

W.P.(C) No.6416 of 2007

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Marg, New Delhi. Bids from eligible persons are invited thereby. These bids are in the form of “Request for Proposal” (RFP). Liberty is given to the bidders to opt for “Fully Automatic Parking System” or “Semi Automatic Parking System” or “Manual System”. The main purpose of the project is to achieve maximum "Net Equivalent Car Space" (ECS). RFP envisages proposal evaluation in three stages. In stage one the proposal is to be first checked for responsiveness with the requirement of the RFP with reference to “other submissions of the proposal” submitted by the bidders. In the second stage technical evaluation of the bids is to be undertaken. This evaluation is to be done only in respect of those bidders whose “other submissions” qua stage one are found to meet the requirements of the RFP i.e. stage one is found to be responsive in terms of the requirement under Clause 1.2.1 of the bid documents. In case technical submissions are found to meet the requirements of RFP, the bidders’ proposal would be evaluated at stage three, namely, ‘Techno Commercial’ . Based on the basis of this process of evaluation, the bidder who emerges triumphant is to be awarded the contract. The petitioner herein is one of the aspirants for this contract and, therefore, it submitted its bid. However, the petitioner is knocked out at stage two as according to NDMC it is found that petitioner’s bid is not

responsiveness with the requirement of RFP. The submission of the petitioner is that its bid was in accordance with the tender conditions and satisfy the technical parameters and evaluation criteria set out in the RFP documents issued by the respondent and, therefore, the action of the respondent in not allowing the petitioner to stage two by not even opening its techno commercial bid is arbitrary. We may point out at this stage itself that as per the evaluation standard and norms fixed for stage two, evaluation benchmark score of 75 marks was fixed for moving on to stage three evaluation. According to the respondent the petitioner has not been able to achieve this benchmark.

In order to appreciate the controversy, basic facts and the relevant provisions of the RFP need mention with some elaboration. We, therefore, propose to do this exercise in the first instance:

(i) In December, 2006 request for Proposal (RFP) document was issued by the respondent for Project to Develop Multilevel Parking cum Commercial Complex at Baba Kharag Singh Marg on a Build Operate and Transfer (BOT) basis.

The very purpose of the Project was to achieve maximum "Net Equivalent Car Space" (ECS), subject to satisfaction of the minimum

technical criteria. The bidders have been left free to opt for a "Fully Automatic Parking System" or a "Semi Automatic Parking System" or a Manual Parking System. The Tender Conditions did not accord any preference/extra weightage to either system.

The said Request for Proposal document envisaged 'proposal evaluation' in three stages as set out in Sections 1.25, 1.26 and 1.27 thereof, which are reproduced hereunder:

1.25 Proposal Evaluation: Stage I- Other submissions

1.25.1 In Stage I evaluation, the Part I(A) - Other Submissions of the Proposal would first be checked for responsiveness with the requirements of the RFP.

1.25.2 The Stage II evaluation, the Part I(B) - Technical Submissions of a Bidder shall be taken up only after the contents of the Other Submissions are found to meet the requirements of this RFP. i.e., the Part I (A) submission is found to be responsive in terms of the requirements under Clause 1.21

1.25.3 NDMC reserves the right to reject the Proposal of a Bidder without opening the Part I(B) and Part II Submissions if, in its opinion, the contents of Part I(A) - Other submissions are not substantially responsive with the requirements of this RFP.

1.26 Proposal Evaluation: Stage II - Technical Submissions

- 1.26.1 In Stage II of the evaluation process, Part I(B) Submissions of all the Bidders who pass the Part I(A) evaluation would be evaluated.
- 1.26.2 In Stage II, the Part I(B) - Technical Submissions of the proposal would first be checked for responsiveness with the requirements of the RFP.
- 1.26.3 In case the Proposal is found to be responsive in terms of the requirements under Clause 1.21, the Technical Submission of the Bidder would be evaluated in accordance with the conditions set out in Section 2 (Evaluation Methodology) of this RFP document.
- 1.26.4 NDMC would have the right to review the Part I(B) Technical Proposals and seek clarifications where necessary.
- 1.26.5 NDMC may request the Bidder to make a visual presentation on the Project Proposal. No marks or extra weightage shall be assigned to the presentation. NDMC reserves the right to call for presentations from any/all of the Bidders.
- 1.26.6 The evaluation of the Techno-Commercial Bid (i.e., the Part II of submission vide Clause 1.16) would be taken up only after the contents of the Part I(B) - Technical Submissions are found to meet the requirements of this RFP. NDMC reserves the right to reject the Proposal of a Bidder without opening the Part II Submissions if, in its opinion, the contents of the Technical Submissions are not substantially responsive with the requirements of this RFP.

