

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

I.A.No.4 of 2018 in WP.No.1983 of 2018;

I.A.No.6 of 2018 in WP.No.1983 of 2018

and

WP.No.1983 of 2018

COMMON ORDER :

The petitioner herein is a firm engaged in the business of civil works. It was registered as a Special Class Civil Contractor with the State of Andhra Pradesh, and the said Certificate of Registration was valid up to 21.05.2017.

2. Before the expiry of its Certificate of Registration, petitioner had applied for renewal of the said registration on 11.05.2017. Such renewal was granted to petitioner on 15.11.2017, and the said registration is subsisting.

3. A Tender Notification was issued by the 2nd respondent through e-procurement under the Andhra Pradesh Disaster Recovery Project (a World Bank Aided Project). Bids were invited through e-tender system and the invitation for bids was opened to all bidders from different countries since it was a global tender.

4. On 27.02.2017, the tender notification had been issued in respect of Package Nos.51, 52 and 58. The last date for submission of bids for all three packages was 10.04.2017 at 15:30 hrs, and the bids were scheduled to be opened on 18.04.2017 at 11:00 a.m.

5. It is not in dispute that the 2nd respondent postponed the date of submission of bids and opening of the bids nearly seven times from

10.04.2017 to 12.07.2017. Finally, the technical bids were opened on 18.07.2017 by the 3rd respondent.

6. The bids relating to all the above three packages were forwarded to the 2nd respondent by the 3rd respondent for technical bid evaluation by the Technical Committee.

7. The said Technical Committee evaluated the bids and disqualified the petitioner on 12-7-2017 in respect of the above three packages on the ground that petitioner's registration as a Special Class Civil Contractor was valid up to 21.05.2017, that the last date for bid submission had been extended up to 12.07.2017 from 12.04.2017, and the validity of the said registration had lapsed during the interregnum.

8. Thereafter Lr.Rc.No.1405/ 2016/ T2/ APDRP/ Tenders dt.2.8.2017 was also issued by the Superintending Engineer, Panchayat Raj, Vizianagaram to the petitioner reiterating the same and further stating that petitioner should submit valid registration certificate or any document in support of renewal of contractor's registration online, that he did not upload it on 12.7.2017 and his bid became invalid. It is further stated that manual submission, instead of online submission, of renewal of registration certificate cannot be considered.

PETITIONER'S CONTENTIONS

9. The petitioner contends that the tender being a global tender, possession of such registration by a bidder is wholly unnecessary

since intending bidders from other countries would any way not have such registration. The petitioner further contended that before the expiry of its registration on 21.05.2017, on 11.05.2017, the petitioner had applied for renewal which had been granted on 15.11.2017; and the said renewal would date back and cover the period after 21.05.2017 also and the Technical Committee could not have disqualified the petitioner at all.

10. The counsel for petitioner invited the attention of the Court to the e-procurement notice / invitation for bid for package no.51 issued on 27.02.2017 and also the Instructions To Bidders (for short 'the I.T.B).

11. Clause 3.1 of the I.T.B indicates that the invitation for bids is *open to all bidders from all eligible countries* as defined under the I.P.R.D. guidelines for procurement.

12. The qualification of bidders was set out in Clause 4.3(a) of the I.T.B and it requires the bidders to include with the bids to be submitted by them, copies of original documents defining the constitution or legal status, *place of registration* and principal place of business, apart from a written Power of Attorney or the signatory of the bid to commit the bidder.

13. The counsel for petitioner contended that it is sufficient if the petitioner is registered as a contractor, that only the place of registration was important, and there was no requirement that there

has to be a subsisting Special Class Contractor registration throughout the validity of the bid.

14. He further relied upon the recommendation dt. 26-10-2017 of the Superintending Engineer (P.R.) Circle, Vizianagaram, who submitted a Bid Evaluation Report certifying that petitioner's bid is a substantially responsive bid and that the petitioner is eligible in accordance with Clause 3 of I.T.B. and meets the qualification requirements of Clause 4 of the I.T.B.

15. He also relied upon the minutes of the meeting of the Commissionerate of Tenders held on 19.09.2017 opining that since there is no specific clause incorporated in the bid document describing registration of contractors as a criteria for disqualifying a bidder, the disqualification of the petitioner by the Technical Committee on the ground that the bidder did not have valid registration up to the last date of bid submission on 12.07.2017, is not in order.

DETAILS OF EVENTS PENDING THE W.P

16. On 25.01.2018, 'Notice Before Admission' was ordered in the Writ Petition, and an interim order was passed that if the tenders have not been finalized with respect to the three packages for which the petitioner had already submitted its bids on 10.04.2017, the same shall not be finalized for a period of four (04) weeks. The said interim order has been extended from time to time.

17. I.A.No.5 of 2018 has been filed by the third-party who is also a registered special class contractor to implead itself in the Writ Petition on the ground that after rejection of the bid of Writ Petition, Price bids have been opened on 03.08.2017 and it had come out as the lowest bidder in respect of package nos.51 and 58. It is contended by the said party that finalization of the bids at the level of Commissionerate of Tenders was not done due to the interim order passed by this Court in the Writ Petition and the said party is seriously affected and is required to be impleaded.

18. By order dt.04.09.2018, the said third-party has been impleaded as 5th respondent in the Writ Petition.

19. I.A.No.6 of 2018 is filed by the said third-party to vacate the interim order.

20. The respondent nos.1 to 4 in the Writ Petition filed I.A.No.4 of 2018 to vacate the order dt.25.01.2018 in WP.No.1983 of 2018.

