

PUBLIC PROCUREMENT ORDER

DPIIT wants 'local content' calculation narrowed

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The industry department has written to the Cabinet secretariat, asking it to do away with certain components of services in calculating local content under public procurement rules.

The components include transportation, insurance, installation, profit, commissioning, training, and after-sales support.

Including such services in the calculating local content is believed to lead to overestimating value added through domestic manufacturing. This allows companies to meet local-content requirements without necessarily indigenising production, which undermines the goal of promoting local manufacturing and production.

In the 16th meeting of the standing committee to review the implementation of Public Procurement (Preference to Make in India) Order held last month, the Department for Promotion

DECODING THE STANCE

► **DPIIT says including such services like transportation, insurance, and installation could undermine the intent of the public procurement order**

► **It may lead to overestimation of actual value through domestic manufacturing**

► **Such inclusions can make even imported products qualify as Class-I or Class-II local suppliers**

of Industry and Internal Trade (DPIIT) had objections to the notification by the Ministry of Petroleum and Natural Gas dated April 26, 2022, which allows the inclusion of components such as the Annual Maintenance Contract (AMC), the Comprehensive Maintenance Contract (CMC), training, transportation, and other services in the calculation.



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“The DPIIT informed that a proposal has been sent to Cabinet Secretariat for accepting to remove components of transportation, insurance, installation, profit, commissioning, and training and after sales services support like AMC/CMC as local value addition for suppliers offering imported products,” showed the minutes of the meeting. Turn to Page 7 ►

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The meeting was chaired by DPIIT Secretary Rajesh Kumar Singh.

Queries sent to the Cabinet secretariat and the DPIIT didn't elicit any response till press time.

The DPIIT has contended that such inclusion undermines the intent of the Public Procurement Order by making even imported products qualify as Class-I or Class-II local suppliers.

At present, a Class-I local supplier is defined as one whose goods, services, or works have at least a 50 per cent local content. This class of suppliers is given the highest preference in public procurement. A Class-II local supplier is one whose goods, services, or works have a 20 per cent local content but less than 50 per cent. A non-local supplier is a supplier whose goods, services, or works have less than a 20 per cent local content. This class is generally the least preferred in public procurement under the Public Procurement Order, unless there are no available Class-I or Class-II local suppliers for a specific requirement.

"Industry raised the matter with the government in the past. In some cases, the services component is as high as 40 per cent and the company has to add just 10 per cent local content to become a Class-I local supplier. Since the public procurement order is a Cabinet decision and not a law, ministries interpret according to their own preference. Greater clarity will help in avoiding circumvention of the order in letter and spirit," a senior private-sector executive privy to the matter said.

However, representatives from the Expenditure Department of the Ministry of Finance defended the petroleum ministry order, indicating that it was designed to incentivise local-content growth in oil and gas projects in India. They noted the exemption limit of ₹1 crore, as stipulated in the petroleum ministry order, was higher than the typical ₹5 lakh exemption limit provided by other ministries.

The standing committee noted the Department of Expenditure's views, agreeing that there was no need to align the exemption limit in the petroleum ministry order with the Public Procurement (Preference to Make in India), Order. However, the committee maintained it would wait for approval from the committee of secretaries (CoS) regarding the proposed changes to the calculation of local content.

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The Commission had said: "It needs to be investigated whether the alleged exclusive arrangements, deep-discounting, and preferential listing by the OPs are being used as an exclusionary tactic to foreclose competition and are resulting in an appreciable adverse effect on competition contravening the provisions of Section 3 (1) read with Section 3(4) of the Act."

"The DG report in its due course follows a long-established process while investigating anti-competitive allegations. Even in this case, it would be tough for a regulator to define the e-commerce space and establish anti-competitive allegations against marketplaces as it is a vibrant sector with multiple players," said K Narasimhan, advocate, Madras High Court.

"If we apply current logic, then the Indian Premier League is colluding with Jio to air content on a single channel. The regulator thus far has remained objective and the same approach shall