राजस्थान सरकार
जल संसाधन विभाग

राजस्थान लोक उपाधि ने पारदर्शिता अधिनियम 2012 एवं नियम 2013 (बिनतु संख्या 83) के अन्तर्गत दायर अपील संख्या 23/2017-18

M/s KGI Associates (JV)

बनाम

Chief Engineer, Water Resources (North), Hanumangadh

मुख्य अभियंता, जल संसाधन उद्देश, हनुमानगढ़ के द्वारा Construction of cross regulator at RD 335.500 of IGMN including construction of diversion channel on R/S of IGMN from RD 334.750 to 336.250 निविदा आमंत्रित की गई।

निविदा की तकनीकी बिड में मूल्यांकन समिति द्वारा लिखे गये निर्णय के संदर्भ में M/s KGI Associates (JV) द्वारा राजस्थान लोक उपाधि ने पारदर्शिता अधिनियम 2012 एवं नियम 2013 के अन्तर्गत अधिघोषणस्वरूप (प्रथम अपील प्राधिकारी प्रमुख शासन सचिव, जल संसाधन, राजस्थान, जयपुर) के समाधान में अपील दायर की एवं नियमनादुर्गति द्वारा प्रक्रिया नम्बर 034085 दिनांक 23.03.2018 राशि रूपये 2,500/– पैसे जमा करवाई गई।

अपील को नियमनादुर्गति अपील संख्या 23/2017-18 पर दर्ज कर मुख्य अभियंता, जल संसाधन उत्तर, हनुमानगढ़ (उपाधि संस्थाप), M/s KGI Associates (JV) (अपीलार्थी) एवं M/s Goodwill Advance Construction Pvt. Ltd., Kota (प्रभावित पक्ष) को अपना पक्ष रखने के लिये नोटिस संख्या एफ.2(31)एप्स/आई/सेल/18/1355-56 दिनांक 27.03.2018 जारी कर दिनांक 03.04.2018 को 5.00 बजे अधिघोषणस्वरूप के कारण उपस्थित होने का समय नियत किया गया।

निर्धारित दिनांक 03.04.2018 को अपीलार्थी की तरफ से श्री मनकीत सिंह उपस्थित हुए एवं उपाधि संस्था की ओर से श्री रामसिंह, अभियंता, जल उपस्थित वृत्त, श्रीकुंजराय एवं प्रभावित पक्ष की ओर से श्री पंकज सेठी उपस्थित हुए। अपीलार्थी की तरफ से अपनी दिखाई अपील के साध-साध अपना विरोध मौखिक पक्ष रखा गया। उपाधि संस्था की तरफ से मुख्य अभियंता, जल संसाधन उद्देश, हनुमानगढ़ द्वारा अपील में उदाये गये बिनतुओं एवं निविदा के संबंध में लिखित प्रतिवेदन प्रस्तुत किया तथा साध ही मौखिक बहस की गई।

Grounds of the Appeal raised by the Appellant:

<table>
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<tr>
<th>Sr. No.</th>
<th>Evaluation Item No.</th>
<th>Objection</th>
<th>Clarification</th>
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<tbody>
<tr>
<td>1</td>
<td>2- Share in J.V.</td>
<td>Lead Partner 50% &amp; other each member should have min. 25% share</td>
<td>As per 2.1 Qualification Criteria- atleas 1 member shall meet 50% of requirement and all members shall meet 25% of requirement. (RFB Pg. 60)- This clause</td>
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</table>
only prescribe the qualification criteria it is not a base of share of JV members.

As per Bid Date Sheet point No. ITB 4.1(a) “Maximum number of members in the Joint Venture (JV) shall be; Three (3) and lead bidders shall have minimum 50% share”. (RFB Pg. 48)

In the given RFB, there is nothing mentioned regarding the mandatory share of 2nd and 3rd member of JV. Only the qualifications of 2nd and 3rd member have been prescribed as stated above. However we kept the share of 3rd member as per his specialisation in the field in relation to cost of scope of work of his field i.e. mechanical job. So, rejection of our bid on this ground is not reasonable.

<table>
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<th>2</th>
<th>3</th>
<th>Place of JV registration- Hanumangarh</th>
<th>As per RFB clause 4. these obligations are applicable on the successful bidder. IRFB Pg. 16-17) So, the rejection of bid on this ground is totally vague.</th>
</tr>
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<tbody>
<tr>
<td>3</td>
<td>12(iv)</td>
<td>Well point continous round the clock 24x7 dewatering for RCC in waterlogged strata.</td>
<td>We have submitted the work of “Reconst. of 5 Nos. VR Bridges, 4 Nos. WC X-ing &amp; 23 Nos. Field Path Xing etc...” in which dewatering work has been executed by the way of wellpoint system consists of a series of small diameters wells (known as wellpoints) connected via a header pipe, to the suction side of a suitable wellpoint pump. The pump creates a vacuum in the header pipe, drawing water up out of the ground”. However the revised certificate consisting full nomenclature of this scope of work is hereby submitted. (Annexure-1)</td>
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<tr>
<td>4</td>
<td>12(vii)</td>
<td>S/E/I/F of Sluice regulator gates (316 Sqm of if measured in weight in Metric Ton 144.03 Mt.)</td>
<td>Against this requirement, we have submitted the 3 experiences of 461.56 sqm, which is almost 150% of the requirement. The “OR” term mentioned in requirement for Sqm/Mt. (RFB Pg. 66). Then there is no question arise to mention the both units. However, the certificates showing the weight also are attached herewith for your kind consideration.</td>
</tr>
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</table>

