

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

**Civil Writ Petition No. 29673 of 2017 (O&M)
Date of Decision: 28.02.2018**

M/s Budget Signs, Plot No. 76, EPIP Phase-II, Thana Baddi, District Solan, through its Proprietor Shri Jagmohan Singh.

.....Petitioner

versus

Union of India and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE AVNEESH JHINGAN, JUDGE**

Present: Mr. Dhiraj Singh Brar, Advocate, for the petitioner.
Mr. H.S.Baidwan, Advocate, for respondent No.1.
Mr. Ashok Kumar Bazaj, Advocate, for respondent No.4.

S.J.VAZIFDAR, CHIEF JUSTICE

One Jagmohan Singh carries on business in the firm named and style of the petitioner-M/s Budget Signs as the sole proprietor thereof. The petitioner has challenged the respondents revocation of a Letter of Acceptance (LoA) dated 22.06.2017 issued by them and the respondents' decision to invite fresh tenders.

2. In April-2017, the respondents invited tenders for the work of road signage at different locations in Ludhiana under the Smart City Mission. The following provisions of the instructions to bidders are relevant:-

“38. Empoloyer’s
**Right to accept
Any Bid and to
Reject any or
All bids**

38.1 The Employer reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all bids submitted and specifically, bid securities, shall be promptly returned to the Bidders.

F. AWARD OF CONTRACT

39.

Award Criteria

39.1 Subject to ITB 37.1, the Employer shall award the Contract to the Bidder whose bid has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Document provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.
40.

Notification of Award.

40.1 Prior to the expiration of the period of bid validity, the Employer shall notify the successful Bidder, in writing, via the Letter of Acceptance included in the Contract Forms, that its bid has been accepted. At the same time, the Employer shall also notify all other Bidders of the results of the bidding and shall publish in Employer online the results identifying the bid and lot (contract) numbers and the following information:
(i) name of each Bidder who submitted a Bid.
(ii) bid prices as read out at Bid Opening.
(iii) name and evaluated prices of each Bid that was evaluated.
(iv) name of bidders whose bids were rejected and the reasons for their rejection; and
(v) name of the winning Bidder and the Price it offered, as well as the duration and summary scope of the contract awarded.
40.2 Until a formal contract is prepared and executed the notification of award shall constitute a binding Contract.
40.3 The Employer shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB 40.1, requests in writing the grounds on which its bid was not selected.”

3. Section III of the above provisions deals with the evaluation and qualification criteria. This section *inter-alia* requires the bidders to have the following experience:-

“**QUALIFICATION**

Eligibility and qualification criteria			Compliance Requirements				
No.	Subject	Requirement	Single Entity	All Parties combined	Each Member	One Member	Submission Requirements
4. Experience							
4.2(a)	Specific Construction and Contract Management Experience	(i) A minimum number of similar contracts specified below that have been satisfactorily and substantially completed as a prime contractor, joint venture member management contractor or sub contractor between 1st January, 2012 and application submission	Must meet requirement	N/A	N/A	N/A	Form EXP-4.2(a)

		deadline.					
		One similar completed work of minimum Contract value of INR 730 Lacs in a single contract.					
		Two similar completed work of minimum Contract Value of INR 548 Lacs in a single contract.					
		Three similar completed work of with minimum Contract value of INR 365 Lacs in a single contract.”					

4. The respondents issued the said LoA dated 22.06.2017 in favour of the petitioner. The petitioner was informed that his bid was accepted. Paragraphs 3 and 4 in so far as they are relevant read as under:-

“3. Documents to be submitted alongwith acceptance of Letter of Acceptance (LoA):

- (i) Work Plan Schedule
- (ii) Rates analysis of the quoted BOQ items No. 2.5 (a) and (b) reproduced below:-
 - a) Providing & Fixing of/ACP 4 mm thick sheeting.
 - b) Providing & Fixing of micro prismatic type XI Sheeting as per IRC 67: 2012 reflective sheeting of size including lettering and signs as applicable.
- (iii) Copy of the Test Report certifying that the retro reflective sheeting has been tested for all the parameters as per clause/para 6.7 of IRC 67-2012.
- (iv) Pre-Qualification warranty for 10 years field performance as per clause/para 6.7.4.3 of IRC 67-2012 duly attested by the sheeting manufacturer.

4. You are to submit the above mentioned documents along with the acceptance of the LoA within 7 days of issue of this LoA. Failure to this, the LoA shall be cancelled without any prior notice.”

5. Firstly, the LoA did not itself result in an agreement between the parties. As provided in Paragraph-3, “Documents to be submitted alongwith acceptance of Letter of Acceptance (LoA)”.

The LOA was, therefore, subject to the acceptance thereof and

subject to the documents stipulated therein being furnished. The petitioner by his letter dated 29.06.2017 conveyed his acceptance of the LoA. Under cover of the said letter, certain documents were forwarded but not the work plan schedule as required in clause 3(i)(a) of the LoA. Admittedly, the work plan schedule was furnished well after the period stipulated in clause-4, namely, seven days. The consequence thereof is provided in clause-4, namely, cancellation of the LoA without any prior notice.

6. The formal contract was not entered into between the parties. Clause 40.2 of the NIT is of no assistance to the petitioner for in these circumstances, it is to say the least doubtful, whether a valid and binding agreement can at all be said to have been entered into between the parties. Clause 40.2 would apply only when a valid agreement is entered into and there remains only the execution of a formal contract by the parties.

7. By the impugned letter dated 04.08.2017, the respondents revoked the LoA due to a decision taken to annul the bid process as per clause 38.1 which we set out earlier. We will presume here that the execution of a formal contract was not a term of the bargain and that a contract had been entered into. This is of course subject to the earlier findings that it is doubtful whether a contract was at all entered into on account of the petitioner having failed to furnish a document as required by paragraph-3 of the LoA.

8. The respondents' decision to annul the tender process was reasonable and infact entirely justified. We set out the

experience required for the said work. Clause 4.2(a) thereof stipulates three separate requirements, namely, one similar work of the specified value, two similar works of the specified values and three similar works of the specified values. Through inadvertence, the respondents had not inserted the word 'or' between each of three requirements. The intention was not that the bidders should have experience in all the three categories but in only one of them. Having realized this error, the respondents rightly decided to annul the bid process and to invite fresh tenders. The main ground on which this decision must be upheld is that on account of this error there are several parties who may not have submitted bids under the impression that they required experience in all the three categories. Had the error not been there, several other eligible bidders may have submitted their bids.

9. In such circumstances, we are not inclined to exercise our writ jurisdiction to interfere by condoning the delay on the petitioner's part in submitting the Work Plan Schedule.

10. The petition is, therefore, dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(AVNEESH JHINGAN)
JUDGE

28.02.2018

ravinder

Whether speaking/reasoned
Whether Reportable:

√ Yes/No
Yes/No√