1.27 Proposal Evaluation: Stage III - Techno-commercial Bid.

1.27.1 The Part II submissions, viz., Techno-Commercial Bid of all the Bidders who pass the Part I(B) evaluation, for particular project, will be opened in the presence of the Bidders' representatives who choose to attend. The Bidders' representatives who are present shall be required to sign and record their attendance. The time and date of opening of Part II Submissions shall be informed to the Bidders in advance.

1.27.2 The Techno-Commercial Bid would be evaluated and ranked on the basis of the evaluation criteria set out in Section 2. The Bidder obtaining the highest rank after evaluation of the Techno-Commercial Bid, shall, subject to terms and conditions set out under Section 2 be declared as the Preferred Bidder.

Clause 2 of the RFP sets out the evaluation methodology for the purpose of stage II Evaluation. In terms thereof, marks are to be assigned to the various bidders and a benchmark/score of 75 marks was fixed for moving on to the Stage III Evaluation. The relevant sub-clauses of Clause 2 of the RFP are reproduced hereunder:

“2. Evaluation Methodology

2.1 Guidelines for submission on Project proposal

The Bidder would be required to furnish the following as part of their Project Proposal (Part I(B) - Technical Submission)

XXX	XXX	XXX	XXX
XXX	XXX	XXX	XXX

2.3 Evaluation of Technical Submission

The Bidder's Technical Submission would be evaluated to check the adequacy and appropriateness of the proposed technology for the Project purposes and its conformance to the Construction Requirements and O & M Requirements (as set out in the Draft Concession Agreement - between Schedules 2, 2 and 4 and development control norms and fixed design parameters as set out in Schedule 1 of the Draft Concession Agreement).

2.4 For this purpose, the Technical Submission would be scored on the basis of rating of various parameters such as the following:

S. No.	Evaluation Criteria	Score
1	Project Appreciation, Layout and Design Evaluation Parameters include, inter alia (a) Design Configuration - Conceptual planning & Architectural layouts of the facilities (b) Traffic Management Plans - Safety and Circulation Plans (c) Contingency Plans - Disaster management plans (d) Design Attractiveness - Environment friendliness, Aesthetics	20
2.	Technology Section Evaluation Parameters include, inter alia (a) Adequacy and Appropriateness of chosen technology (b) Testimonials on - safety & Time provenness in operations (c) Technology management & know-how transfer arrangements (d) Overall Conformance to stipulated (technical) requirements	30

3.	Plan of Implementation Evaluation Parameters include, inter alia Sequencing and time phasing of activities Plan for interim parking arrangements	15
4.	Resource Allocation Evaluation Parameters include, inter alia (a) Adequacy and Effectiveness of resource allocations - plant & machinery and manpower (b) Financial stake (equity percentage) and Financial arrangements (percentage of the extent of tie-up)	15
5.	Method statement The detailed method statement justifying the methodology of execution proposed by the bidder. This shall include, inter alia (a) method & technique for manufacture (sourcing) and transportation of the various project components (b) method & technique for erection, testing and commissioning of the various project components - civil, structural, electrical, fire safety and the like (c) construction methodologies - safety and environment friendliness - with special emphasis on the methodology adopted for an underground construction (d) operations & management procedures, arrangements and tie-ups in that regard	15
6.	Compliance Requirements Evaluation Parameters include, inter alia (a) Extent of compliance (b) Constructive justification behind deviations, if any	5
	Total	100

