

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-26873-2015 (O&M)
Date of decision:- 12.01.2016

M/s Vishvas Construction Company

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Raman Mohinder Sharma, Advocate,
for the petitioner.

Mr. Rajinder Goyal, Additional Advocate General, Punjab.

Mr. Puneet Gupta, Advocate,
for respondent No. 5.

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S.J. VAZIFDAR, A.C.J. (ORAL)

CM-322-2016

Leave is granted to place on record Annexures P-8 to P-10 filed on behalf of the petitioner and the application is allowed.

CWP-26873-2015

The petitioner has challenged the award of the contract for the upgradation of 17.63 kms long road in favour of respondent No. 5.

2. The petitioner's bid was rejected on the ground that it was non-responsive. The bid capacity of the bidders was to be calculated as per clauses 4.2, 4.3 and 4.4 of the notice inviting tenders which read as under:-

“4.2 All bidders shall attach the following information and documents with their on-line Technical Bid alongwith the information required as per Section 2:

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

C In addition, each bidder shall submit the following information for his qualification:

(f) Details of his available bid capacity with an undertaking that his available bid capacity calculated as per clause 4.4 below is more than the estimated value of the project work : (as specified in BDS).

4.3 To qualify for award of the contract, each bidder in its name should have :

B. For works above Rs. 5.00 Crores :

b) satisfactorily completed the last five (5) years ending last day of month previous to the one in which bids are invited as a prime Contractor (or as a nominated sub Contractor, where the subcontract involved execution of all main items of work described in the bid document, provided further that all other qualification criteria are satisfied)

one similar work (as defined in the Bid Data Sheet) of value not less than 80% of the estimated cost of work

or

two similar works each of value not less than 50% of the estimated cost of work

or

three similar works each of value not less than 40% of the estimated cost of work

[For lump sum works where estimated cost is not to be disclosed, these amounts should be given in figures]. The values of works can be updated to current price levels by enhancing the value of executed works at the rate given in the BDS.

4.4 Bid Capacity :

The bid capacity of the prospective bidders will be calculated as under :

Assessed Available Bid Capacity = (A N B)

Where

A = Maximum value of Civil Engineering works executed in one year (year means Financial year) during the last five years (updated to the price level of the Financial year in which bids are received at a rate per year as indicated in the BDS) taking into account the completed as well as works in progress.

N = Number of years prescribed for completion of the Project/Works for which these bids are being invited i.e. 7 months = 7/12 year)

B = Value (updated to the price level of the year indicated in BDS) of existing commitments (only allotted works) on the last date of submission of bids as per bidding document and on-going works to be completed during the period of completion of

the Project/Works for which these bids are being invited.

Note: The statement showing the value of existing commitments and on-going works as well as the stipulated period of completion remaining for each of the works listed should be attached alongwith certificates duly signed by the Engineer-in-Charge not below the rank of an Executive Engineer or equivalent.”

3. The petitioner’s bid, however, included a wrong variable in respect of the variable ‘N’ by considering the period for construction to be twelve months instead of four months. The work was to be completed within four months. The petitioner had not challenged this condition prior to submitting the bid. The petitioner participated in the bid. If the correct variable with respect to variable ‘N’ is taken into consideration, the petitioner’s bid capacity is in the negative to the extent of Rs. 14,26,48,529/-.

4. The petitioner then contends that the stipulation of a four months period is illegal and malafide only with a view to benefit respondent No. 5. The official respondents are always entitled to stipulate the period within which they desire to have the work completed. If a shorter period is prescribed, absent anything else, it cannot be faulted. The petitioner, however, contends that it is physically impossible to complete the work within four months. The private respondent, namely, respondent No. 5 has, however, undertaken to complete the work within four months. If it does not do so, the official respondents would obviously be bound to take action against the private respondent which would be another matter altogether.

5. In these circumstances, the petition is dismissed.

6. In view of the dismissal of the petition, the application for vacating the stay is disposed of.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(ARUN PALLI)
JUDGE

12.01.2016

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