

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

CWP No. 7607 of 2018 (O&M)

Date of Decision:20.04.2018

M/s IHR Associates

.....Petitioner

Versus

Punjab State Bus Stand Management Company Ltd. and others

.....Respondents

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

Present: Mr. R.K. Girdhar, Advocate for the petitioner.
Mr. Vikas Mohan Gupta, Advocate for respondents No. 1 to 3.
Mr. Sunil Chadha, Senior Advocate with
Ms. Swati Verma, Advocate for respondent No.4.

S.J. VAZIFDAR, CHIEF JUSTICE (oral)

CM Nos. 5459 and 5655 of 2018

Allowed subject to all just exceptions.

CM Nos. 5458 and 5654 of 2018 & CWP No. 7607 of 2018

The above applications have been filed by the respondents for vacating the ad-interim order dated 27.03.2018 by which the issuance of the work order was stayed till further orders. Liberty was granted to the respondents to make an application for vacating or modifying the order after giving the petitioners' advocate 24 hours notice in writing.

2. The parties requested us to hear the petition itself finally. We proceed to do so.

3. Respondents No. 2 and 3 are officers of the first respondent. Respondent No.4 is a private respondent in whose favour a notice of award of contract had been issued on 19.03.2018.

4. The petitioners have challenged the rejection of their technical bid and the issuance of the contract in favour of respondent No.4. The petitioner's technical bid has been rejected on the ground that the documents and the information stipulated in clause 6.3.1. (b) (iii) were not uploaded.

Clause 6.3.1 in so far as it is relevant reads as under:

"6.3.1 Technical Proposal

To enable fair and consistent evaluation of proposal, the technical proposal should include the following. Failure to include any of the items requested could result in disqualification of proposal.

a) Covering Letter: include a covering letter containing the name and address of the Bidder, name, mailing address and telephone no. of the contact person on the proposal; a statement confirming that the proposal is valid for 6 months (180 days) from the due date of submission.

b) Documentary Requirements:

i. The bidder has to submit online, the details of their management staff and personnel, Audited Financial Statements, balance sheets and a Certificate issued by the Chartered Accountant (CA) for atleast last three years and annual turnover (as per the eligibility criteria mentioned above). It should be certified that the annual turnover as per the eligibility criteria are for the last continue three financial years i.e. FY-2014-15, 2015-16 and 2016-17. It should be further certified by the Chartered Accountant in the said certificate that the Turnover is from the experiences/works as mentioned in the RFP condition No. 6.3.1 (b) (iii).

ii. Hard copy of Technical bid will be submitted after the closing time for Online bid by the next day before 12:30 p.m.

iii. Evidence of the experience of the bidder having minimum period of 3 years (mentioning the dates clearly) in any of the following fields:

- Operation & Maintenance of Bus Terinals, Air Ports, Railway Station, Hospitals, Banks, Institutions.
- Toll/Adda Fees Collection, collection of Revenues.

- Parking Fee Collection.
- The Govt. Contractor enlisted in 'A-class' by PWD Department of any State Govt., Govt. of India, CPWD or any other Govt. Department/Undertaking/Board/Corporation etc. having minimum 3 (Three) experience in Civil/PH/Electrical and other similar works.
- Outsourcing manpower service provider (Supply of average Minimum 150 persons per month in a year).

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NOTE: Bidders/Contractors shall upload/attach scanned copies of required relevant documents Only. i.e. Tender Fee, Proposal Security and Certificates as required for Technical Bid/Proposal and original may be submitted in the office of PUNBUS as stated in Condition No. 6.3.1 (b-ii).

5. The opening part of 6.3.1 does not make it mandatory for the official respondents to reject the bid if the particulars mentioned therein have not been uploaded. In fact sub clause (b) thereof indicates that hard copies of the technical bid are also to be submitted. The official respondents indeed are entitled to reject the technical bid, if the circumstance so warrant in the event of the information not being uploaded. They must however exercise their discretion in this regard and take an informed decision whether or not to reject it.

6. The "NOTE" quoted above does say that the bidder "shall" upload/attach scanned copies of the required relevant documents. The "NOTE" however must be read with the opening part of Clause 6.3.1. As we have already mentioned the official respondents have the discretion to reject or not to reject the technical bid on the ground that the information has not been received even though hard copies thereof have been supplied.

7. Clause 6.20 (a) of the notice inviting tenders reads as under:

"6.20 Selection and Notification

a) After the evaluation of the Technical Bids duly submitted by the bidders online, PUNBUS would intimate the date and venue of the opening of the Financial Proposal, to all the qualified bidders only whose Technical Proposal(s) are found to be confirming to the RFP requirements."

The official respondents by their letter dated 12.03.2018 invited the petitioner to attend the venue at the time of opening the financial bid on 13.03.2018. The letter states as follows:

"After evaluation of Technical Bids of "Operation and Maintenance of Bus Terminals Jalandhar & Ludhiana", now the financial bid will be opened on 13.03.2018 at 12:15 p.m. in the office of Executive Director (Operation), PUNBUS.

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Copy of the above is forwarded to the following for information and to attend the office."

It appears that the official respondents themselves considered the technical bid to be valid. Indeed if the technical bid was ex-facie not in order the official respondents would be entitled to reject it even subsequently.

8. The respondents contended that even hard copies of the required information/document were not furnished. That is an issue for the official respondents to decide. If the petitioner has infact not furnished even hard copies of the documents the official respondents may well be justified in rejecting their tender.

9. The petition is therefore disposed of by directing the official respondents to consider the petitioner's technical bid in accordance with the above observations namely they must exercise the discretion whether or not to reject the technical bid on the ground that the information stipulated in

clause 6.3.1 was not uploaded, if hard copies thereof were otherwise supplied. Further the official respondents shall consider whether even the hard copies of the required information was supplied or not. The official respondents are requested to intimate the petitioner and the private respondents their decision in writing forthwith.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(AVNEESH JHINGAN)
JUDGE

20.04.2018
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Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No