- 2.5 Composite score under the Technical Proposal would be the arithmetic sum of the marks assigned to the Bidders under each of the parameters listed above in Clause 2.4. The Benchmark Score to be achieved for Stage II evaluation is 75. The marks so assigned by NDMC or its Consultant(s) or Advisor(s) would be final and binding on the Bidder.
- 2.6 Only Proposals that have achieved the Benchmark Score on the Stage II evaluation will be taken forward to Stage III evaluation.
- 2.7 Evaluation of Part III submissions - Techno-commercial Bid: Net Equivalent Car Spaces

This Part II submission, viz., Techno-Commercial Bid of Bidders who have passed the stage II evaluation, for the particular Project, would be opened and evaluated on the basis of the highest Net Equivalent Car Space (ECS) provision that the Bidder is committing to offer to NDMC as per the format prescribed in Appendix 5-B.

2.8 XXX XXX XXX XXX
 XXX XXX XXX XXX."

The Bid was required to be submitted in the prescribed format in terms of the Appendices to the RFP.

(ii) On 9.4.2007, the petitioner submitted its proposal as per the

prescribed methodology and fully in accordance therewith. While meeting the prescribed technical criteria, the Petitioner opted for a Semi Automatic System to maximize the ECS.

- (iii) On 17.4.2007 Part I of the petitioner's bid was opened by the respondent. Part I(A) of the petitioner's bid was found to be in order, and, accordingly, the Petitioner's proposal successfully cleared the Stage I evaluation as contemplated under Clause 1.25.1, and moved on to Stage II of the evaluation process.

There were three more parties whose bids are also found responsive and thus four parties were allowed to move the stage two.

On 14.7.2007 the petitioner made technical presentation before the Evaluation Committee of the respondent highlighting various aspects of its bid. Thereafter, vide letter dated 27.7.2007, the petitioner clarified certain issues which, according to the petitioner, had emerged during the presentation. According to the petitioner he did not receive any communication thereafter though date for third stage evaluation was

14.8.2007. Thus a day before i.e. on 13.8.2007 the petitioner handed over a letter dated 11.8.2007 to the respondent protesting at the manner and the apprehended reason for the ousting of the petitioner. In this communication the petitioner expressed its feeling that it was not being considered for stage three evaluation on account of the fact that the petitioner had opted for “Semi Automatic Parking System” instead of “Fully Automatic Parking System”. This was in gross violation of the terms and conditions of the tender, inasmuch as, choice was given to the bidders to opt for any of the three parking systems and, therefore, this could not be the consideration for attempting to oust the petitioner as the main consideration which should have weighed with the respondent in evaluating the proposals was to achieve maximum net “Equivalent Car Space”. The NDMC went ahead with the evaluation of Techno Commercial Bid in respect of remaining three bidders on 14.8.2007 and did not consider the bid of the petitioner for stage three. The petitioner thus wrote another letter dated 16.8.2007 protesting at the aforesaid move on the part of the NDMC and the manner in which NDMC seeking to oust the petitioner. As no response was received, the petitioner filed present writ petition on 29.8.2007.

Since advance notice of this petition was served upon the standing counsel for NDMC, when this petition came up for hearing on 31.8.2007, arguments were heard-in-part and thereafter matter was taken up on 6.9.2007. Though the NDMC had produced the records, we deemed it proper to have the version of the respondent on the record of this case in the form of an affidavit and, therefore, granted time to the respondent-NDMC to file counter-affidavit, issuing show cause notice in the writ petition. As we were informed that the tenders had already been finalized, in the stay application filed by the petitioner, order was passed that Letter of Intent (LOI), if issued shall be subject to further orders that may be passed and the outcome of the writ petition. Pleadings were thereafter completed. Counter-affidavit was filed. Learned counsel for the petitioner, however, wanted to peruse the original records which permission was granted. After perusal thereof the petitioner filed the rejoinder and thereafter both the parties were heard at length.