CONTENTIONS OF COUNSEL FOR PETITIONERS

21. Sri P. Venu Gopal, Senior Counsel appearing for Writ Petitioners, reiterated the contentions of petitioner referred to above.

22. He also pointed out that though the renewed Registration Certificate was to be given to the respondents / uploaded and the petitioner had submitted the renewed Registration Certificate manually (not *on-line*), since it's possession itself is not material, the petitioner could not have been disqualified.

CONTENTIONS OF THE SPECIAL GOVERNMENT PLEADER

23. The Special Government Pleader, appearing for respondent nos.1 to 4, however, contended that as per Clause 4.3 of the I.T.B, it is necessary to have a Special Class Registration Certificate, and since the petitioner did not have such a certificate during the subsistence of the bid validity between 10.07.2017 and 18.07.2017 as it had expired on 21.05.2017 itself, the Technical Committee rightly rejected it. He also relied upon a letter dt.13.10.2017 of the Chief Engineer (PR), Panchayat Raj Department, Tankasala, Enekepadu, Amaravathi at Vijayawada addressed to the Project Manager, P.M.U., Revenue D.M. Department, Guntur District, seeking clarification regarding registration of contractors as a criteria for qualifying a bidder, i.e., whether the bidder should have valid registration as contractor up to last date of bid submission for the subject tenders. He contended that the World Bank had also stated that if registration is a requirement of qualification criteria, bidders cannot be said to be technically qualified. Other correspondence between the Project Manager, PIU (PR), APDRP, Visakhapatnam addressed to the Commissionerate of Tenders is also referred to.

24. Sri Vedula Venkata Ramana, counsel appearing for 5th respondent / impleaded party also supported the contentions of the Government Pleader.

THE CONSIDERATION BY THE COURT

25. It is not disputed by the learned Government Pleader that the subject tenders were global tenders. Clause 3.1 of the instructions to bidders stated clearly that the I.T.B is open to all bidders from the eligible countries as defined in the I.P.R.D. guidelines for procurement. When the subject tenders are global tenders, to have a requirement of registration as a local contractor / Special Class Civil Contractor issued by the State Government of Andhra Pradesh would be absurd. Insisting on any such requirement would make the global tender community a 'local' tender.

26. That was why Clause 4.3 of the I.T.B, merely required the bidders to submit documents relating to the constitution or legal status, *place of registration* and principal place of business. What was required is only details of registration as firm/Corporation and place where it was done.

27. In Clause 4.3(a), no doubt, other documents relating to experience are also mentioned, but the requirement of having a Special Class Civil Contractor Registration, which is subsisting till the bids are opened, has not been insisted upon.

28. So it is not open to the respondents to introduce a disqualification which is not there in the I.T.B.

29. Admittedly, the Commissionerate of Tenders, which is the apex body of the Government of Andhra Pradesh, comprising of the Chief

Engineers of different Departments including the Director of Works Accounts as its Members ,in a meeting held on 19.09.2017 opined that the rejection of petitioner's bid on the ground that the petitioner did not possess a valid registration up to the last date of bid submission was not proper, since there was no specific clause incorporated in the bid document prescribing possession of a registration certificate as Special-Class Contractor as a criteria for qualifying a bidder.

30. Even the Superintending Engineer, P.R. Circle, Vizianagaram in his Lr.Nrc.No.1405/2016/T2/APDRP/58- MM Dam package dt.26.10.2017 opined that petitioner's bid is substantially responsive to the bidding document and that petitioner is eligible in accordance with Clause 3 and Clause 4 of the I.T.B.

31. It is not open to the Chief Engineer, P.R. Department to disagree or doubt the decision of the Apex Body such as the Commissionerate of Tenders and justify the rejection of the bid of the petitioner on the basis of his own *ipsi dixit* by trying to obtain a clarification from the World Bank Agency.

32. Consequently, the Superintending Engineer, Panchayat Raj, Vizianagaram (the 3rd respondent) was not justified in issuing the impugned Lr.Rc.No.1405/ 2016/ T2/ APDRP/ Tenders dt.2.8.2017 rejecting petitioner's bid on the ground that petitioner did not have a subsisting Special Class Contractor registration till 12.07.2017, the last date and time for online bid submission. He is also not correct in rejecting the petitioner's bid on the ground that renewal certificate

issued cannot be taken into account since it was submitted manually and not *on-line* because such renewal certificate of petitioner's registration as a Special Class Contractor is in fact not a necessary document which the petitioner was required to file as per the I.T.B, as mentioned above.

33. In this view of the matter, the proceedings Lr.Rc.No.1405/2016/ T2/ APDRP/ Tenders dt.2.8.2017 of the 3rd respondent is set aside as being illegal, arbitrary and violative of Articles 14 and 19(1)g of the Constitution of India and also on the ground that it is contrary to the terms and conditions of the I.T.B; and respondent nos.2 and 3 are directed to evaluate the price bids of petitioner in respect of package Nos.51, 52 and 58 of the Tender Notification dt.27.02.2017 within a period of four (04) weeks from the date of receipt of copy of the order along with other bids and take appropriate decision thereon.

34. Accordingly, the Writ Petition is allowed with the above directions. No order as to costs.

35. Consequently, I.A.No.4 of 2018 in WP.No.1983 of 2018; I.A.No.6 of 2018 in WP.No.1983 of 2018 are dismissed.

36. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date : 11.10.2018
Ndr/