मुख्य अभियंता, जल संसाधन उत्तर, हनुमानगढ़

मुख्य अभियंता, जल संसाधन उत्तर, हनुमानगढ़ के द्वारा Rehabilitation and Modernization of Karnisingsh disty. from KM 3.935 to 33.336 (Tail) of Bhakra Canal System निविदा आमंत्रित की गई।

निविदा की तकनीकी बिढ़ में मूल्यांकन समिति द्वारा लिये गये निर्णय के संदर्भ में M/s RNC-MDBPL Joint Venture द्वारा राजस्थान लोक उपायन में पारदर्शिता अधिनियम 2012 एवं नियंत्रण 2013 के अंतर्गत अद्यावस्थाकारक (प्रथम अपील प्राधिकारी मुख्य अभियंता, जल संसाधन, राजस्थान, जयपुर) के समक्ष अपील दायर की एवं नियमानुसार डिमाण्ड ग्राफ्ट नब्बे 390433 दिनांक 07.12.2017 से राशि स. 2,500/- फीस जमा करवाई गई।

अपील को नियमानुसार अपील संख्या 15/2017-18 पर दर्ज कर अपीलार्थी मुख्य अभियंता, जल संसाधन उत्तर, हनुमानगढ़ (उपायन संस्था) तथा M/s RNC-MDBPL Joint Venture (अपीलार्थी) को अपना पता रखने के लिए नोटिस संख्या एक. 2(47)एत्स/आई/सेल/5735 दिनांक 21.12.2017 जारी कर दिनांक 26.12.2017 को प्रातः 11:30 के अद्यावस्थाकारकों के कक्ष में उपस्थित होने का समय नियत किया गया।

निर्धारित दिनांक 26.12.2017 को अपीलार्थी की तरफ से श्री हरदयाल चिंड उपर्युक्त हुए एवं उपायन संस्था की ओर से श्री कृष्ण लाल जावड़ भारत, मुख्य अभियंता, जल संसाधन उत्तर, हनुमानगढ़ उपस्थित हुए। अपीलार्थी की तरफ से अपनी लिखित अपील के साथ-साथ अपना विस्तृत मौखिक पता रखा गया। उपायन संस्था की तरफ से मुख्य अभियंता, जल संसाधन उत्तर, हनुमानगढ़ द्वारा अपील में उठाये गये बिन्दुओं एवं निविदा के संदर्भ में लिखित प्रतिरोध प्रस्तुत किया तथा साथ ही मौखिक बहस की गई।

अपीलार्थी की तरफ से अपील में उठाये गये बिन्दु निम्नानुसार हैं :-

We are not satisfied with the bid evaluation done for the above cited tender case by the Chief Engineer (North), WRD Hanumangarh. We challenge the bid evaluation on the following grounds :-

(1) Under bid requirement clause 2.4.2(a)

The joint-venture could qualify under this requirement under two experience certificates.

(b) Certificate no. nil dated 09.01.2016 completed by Abhi Engineering amounting to Rs. 27.34 crore.

(Note:- The other certificates do not meet the minimum requirement of experience under three contacts amounting to Rs. 16.55 crore.)

The certificate (a) is related to the work allotted to M/s Sunil Hi-tech Engineers Ltd. but as sub-contractor it was completed by M/s Abhi Engineering. Moreover the work is related Ash Bund and fails in complexity. The above certificate does not meet this requirement as it is performed under sub-contractor and the ITB clause-33 has been deleted from the bid and substituted with fresh clause-33.1 as such the contract completed by the sub-contractor cannot considered under the above requirements.

The other experience certificate at (b) is issued by a Private Limited Company namely PMC Projects Pvt. Ltd. which cannot be relied upon and being its authenticity questionable. The certificates mandatorily be issued by a Central Govt. Department. State Govt. undertaking Enterprises.

This way the Joint Venture fails against experience at its credit of one work of Rs. 2482.80 lac, two works of Rs. 2069 lac or three works of an amounting of Rs. 1655.20 lac. Furthermore, both the above work certificates fail in terms of similar complexity and characteristics being related to construction of Ash Bund and Electric Tower.