We may state at the outset that the entire thrust in the writ petition is that the NDMC sought to exclude the petitioner from the reckoning primarily because of the reason that the petitioner had opted for

“Semi Automatic Parking System” and the NDMC wanted “Fully Automatic Parking System” in the said multi level parking. According to the petitioner this was not at all proper and was in fact contrary to RFP and the provisions contained therein including in respect of norms of evaluation provided in the RFP. Submission was that, as noted above, the main purpose of the project was to achieve maximum net equivalent car space and for this purpose the bidders were given an option to either opt for “Fully Automatic Parking System” or “Semi Automatic Parking System” or “Manual System” of parking. Therefore, the criteria adopted by the NDMC was totally irrelevant and irrational and arbitrary in excluding the petitioner from the tender process merely because the proposal was for “Semi Automatic Parking System” and not for “Fully Automatic Parking System”. On the contrary going by the purpose and objective of the project, the petitioner’s proposal was better than others as it was aimed at maximum ECS.

In order to test the aforesaid arguments, original records were summoned and perused. Going through the minutes of the various meetings, we found that the aforesaid contention of the petitioner was ill-

founded and factually incorrect. There is nothing to suggest that the petitioner's proposal was rejected on the ground that it was for "Semi Automatic Parking System" and not "Fully Automatic Parking System".

Record reveals that a Technical Evaluation Committee consisting of experts in the field was constituted by the NDMC to evaluate the bids. This committee consists the following members:

Name	Designation	Organisation
Sh. K.K. Mutreja	Engineer-in-Chief	New Delhi Municipal Corporation
Sh. Sanjib Sengupta	Chief Architect	New Delhi Municipal Corporation
Sh. J.B. Bhatia	EE (SIP)	Municipal Corporation of Delhi
Sh. K.C. Iyer	Professor	IIT, Delhi
Sh. S. Mukherjee	Professor	IIT, Delhi

The composition of the Committee discloses that there are two high ranking officials of the NDMC and one of the MCD with expertise in the field as they are Engineer-in-Chief, Chief Architect, EE(SIP) respectively. This was supported by the consultant for this project, namely, M/s. IDFC and also the Director Projects of NDMC. In addition five more experts from other organizations were included in the Committee. Two of them are the Professors from an esteemed institution, namely, Indian

Institute of Technology, Delhi. They hold the post of Professor. As per the description given in the counter-affidavit, one of them is a Civil Engineer with a PhD from IIT, Madras. He has 15 years working experience in Industry which include working in Military Engineer Services; Defence Research and Development Organization (DRDO). The areas of specialization of other Professor are mechanisms, Robotics, Mechanical Systems Design and Impact Biomechanics.

It is also mentioned that IDFC has substantial expertise in designing, running and managing large complex bid processess for infrastructure, assets, particularly in the transport sector and various prestigious projects have been undertaken by the IDFC. The expertise and the insights gained in such assignments have enabled IDFC to provide high quality advice to the Government Agencies in managing bid processess. Keeping in view this credential of the IDFC, this company was appointed as Consultant and two persons with requisite expertise were placed by the IDFC who were associated in the meetings of the Technical Committee.

Five experts who constituted the bid Evaluation Committee

undertook the task of technical evaluation of the bidders. Record shows that the bids were evaluated on six parameters, namely, project appreciation, layout design, technology selection, plan of implementation, resource allocation and compliance allocation. Maximum marks allocated under the aforesaid six heads were 20,30,25,15,15 and 5 respectively. In this manner marks were to be awarded out of 100 and minimum requirement/benchmark was to get 75 marks for a bidder to qualify for stage three. While evaluating the bids under the aforesaid six heads, there were further sub-heads and the total sub-heads count to 17 under the six heads. Thus there were six main parameters and 17 sub-parameters under which evaluation exercise was undertaken. All the five experts evaluated each of the four bidders who had qualified for stage two, under aforesaid heads. Thereafter, marks were added and on that basis it was found that the petitioner secured 49.1 marks whereas other three bidders could achieve the benchmark of 75 and above. This is demonstrated from the following tabulated sheet prepared by the Evaluation Committee which is signed by all the five experts.

papers `A` Page-12 to be photocopied & attached

The aforesaid process when read along with the minutes of the meetings of the Evaluation Committee, as recorded, brings out the following significant aspects:

- A. There was an objective criteria laid down by the Evaluation Committee on the basis of which the technical bids of the bidders were evaluated.
- B. Every proposal was examined on the basis of the pre-determined objective norms which have clear relevance with the nature of project. All the proposals were discussed and evaluated on a common platform.
- C. Adequate opportunity was provided to all the bidders to clarify their proposal. The bidders were even given a chance to make their presentation on the proposal submitted by them. The five members of the Committee had evaluated each proposal on the fixed parameters after going through the bids, presentations made and clarifications offered by the bidders while making their presentations.
- D. The five experts made their individual assessments assigning marks

to the bidders under various heads which would signify an objective assessment made by these experts.