**Procuring Entity’s Reply:**

For the first ground, the respondent Chief Engineer, Water Resources (North), Hanumangarh has replied in writing that the members of Joint Venture has been required to fulfill criteria as per Section III- Qualification Criteria as regards experience/financial capability and in the openion of the Evaluation Committee the each JV member should
bear responsibilities in proportion of qualification criteria i.e. minimum 25%. The share of 3rd member found to be only 10% therefore the Evaluation Committee reckoned the bidder not fulfilling this criterion.

Regarding second ground of the appeal the respondent has replied in writing that as per Section II BDS (ITB 4.1(h) there is provision regarding place (Hanumangarh) where agreement of JV to be registered. The firm has violated this clause having registered JV at Bhatinda.

For the third ground of the appeal the respondent has replied in writing that as per clause 4.2(b) of section III the qualification criteria was required for “Well point continuous round the clock 24x7 dewatering for RCC in waterlogged strata” whereas as per experience certificate of Executive Engineer, Canal Lining Division, Abihar No. 240/07.03.2018 produced by the bidder did not fulfil this criterion and found to be non responsive.

Regarding fourth ground of the appeal, the respondent has given reply in writing that as per clause 4.2(b) of Section III the qualification criterion was 316 Sqm or if measured in weight in Metric ton 144.03 M.T. The bidder submitted the experience of 461.56 Sqm only and in view of the Evaluation Committee the experience in Sqm did not fulfil this criterion without having weight of 144.03 MT. As such the bidder was rightly liable to be non responsive.

An application was submitted by M/s Goodwill Advance Construction Co. Pvt. Ltd. Kota with the request to permit their firm for the appearance as 3rd party in the matter to safe guard their interest.

Decision

Being the participant in the bid of the work and declared as lowest responsive bidder by the Bid Evaluation Committee, M/s Goodwill Advance Construction Co. Pvt. Ltd. Kota is allowed as party in this matter.

The representative of impleaded party M/s Goodwill Advance Construction Co. Pvt. Ltd. Kota submitted a written argument. Besides the grounds dealt above an issue of not submitting the Registration Certificate in technical part of the online bid submission was raised by the third party. The representative of the procuring entity submitted during the hearing that out of three partners of JV, the Registration Certificates of two bidders were uploaded and Registration Certificate of the third partner was received later on. This is in the contravention of the provision of ITB 11.2(i). Another different issue raised was lack of indicating precise role of the members of JV. Regarding points raised by M/s Goodwill Advance Construction Co. Pvt. Ltd. Kota, I do not find any merit in the arguments.

The appeal was filed by Appellant on four grounds.

The first ground of the appeal filed by the Appellant is with regards to the evaluation criterion no. 2 ‘Share in JV’. The appellant has submitted that as per the ITB 4.1 (a) of Section II – Bid Data Sheet (BDS), the requirement of Joint Venture (JV) is prescribed as maximum number of members in JV shall be three and lead bidder shall have minimum 50% share, therefore it should not be connected with the financial qualification criterion provided at 3.1 of Section III – Evaluation and Qualification Criteria. After hearing of the arguments and inspection of the record I found that the Bid Evaluation Committee has misinterpreted the financial criterion given at 3.1 and wrongly connected with the share of JV partners.

The second ground of the appeal is the rejection of technical bid on the basis of evaluation criterion no. 3 ‘Place of JV registration’. As per the ITB 4.1 (h) of Section II –
Bid Data Sheet (BDS), the place where the agreement to form JV to be registered is Hanumangarh (Rajasthan). The appellant submitted that the requirement to get the JV registered would arise in the case of successful lowest bidder and before the issue of work order, the JV would be registered at Hanumangarh (Rajasthan). I found this in order with the provisions of the bid document and this ground therefore appears prima facie acceptable.

Another two grounds are the rejection of technical bid on the basis of evaluation criteria no. 12(iv) & (vii). The procuring entity submitted during the hearing that the certificate appended with the bid shows the quantity of ‘dewatering’ in place of ‘well point continuous round the clock 24x7 dewatering for RCC in waterlogged strata’. Though certificate does not specify dewatering but work was related with construction of Village Road Bridge (VRB) on Toe drain, it can be considered for the dewatering of subsurface water. This ground appears prima facie acceptable. Evaluation criterion 12(vii) stipulates the quantity of supply, erection, installation and fixing of gates in Sqm. or weight and the certificates submitted by the appellant with the bid show the quantity of gates in Sqm., which is in order to the evaluation criterion and hence this ground raised by Appellant appears clearly acceptable.

In view of the above, there appears to be prima facie inaccurate interpretation during evaluation at the level of Procuring Entity. I therefore consider it appropriate to remand the case to Procuring Entity for re-examination and appropriate decision thereafter.

Date: 04.04.2018

(Shikhar Agrawal)
First Appellate Officer &
Principal Secretary to Govt.