

राजस्थान सरकार
जल संसाधन विभाग

राजस्थान लोक उपापन मे पारदर्शिता अधिनियम 2012 एवं नियम 2013 (बिन्दु संख्या 83)
के अन्तर्गत दायर अपील संख्या 15/2017-18

M/s RNC-MDBPL Joint Venture

बनाम

मुख्य अभियन्ता, जल संसाधन उत्तर, हनुमानगढ़

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

निविदा की तकनीकी बिड में मूल्यांकन समिति द्वारा लिये गये निर्णय के संदर्भ में M/s RNC-MDBPL Joint Venture द्वारा राजस्थान लोक उपापन मे पारदर्शिता अधिनियम 2012 एवं नियम 2013 के अन्तर्गत अद्योहस्ताक्षरकर्ता (प्रथम अपील प्राधिकारी मुख्य अभियन्ता, जल संसाधन, राजस्थान, जयपुर) के समक्ष अपील दायर की एवं नियमानुसार डिमाण्ड ड्राफ्ट नम्बर 390433 दिनांक 07.12.2017 से राशि रु. 2,500/- फीस जमा करवाई गई।

अपील को नियमानुसार अपील संख्या 15/2017-18 पर दर्ज कर अपीलार्थी मुख्य अभियन्ता, जल संसाधन उत्तर, हनुमानगढ़ (उपापन संस्था) तथा M/s RNC-MDBPL Joint Venture (अपीलार्थी) को अपना पक्ष रखने के लिये नोटिस संख्या एफ. 2(47)एस/आई/सेल/5735 दिनांक 21.12.2017 जारी कर दिनांक 26.12.2017 को प्रातः 11.30 बजे अद्योहस्ताक्षरकर्ता के कक्ष में उपस्थित होने का समय नियत किया गया।

निर्धारित दिनांक 26.12.2017 को अपीलार्थी की तरफ से श्री हरदयाल सिंह उपस्थित हुए एवं उपापन संस्था की ओर से श्री कृष्ण लाल जाखड़, मुख्य अभियन्ता, जल संसाधन उत्तर, हनुमानगढ़ उपस्थित हुए। अपीलार्थी की तरफ से अपनी लिखित अपील के साथ-साथ अपना विस्तृत मौखिक पक्ष रखा गया। उपापन संस्था की तरफ से मुख्य अभियन्ता, जल संसाधन उत्तर, हनुमानगढ़ द्वारा अपील में उठाये गये बिन्दुओं एवं निविदा के संबंध में लिखित प्रतिवेदन प्रस्तुत किया तथा साथ ही मौखिक बहस की गई।

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

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.

(a) Certificate no. 00412 dated 09.09.2017. completed by Abhi Engineering amounting to Rs. 71.62 crore.

(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

S. No.	Experience Certificate	E/W in cum	P.C.C. in cum	Brick Masonry in cum	Lining in sqm	Remarks
1	Experience Certificate no. nil dated 09.12.2015 issued by BGR Energy	-	-	-	-	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 BGR is not a Central, State Govt. Deptt. but a Private company which cannot be relied upon.
2	Experience Certificate no. 444 dated 17.11.2017 issued by NUC. Power Corp. Ltd.	-	-	904	131999	No Comment.
3	Experience Certificate no. nil dated 21.07.2016 issued by BHEL amounting to Rs. 66924813/-	677463	-	-	-	No Comment.

3

4	Experience Certificate no. CIV dated 11.02.2017 by BHEL, amount nil	-	-	8778	-	The certificate is silent regarding amount of work executed.
Total (A)		677463	-	9682	131999	

(B) Performance by M/s ARCPL

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

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.

उपापन संस्था का कथन :-

अपील में दिये गये तथ्यों एवं आधारों के सम्बन्ध में मुख्य अभियन्ता, जल संसाधन उत्तर, हनुमानगढ़ द्वारा निम्नानुसार टिप्पणी 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 upto 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.

प्रथम अपील अधिकारी का कथन:-

अपील के संबंध में मेरे द्वारा राजस्थान लोक उपापन में पारदर्शिता नियम 2013 के अपील संबंधी प्रावधानों का विवेचन किया गया एवं मेरे द्वारा उक्त प्रावधानों के अध्ययन उपरान्त पाया कि इस निविदा प्रकरण पर यह प्रावधान लागू होंगे या नहीं। इस संबंध में तथ्य यह है कि निविदा के निविदा प्रपत्र JICA व राजस्थान सरकार के मध्य निष्पादित समझौते के अन्तर्गत ऋण प्रदाता संस्था की गाईड लाईन के आधार पर तैयार किये गये जिनमें सक्षम प्राधिकारी द्वारा लिये गये निर्णय के विरुद्ध अपील दायर करने का प्रावधान नहीं है। उक्त संबंध में राजस्थान लोक उपापन में पारदर्शिता अधिनियम 2012 का क्लॉज 3(3) भी अवलोकनीय है जो निम्नानुसार 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 उपापन में पारदर्शिता अधिनियम के उक्त प्रावधान से स्पष्ट है कि सक्षम प्राधिकारी के निर्णय के विरुद्ध अपील दायर किया जाना नियमान्तर्गत नहीं है।

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

दिनांक 05.01.2018

Undy
(एम. आर. डूडी) 5-1-18
प्रथम अपील अधिकारी,
मुख्य अभियन्ता,
जल संसाधन, राजस्थान, जयपुर