- E. Most importantly, the bid of the petitioner is not rejected on the ground that it contained the proposal for 'Semi Automatic Parking System'. Thus the apprehension of the petitioner on this count which is the foundation of the writ petition is wholly misconceived.

Normally after finding the aforesaid material on record, no further discussion was needed as this is sufficient to dismiss the petition being without any merits. However, after the records were produced and inspection provided to the petitioner as well, the petitioner has sought to build altogether different case after inspecting these records. The attempt thereafter was to find out loopholes and irregularity in the process and methodology adopted by the Evaluation Committee. The argument has thus shifted to a different platform. The petitioner now alleges, which was the focus at the time of arguments as well:

1. There has been no objective in the allocation of marks to various bidders inasmuch as there is wide variation in the marks allocated to the petitioner vis-a-viz allocated to other bidders and no reasons have been recorded therefore,

2. It is contended that the Supreme Court in the case of Reliance Airport Developers (P) Ltd. Vs. Airports Authority of India (2006) 10 SCC 1 has categorically held and stressed the need for objective scoring system. Specific reference was made to pars 30,31,56,57,74 and 110 of the said judgment.
3. It is submitted that the representation of the petitioner was considered by the Technical Committee in its 8th meeting held on 14.8.2006 giving four reasons to disqualify the petitioner but these four reasons had no nexus with the evaluation criteria set out in Clause 2.4 of RFP. The four reasons which are assigned in the minutes of meeting dated 14.8.2007 are as under:
4. No references/testimonials with regard to workings of this parking system/solution anywhere in the world was provided.
5. Retrieval times excluded the time required to park-in the cars from the elevator to the parking floor & part-out the car upto the elevator from the parking floor and clearly

exceeded the retrieval period of 3 minutes as required in the tender documents.

6. Circulation plan as proposed was observed to be unsatisfactory on account of usage of lifts for entry/exit during the peak traffic period.
7. Non-compliance was observed with regard to provision of three basements for manual/semi automatic systems and 4 basements were provided, however within 12 mts.
8. According to the petitioner, as per Clause 2.4 of the RFP, the parameters are technical selection, plan of implementation, resource allocation method statement. However, in the four alleged reasons cited by the Committee, only circulation plan finds the mention which is relevant and only 5 marks have been allocated under this head and no marks have been allocated to any other criteria set out in Clause 2.4.
9. It is argued that entire evaluation criteria and evaluation process is stooped in favour of 'Fully Automatic Parking System' involving use of sophisticated technology

regardless of the ECS being achieved.

10. None of the members of the Evaluation Committee were experienced in transportation engineering which is the area of experts relevant for appraisal of the bids.

Independent studies/ reports obtained by the Petitioner from Transportation Engineering Section, Deptt. of Civil Engineering, Indian Institute of Technology, Delhi and also from Centre for Transportation Systems, Indian Institute of Technology, Roorkee, clearly establish that the reasons cited by the Respondent for disqualifying the Petitioner are non-existent and have no factual basis whatsoever. The said reports have already been placed on record.

The various technical parameters that a Bidder is supposed to achieve, have been duly set out in detail in various Clauses of Schedule - II. These include parameters relating to construction requirement, design parameter, operating and maintenance requirement etc. Objective requirements have been specifically prescribed in respect of various aspects, for instance, depth of construction, Base/Soil Dimensions/Car Space, Air-conditioning, Gradient of Ramp, Width of Ramp, Straight Turing Radius, number of Care Lifts, Power Backup, Sound Emission, Lighting, Signage,

Generator Back-up, Drainage, Safety Barriers etc. Each and every of the criteria set out in Schedule II of the RFP is satisfied by the Petitioner. It is, therefore, inconceivable as to how the Petitioner could fail, and fail so miserably, to even achieve the qualifying score for it to proceed to Stage-III of the Evaluation Process. The credentials of the Petitioner are evident from the fact that it has emerged as the successful bidder in respect of a similar tender floated by the MCD for construction of an automatic multi-level parking system in Kamla Nagar.