(2) Under Bid Requirement Clause 2.4.2(b)

The joint venture fails to meet the requirement of Key-Activities specified as below:-

- Earth work in cum - 1117621
- Production of Concrete in cum - 10976
- Brick Masonry in cum - 10259
- Lining in sqm - 280031

The Joint Venture has submitted with the bid claiming that it meets the Key Activity requirement and submitted a tabular chart whereas the reality is as below :-

(A) Performance by Lead Partner M/s DRRC

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Experience Certificate</th>
<th>E/W in cum</th>
<th>P/C in cum</th>
<th>Brick Masonry in cum</th>
<th>Lining in sqm</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Experience Certificate no. nil dated 09.12.2015 issued by BGR Energy</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>The performance cannot be added being executed in capacity of Sub-contractor and clause to this effect ITB 33 is deleted from this bid. Moreover the BGRE is not a Central, State Govt. Dept. but a Private company which cannot be relied upon.</td>
</tr>
<tr>
<td>2</td>
<td>Experience Certificate no. 444 dated 17.11.2017 issued by NUC, Power Corp. Ltd.</td>
<td>-</td>
<td>-</td>
<td>904</td>
<td>131990</td>
<td>No Comment.</td>
</tr>
<tr>
<td>3</td>
<td>Experience Certificate no. nil dated 21.07.2016 issued by BHEL amounting to Rs. 66924813/-</td>
<td>677463</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>No Comment.</td>
</tr>
</tbody>
</table>
(B) Performance by M/s ARCPL

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Experience Certificate no.</th>
<th>E/W in cum</th>
<th>P.C.C. in cum</th>
<th>Brick Masonry in cum</th>
<th>Lining in sqm</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Experience Certificate no. 412 dated 07.09.2017 issued by MSPGCL</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>The performance cannot be added being executed in capacity of Sub-contractor and clause to this effect ITB 33 is deleted from this bid.</td>
</tr>
<tr>
<td>2</td>
<td>Experience Certificate no. 705 dated 01.08.2016 Amt. 6.18 Crore. issued by MSPGCL</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>No quantity can be added as the ITB clause 33 has worked as sub-contractor of BGR is himself a Pvt. Company.</td>
</tr>
<tr>
<td>3</td>
<td>Experience Certificate no. 418 dated 08.09.2017 Amt. 14.32 Lac. issued by MSPGCL</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>No Comment.</td>
</tr>
<tr>
<td>4</td>
<td>Experience Certificate no. nil dated 09.01.2016 Amt. 27.34 Lac Crore. issued by PMC Projects.</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>The work quantity cannot be considered being done under Pvt. Ltd. and not by Central Govt., State Govt. or Govt. undertaking.</td>
</tr>
<tr>
<td></td>
<td>Total (B)</td>
<td>1044957</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total (A)+(B)</td>
<td>1722420</td>
<td>-</td>
<td>9682</td>
<td>131999</td>
<td></td>
</tr>
</tbody>
</table>

The above chart along with remarks against the work certificate prove beyond doubt that the Joint-Venture bid is non-responsive. Apparently the evaluation was done omitting the directions enshrined in the bid for acceptance bids.

उपाय रूप संस्था का कथन :-

अपील में दिये गये तथ्यों एवं आधारों के समन्ध में मुख्य अभियंता, जल संसाधन उत्तर, हनुमानगढ़ द्वारा निम्नानुसार टिपणी प्रस्तुत की है:-

1. Under bid requirement clause 2.4.2(a)

(a) This work has been executed by the J.V. member M/s Abhi Engineering Pvt. Ltd. on behalf of M/s Sunil Hi-tech Engg. Ltd. The work is for construction of Ash bund and meant to store Ash slurry which is of hydraulic nature. Therefore, the work is of hydraulic structure and similar work in terms of physical size, complexity, construction method, technology etc. Therefore the said work falls under “similar work” in view of clause no. 2.4.2(a).

