

## **Impact of Public Procurement (Preference to Make in India) Order, 2017 on members of AMCHAM India**

### **Background**

The Department for Promotion of Industry & Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India issued the Public Procurement Order, 2017 (last revised on September 16th, 2020) to encourage manufacturing of goods and services in India, with a view to enhance income and employment. *The order lays down criteria for purchase preference linked to local content* for central ministries, departments, central public sector undertakings etc. to follow. Based on this order, various nodal ministries/departments have issued notifications on procurement criteria for their industries/sectors. Details of the public procurement order and the corresponding notifications issued by various nodal ministries/departments can be viewed [HERE](#)

AMCHAM invited views of its members across sectors on the implications of these procurement notifications on their companies in securing business from government entities. Their concerns and suggestions have been compiled sector wise for consideration.

### **HIGHLIGHTS OF SECTOR WISE CHALLENGES ARE AS FOLLOWS:**

#### **Information, Communication & Technology (ICT)**

- **Modern IT Hardware:** For all tenders under INR 200 crore (~USD 27,260,020), only suppliers with at least 20-50% local content are eligible. This is next to impossible given that chips and many active components are not made here
- **Software-as-a-service or Platform-as-a-service:** Computation or classification of 'Local Content' for software-as-a-service or platform-as-a-service is yet to be provided by MEITY. However, software development in the modern technology supply chains or development lifecycle are often transnational, undertaken by global teams, involving multiple stakeholders in different geographies. It is practically impossible to determine the contribution of locations to the development of software and cannot be broken down in terms of local content percentage or slotted into specific country of origin. All the US companies have made huge investments in India including investments into large datacentres. Any policy change should ensure that further investments are encouraged and ease of doing business doesn't get affected negatively. Industry's suggestions on a workable formula to determine local content have been turned down between DPIIT and MeitY. A coordinated effort closely involving industry is required to move forward on this issue
- **After-sales service:** Procurement policy prohibits inclusion of any after-sales service into calculation of the local value of the product sold. This creates a significant negative impact to the local ecosystem
- **Unfair applicability of Make in India (MII) clause on products not notified by MeitY in its Sept 2020 Order:** Products which are not mentioned in the MEITY order, such as Storage, Hyper Converged Infrastructure (HCI), Backup Appliance, Backup Software, Workstation, Application & database Software, to name a few, are also listed under the Make in India clause on [Government e Marketplace](#). However, due to the lack of domestic manufacturing of these products - a fact highlighted by their exclusion from the MeitY order – this requirement has created obstacles which hinders the procurement of these products by various agencies and departments and adversely impacts supplier operations

- **Exclusion of services in value addition for turnkey/ System Integration (SI) contracts:** Exclusion of value-added services such as transportation, insurance, installation, commissioning, training and after sales services like AMC/CMC for domestic products impact eligibility as Class 1/ Class 2 suppliers. Such services should qualify for inclusion in the overall computation of the domestic value add content in domestically manufactured products
- **Misrepresentation of local value additions:** The current declaration process requires self-assessment of domestic content. In the recent past there have been various cases of misrepresentation related to value addition. There must be a mechanism to validate claims of manufacturers at a technical committee level along with stringent audit mechanisms
- **Consider exemption sought by one procuring department as a fair assessment of local capacity and capability:** Over the last year, many procurement departments have raised issues regarding inability to procure due to local value addition norms. we suggest that a pan-procurement body exemption framework be drafted that allows for software and components and equipment lacking sufficient local production to be procured from vendors with value add <20%
- **Restriction on bidders from countries sharing India's land border owing to geo-political issues:** These restrictions require mandatory registration of all such bidders / suppliers, with the Indian government, as a pre-condition to participation in government tenders and very cumbersome

