyer.
- vii. Central / State PSUs.
- viii. Seller / Service Provider registered with designated Agency / Authority as specified in the bid document by the Buyer – such bidder shall have to upload scanned copy of relevant valid registration document in place of Bid Security document while bidding.

Note:

- 1) No EMD to be taken from exempt category of sellers even by way of specific clauses mentioned in ATC / STC. Such clauses which are against the GeM GTC, will be treated as null and void.
- 2) However, State Government / State Autonomous / State Local Bodies / State PSU / Cooperatives may choose to seek EMD from MSE bidders by specifying the same in ATC / STC of the Bid. In case no such clause is included in ATC / STC, EMD exemption as per exemptions listed above shall prevail.