We are not impressed by any of the aforesaid submissions. Clause-2 of the RFP deals with evaluation methodology. As per para 2.3 which is concerned with evaluation of technical submission, it is provided that the technical submission would be evaluated to check the adequacy and appropriateness of the proposed technology for the project purposes and its conformance to the construction requirements and O & M requirements. For this purpose the technical submission is to be scored on the basis of rating of various parameters mentioned in para 2.4 which is already extracted above. It provides a complete package and every bidder was put to notice of these parameters. No doubt he had choice to bid for 'Fully Automatic Or Semi Automatic Or Manual Parking System but then he could

very well anticipate that keeping in view the yardsticks on the basis of which evaluation was to be done. He may have this advantage in getting his bid evaluated under certain heads if his bid is 'Semi Automatic' Or 'Manual'. Schedule-2 of RFP under the head "Construction Requirements" though gives choice to the bidders to choose any of the aforesaid technology, namely, Manual, Semi or Fully Automatic Parking System, it also specifically stipulates as to what is to be ensured in the chosen technology by providing as under:

Request for proposal document
PPP Project to Develop Multilevel Parking cum Commercial Complex at Baba Kharag Singh Marg,
New Delhi

Schedule 2

Construction Requirements

1. Construction Requirements for Parking Facility

1.1 General

- i. The facilities to be provided in the Parking Facility which is to be implemented by the concessionaire as part of the Project shall be as set out in Schedule 1.
- ii. The choice of technology for the Parking Facility is left to the Concessionaire, and shall be finalized as part of the bid submitted. the Concessionaire is free to choose:

a. Manual

A manual parking system is a conventional ramp based parking system where, the vehicle is expected to be driven and parked in/retrieved and driven out from an available/alloted parking space by the owner and/or a designated operator. No mechanisation what so ever is expected for the process of conveying to the parking/retrieving of the vehicle.

b. Semi-automatic

A semi automatic system is a parking system where one or more processes of conveying to/from and parking/retrieving of the vehicle within the parking structure is mechanised. It is presumed that there is a human involvement with the vehicle (either by the owner or a designated operator) during the physical process conveying or of parking or retrieving the vehicle.

c. Fully automatic

A fully automatic system is a parking system where all the processes of conveying to/from and parking/retrieving of the vehicle within the parking structure beyond a designated entry area is fully mechanised. It is presumed that there is no human involvement with the vehicle (either by the owner or a designated operator) during the physical process conveying or of parking or retrieving the vehicle from the storage area.

Provided that the Concessionaire shall ensure that the technology chosen is

- (a) Appropriate to the site and ground situation
- (b) Accommodates the number of ECS proposed
- (c) Has a precedent for use in a project of similar nature and size
- (d) is supported by the technology/service provider for design, supply, implementation and on going maintenance
- (e) Addresses all issues of safety, including fire safety, operational safety, and environmental safety
- (f) Does not add to circulation problems for pedestrians and traffic in the contiguous area

NDMC desires that, at the time of Handback of Project Facilities, it takes over an asset that would have the most appropriate technology under the circumstances, would be operationally, the most safe and convenient design and environmentally, the most friendly and aesthetic structure. Towards satisfying this objective, the Table 2.1 below lists the technical parameters that the Concessionaire shall comply with while selecting the appropriate technology and while designing the facilities thereunder.

This table is definitely not intended to be exhaustive and it shall be the obligation of the Concessionaire to adhere to an applicable norms and to good industry practices in the design of the Project Facilities. As such, the Concessionaire would be expected to adhere to all the relevant set of

covenant(s) that would relate to the technology option(s) that is offered for the Project.

The Parameters listed in the table would co-exist with the approved development control norms as listed in Table 1.3 of Schedule I. They shall be read with and applied in conjunction with the development control norms as appropriate. Any deviations, from these parameters, however, being within the compliance of the approved development control norms shall be accepted by NDMC only at its sole discretion.