### Defence, Oil & Gas, Precision Electronics

- **Limited internal demand for high end technology and low volume standalone equipment:** With limited internal demand, no guarantee for repeat orders or regular new orders, most MNCs are presently languishing outside the 50% and even 20% local content. This will prevent India from obtaining next generation technologies in Defence, Oil & Gas and Precision Electronics
- **Government e Marketplace (GeM):** The recent amends in the GeM portal does not allow MNCs to participate unless they have local manufacturing. This prevents customers to assess the market availability of cutting-edge technology
- **Prevent access to advanced technologies and impact research and innovation of Govt./Research Institutes:** Government should consider exempting high technology companies (Analytical/Diagnostic Instrumentation) from DPIIT public procurement orders, due to absence of comparable local manufacturing

### Medical Devices

Department of Pharmaceutical (DoP) issued a notification dated 09.11.2020 F.No.31026/36/2016-MD followed by two other circulars dated 16<sup>th</sup> Feb. 2021 and March 25<sup>th</sup>, 2021, restricted procurement of medical devices with less than 25 % local content and subsequently mandated procurement of 130 diagnostics products and 19 categories of Medical Devices from Class I local supplier only, with local content 50 % and above

- **Import dependency of Medical Devices, a global phenomenon:** No country including the developed countries like USA, Japan, China, EU, UK is free from import dependency and requires mutual trading to meet the domestic demand. India has overall 70 % import dependency and for class C and D devices 86 % to 90 % import dependency (as per the report of NITI Aayog 2021 and

DoP report of 2020). The Public Procurement orders as notified, has thus created a huge demand and supply situation in Public Procurement of Medical Devices In the following manner:

1. **Denial of life-saving latest generation medical devices to critically ill patients:** The PPO is preventing the critically ill patients getting treated in the secondary and tertiary referral hospitals from the benefits of the latest generation lifesaving medical device which may be acutely required for his/ her survival and better outcome
  2. **Affecting Clinical Research and Academic Activities:** The academicians and students will be denied the opportunity of training, evaluating, doing research, and improving the standard treatment protocols for the larger group of patients. If continued, this will create a huge gap in skills and will affect the clinical research degrading the academic excellence of these institutes
- **The diagnostic list of 130 kits/ equipment:** The 16th of Feb. 2021 notification as mentioned above, cuts off the supply of the latest diagnostic kits from the supply chain of Public Procurement. Every diagnostic kit varies from the other in sensitivity, specificity, accuracy, process of handing samples (closed or open system) and time taken to provide the results. Again, the central hospitals will be denied the latest medical diagnostic equipment and kit which would have enhanced the ability of the hospitals
  - **Medical devices under 19 HSN codes,** notified under March 25th notification are not monolithic. Several different devices are imported under the same HSN code and many of the devices imported under those HSN code are not Made in India at all. Hence patient seeking life-saving treatments will be denied the benefits of these medical devices
  - **Medical Device Exemption List of 371 medical devices:** In this backdrop DoP has attempted to create a list of 371 medical devices mainly electronic equipment for PPO exemption so that the procuring agencies can procure the same, without going the lengthy process of GTE, which is a welcoming move, Vide No F 4/1 12022-PPD (pt.) dated 21.06.2022
  - **Expansion of the GTE list for medical devices through larger consultancy:** Due to limited consultation with limited stakeholders and without the involvement of specialist clinicians and bio-medical expert the GTE list of 371 medical devices is far from been complete. The list requires further addition and revision to include other equipment, latest catheters, diagnostic kits, latest technologies like robotics, monitors, and latest generation long durable implantable especially in the segment of cardiology/ cardiac surgery, orthopaedic, neurology and other critical care segments- which are not made in India at all, or we have insufficient manufacturing capability
  - Since Medical device is a capital-intensive industry with a long gestation period to break even and requires an eco-system to develop capabilities to undertake R & D activities, it will take some time to develop local capacity. Hence It is suggested to be more inclusive to allow the hospitals to adopt to the latest medical technologies and concentrate on increasing medical device usage in India through development of hospital infrastructure and improving the depth and span patient reimbursement