The ITB clause 33.1 is about arithmetic check which does not have any relevancy to the certificate by which the bid has been considered responsive.

(b) The certificate issuing company is a reputed company. The certificate issued by a reputed company has been treated by the evaluation committee as “Authentic”. Therefore consideration of evaluation committee in this connection is proper in all respect.

Moreover, it is to say that only above said first experience certificate is sufficient to qualify for this bid.
(2) Under Bid Requirement Clause 2.4.2(b)

(A) Performance by Lead Partner M/s DRRC:-

1. As per clause 2.4.2(b) performance of sub-contractor is permissible for qualification criteria up to the work executed as a sub-contractor (The extract copy of clause 2.4.2(b) is enclosed for perusal). BGRE is a listed company so the certificate issued by BGRE can not be said as non reliable. Moreover verification from RVNL of this certificate from BGRE have also been provided by M/s DRRC. Hence the validity of the certificate is established. ITB clause 33.1 attached with this bid document is irrelevant about the certificate.

2. No comment needed.

3. No comment needed.

4. Only the performance of key activity of certificate has been included under clause no. 2.4.2(b). The amount of work executed does not matter in this connection because amount of this certificate does not considered for qualification criteria. Even if amount of this work is not considered then the bid is also responsive.

(B) Performance by M/s ARCPL:-

1. As per clause 2.4.2(b) performance of sub-contractor is permissible for qualification criteria.

2. (i) The ITB clause 33 is not related in this connection. (ii) The performance of sub-contractor is considerable for qualification criteria under clause 2.4.2(b) of the bid.

3. No comment needed.

4. The certificate issuing company is a reputed company. The certificate issued by a reputed company has been treated by the evaluation committee as “Authentic”. Therefore consideration of evaluation committee in this connection is completely justified.

In view of facts submitted as above the evaluation of technical bid by the Evaluation committee has been done as per provision of qualification criteria of the bid, therefore the appeal submitted by M/s RNC-MDBPL (Joint Venture) is liable for rejection.

प्रकाश अपील अधिकार का कथन—

अपील के संबंध में मेरे द्वारा राजस्थान लोक उपाधि में पारदर्शिता नियम 2013 के अपील संबंधी प्रावधानों का विवेचन किया गया एवं मेरे द्वारा उक्त प्रावधानों के अध्ययन उपर गया कि इस निर्देश प्रकरण पर यह प्रावधान लागू होगा या नही। इस संबंध में तथ्य यह है कि निर्देश के मिश्रित प्रावधान JICA व राजस्थान सरकार के मध्य निर्धारित समझौते के अन्तर्गत ऋण प्रदाता संस्था की गाईड लाईन के आधार पर तैयार किया गया जिनमें संस्थाप्रावधानी द्वारा लिये गये निर्णय के विरूद्ध अपील दायर करने का प्रावधान नहीं है। उक्त संबंध में राजस्थान लोक उपाधि में पारदर्शिता अधिनियम 2012 का क्लाज 3(3) भी अपलोकनीय है जो विनिमयसार है—

(3) Notwithstanding anything contained in sub-section (1) provisions of this Act shall apply to a procuring entity subject to any obligation of the State Government under or arising out of any agreement.—
(a) entered into by the Central Government with any other country or with an intergovernmental international financing institution; or

(b) to which it is party with one or more other State Governments or with the Central Government.

and the requirements of such agreement shall prevail over the provisions of this Act.

राजस्थान लोक उपाध्यक्ष अधिनियम के उक्त प्रार्थना से स्पष्ट है कि सक्षम प्राप्तिकरी के निर्णय के विरुद्ध अपील दायर किया जाना नियमानुसार नहीं है।

उक्त तथ्यों के मध्यवर्त मध्यवर्त अधिकारी M/s RNC-MDBPL (Joint Venture) द्वारा प्रस्तुत अपील उक्त तथ्यों के मध्यवर्त खारिज की जाती है।

दिनांक 05.01.2018

[Signature]

प्रथम अधिकारी,
मुख्य अभियंता,
जल संसाधन, राजस्थान, जयपुर