Table 2.1- Covenants

Sl. No.	Type of Parking Facility	Item Description	Covenant
1.	Manual Parking	Depth of construction, below ground	Should not exceed three basement levels.
2.	Manual Parking	Height of Parking, without elevators	Should not exceed three floors
3.	Manual Parking	Height of each basement floor	Should not exceed 3.00 M
4.	Semi-automatic (requiring human intervention in vehicle handling below ground)	Depth of construction, below ground	Should not exceed three basement levels or 12 metres
5.	Manual Parking	Space for calculating one Equivalent Car Space (ECS) within parking structure.	Not less than 28 M2 per ECS for ground floor covered parking and 32 M2 per ECS for underground and above the ground parking facilities.
6.	Manual Parking	Space for calculating one Equivalent Car Space (ECS) within parking structure	Not less than 23 Sq.m
7.	Manual Parking/semi automatic	Bay/slot dimensions per car space	Not less than 5.2 m long and 3.25 m wide

8.	Automatic/Semi - automatic (if mechanical parking bays are proposed)	Space per ECS	Note less than 15 sq. m
9.	Manual Parking/ Semi-automatic	Airconditioned	Preferable, but not mandatory. However mechanical ventilation must be provided to permit a minimum of 15 air-changes per hour for normal ventilation and 30 air-changes per hour in case of fire or distress call
10.	Fully Automatic	Retrieval time	Not more than 3 minutes minutes.
11.	Semi automatic (operator assisted)	Retrieval Time	Not more than 3 minutes
12.	Manual/automatic (if ramp is provided)	Gradient of Ramp	Not more than 1:7.5 with a minimum transition space of 5 M at the start and Termination of the ramp with gradient of 50% of the main ramp.
13.	Manual/semi automatic (if ramp is provided)	width of Ramp	Minimum of 5.5 M width and only one way
14.	Manual/semi automatic (if ramp is provided)	Straight Turning Radius Helical Length turning radius Lot turning radius	Minimum 7.5 M Minimum 10 M Minimum 5.5 M
15.	Automatic/Semi automatic (if car lifts are used)	Number of car lifts	A minimum number of 3 car lifts each for entry and exit with atleast one lift each for entry and exit as stand by

16.	Manual/ automatic/automatic	Semi Carriageway of pavement for circulation space within parking facilities	Note less than 4 meters, if one way, and not less than 6 meters if it is two ways flow
17.	Automatic/Semi automatic	power back up	Not less than 100% with automatic switch over mechanism
18.	Automatic/Semi automatic	sound emissions	Not more than 40 dba

ii. The Concessionaire may adopt appropriate designs conforming to Approved Development Control norms for the Project Facilities and approved in accordance with this Schedule 1.

A cumulative reading of the aforesaid provisions would show that marks were to be allotted for safety and circulation plans, adequacy and appropriateness of chosen technology, technology management and knowhow transfer arrangements, construction methodologies -safety and environment friendliness with special emphasis on the methodology adopted for an underground construction etc.

If under the aforesaid and other heads bidder would adopt for 'Fully Automatic Parking System' steal a march , the other bidders (like the petitioner) with proposal for 'Semi Automatic Parking System' cannot

make grievance thereby.

In Madan Lal & Others Vs. State of J&K and others (1995) 3 SCC 486, the Supreme Court made following observations which may be relevant in the context though that was a case of appointment through selection:

“Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a Court of appeal and try to re-assess the relative merit of the concerned candidates who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee”.

To the same effect is the judgment of this Court in the case of Continental Construction Ltd. Vs. Tehri Hydro Development Corporation Ltd. & Another 2002 V AD (Delhi) 789.

Paras 2.3, 2.4 of RFP along with Schedule -2 extracted above provide sufficient guidelines for the Expert Committee prosecuting the manner in which the bids were to be evaluated. It was obviously done to achieve objectivity when such specific guidelines were provided to the Expert Committee. It cannot be said that the exercise undertaken by the experts is arbitrary merely because so called reasons giving different marks are not recorded. Further only because of the reason that different experts have given different marks is no ground to contend that there is no objectivity. As mentioned above, all the five members are experts in their field. Three out of five members belong to other organizations. No member had any personal interest in the matter. There are no allegations of bias or mala fides.

From the perusal of the records it is clear that the evaluation was done by the Technical Committee after receiving the presentation of the bidders on July 13 and 14, 2007. The following minutes of the meeting record in respect of the petitioner, are as under:

- Presentation broadly covered all aspects required by the Technical Committee.
- The semi-automatic system described was found deficient vis-a-vis the output parameters provided in the tender documents

- no references/testimonials with regard to workings of this parking system/solution anywhere in the world was provided
- retrieval times excluded the time required to park-in the cars from the elevator to the parking floor & park-out the car upto the elevator from the parking floor and clearly exceeded the retrieval period of 3 minutes as required in the tender documents;
- Circulation plan as proposed was observed to be unsatisfactory on account of usage of lifts for entry/exit during the peak traffic period
- Non-compliance was observed with regard to provision of three basements for manual/semi automatic systems and 4 basements were provided, however within 12 mts.
- The bidder could not satisfactorily respond to queries pertaining to turning radius, direction on movement of vehicle (turntable), dedication of the lift-car/car cum passenger/service lift, etc".

In the next meeting held on 7.8.2007 clarifications received from the three bidders along with suo moto clarification furnished by the petitioner were considered. The comparative analysis of all the bidders was reviewed by the Technical Committee. Evaluation methodology for scoring was followed. The minutes further record that evaluation methodology was followed in accordance with the RFP documents and final score-sheet was prepared accordingly which has already been extracted above. On this basis

the Committee recommended that three bidders had qualified and their Techno Commercial bids be opened. Since the bid of the petitioner was not found responsive, it did not reach stage-3. However, in the meeting held on 14.8.2007 representation dated 11.8.2007 of the petitioner received on 13.8.2007 was considered and reasons for its clarification were given which have also been reproduced above. On the basis of which the Committee remarked that contentions of the petitioner were based on supposition. It would be necessary to note that even if the members of the Committee have given different marks to the petitioner, which is the case in respect of other three bidders as well, minutes dated 14.8.2007 are signed by all the five experts /members without giving any dissent or making discordant note.

In the case of Tata Cellular Vs. Union of India (1994) 6 SCC 651 the Court after detailed examination of the law on the subject taking note of scores of judgments laid down opined that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, at the same time the Court delineated the inherent limitations in exercise of the said power of judicial review. The Apex Court was of the view that Judicial review is concerned with reviewing not the merits of the decision in support of which

the application for judicial review is made, but the decision-making process itself. It is thus different from an appeal. When hearing an appeal the Court is concerned with the merits of the decision under appeal. Since the power of judicial review is not an appeal from the decision, the Court cannot substitute its own decision. Apart from the fact that the Court is hardly equipped to do so, it would not be desirable either. Where the selection or rejection is arbitrary, certainly the Court would interfere. It is not the function of a judge to act as a superboard, or with the zeal of a pedantic schoolmaster substituting its judgment for that of the administrator. The Court thus laid down the following parameters on which the legality of the action of the respondent could be adjudged:

“The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?
2. committed an error of law
3. committed a breach of the rules of natural justice
4. reached a decision which no reasonable tribunal would have reached or
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with

the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case, shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under :

(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness, It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at. The decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it

(iii) Procedural impropriety”.

The legal position in respect of the judicial review of the contractual matters was summarized by the Supreme Court in para-94 of the said judgment laying down the following principles:

“The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself

may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fairplay in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure”.

The upshot of the aforesaid discussion would be to conclude that the Expert Committee evaluated the bids in accordance with the criteria laid down in the RFP which was an objective criteria spelled out in the tender document itself and made known to the bidders as well to ensure transparency in the system. This was adhered to by the Committee. Even technical evaluation was done by the experts. This Court is neither competent nor equipped to comment upon the technical evaluation done by

the said committee.

We, therefore, do not find any merit in this petition which is dismissed.

(A.K. SIKRI)
JUDGE

January 18,2008.
skk

(VIPIN SANGHI)
JUDGE