



W.P.No.8902 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order 23.03.2023	Date of Pronouncing Order 09.06.2023
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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

WP.No.8902 of 2023
and
WMP.Nos.9045 & 9046 of 2023

B.S.Enterprises,
Represented by its Proprietor,
S.Senthilnathan,
Having office at
No.29/44, Vellaiyampalayam,
Ayyampalayam, Kodumudi,
Erode – 638 151.

... Petitioner

Vs.

The Principal Chief Conservator of Forests,
(Head of Forest Force) Forest Headquarters,
Guindy – Velachery Main Road,
Near Kannigapuram Check post, Guindy,
Chennai 600 032.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the request for proposal invited by the Respondent Reference No.Nil dated 06.03.2023 published in Dina Thanthi daily newspaper captioned as “Request for Proposal (RFP) for



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DGPS SURVEY OF FOREST BLOCKS TO PREPARE NECESSARY GEO-DATABASE WITH BOUNDARY DETAILS USING AERIAL LiDAR” quash the same as illegal and against the provision of the Tamil Nadu Transparency in Tenders Act, 1998 and respective Rules, 2000.

For Petitioner	: Mr.R.Sivakumar for M/s.K.M.Vijayan Associates
For Respondent	: Mr.J.Ravindran Additional Advocate General IX Assisted by Mrs.S.Mythreye Chandru Special Government Pleader

ORDER

This Writ Petition has been filed for quashing the Request For Proposal invited by the Respondent in paper publication dated 06.03.2023 captioned as “Request for Proposal (RFP) for DGPS SURVEY OF FOREST BLOCKS TO PREPARE NECESSARY GEO-DATABASE WITH BOUNDARY DETAILS USING AERIAL LiDAR” as illegal and against the provision of the Tamil Nadu Transparency in Tenders Act, 1998.

2.The brief facts leading to filing of this Writ Petition is as under:

The Respondent herein invited Request for Proposal (RFP) for DGPS



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SURVEY OF FOREST BLOCKS TO PREPARE NECESSARY GEO-

DATABASE WITH BOUNDARY DETAILS USING AERIAL LiDAR and the

same was published in the newspaper dated 06.03.2023 and the same was published in the respondent department website on 03.03.2023 at 07.15 pm.

2(a).The main contention of the Petitioner is that the captioned request for proposal can only be termed as tender and consequently the Respondent is liable to follow the Tamil Nadu Transparency in Tenders Act, 1998 and respective Rules, 2000 and reliance is placed upon Section 4 of the above Act.

3.The sole Respondent filed counter affidavit, wherein he has narrated the necessity for calling for Request for Proposal (RFP). The summary of the counter that are necessary for determination of this Petition is as under:

3(a).The Hon'ble Supreme Court of India on 06.07.2011 in IA.No.1868 of 2007 filed by M/s.Lafarge Umiam Mining Pvt. Ltd., in WP (Civil) No.202 of 1995 in the matter of TN Godavarman Thirumalpad versus Union of India and others, issued guidelines on long term and short term measures to be taken by Central Government, State Government and various authorities under Forest Conservation Act, 1980 and Environment Protection Act, 1986 to prevent



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recurrence of *fait accompli* situations. Therefore the guidelines issued by the

Hon'ble Supreme Court of India require creation and regular updating of a "GIS based decision support database" containing the district-wise details of location and boundary of each plot of land that may be defined as forest for the purpose of Forest Conservation Act, 1980.

3(b).The main purpose of Request for Proposal (RFP) is to identify the best technology/methodology to be executed by best vendor in case of complex projects and to have variety of perspective in projects. The Request for Proposal (RFP) also advises the participants on how to prepare proposals, with specific guidance on how the bids should be formatted and presented. They generally include instructions on what information the bidder must include and the desired format.

3(c).This work involves a lot of high technical expertise, deals with forest asset mapping and boundaries which is quite sensitive and environmental concern. The criteria were fixed to ensure authenticated vendors to participate, to carry out the intended project work of DGPS Survey of Forest Blocks to prepare necessary Geo-Database with Boundary details using Aerial LiDAR.



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3(d).For the year 2022-23, sanction was accorded to carryout work of DGPS (Differential Global Positioning System) Survey of Forest Blocks to Prepare Necessary Geo-Database with Boundary details for Rs.15 crores. Hence, it has been decided to adopt a methodology of using Aerial LiDAR (Geo Spatial Technologies). Therefore, action has been taken to call for the Request for Proposal with the objective to map the forest area of Tamil Nadu, about 4,700 Sq.km using aerial LiDAR and Aerial Photography which will facilitate highly accurate and complete mapping of the forest boundaries of continuous Reserve Forest area in 955 number of Reserve Forest and Reserve Lands as given below:

<i>S.No</i>	<i>Name of the Circle</i>	<i>Reserve Forest (Sq. Km)</i>	<i>Reserve Land (Sq. Km)</i>	<i>Total recorded forest area (Sq. Km)</i>
1	Anaimalai Tiger Reserve	1814.123	8.903	1823.027
2	Mudhumalai Tiger Reserve	1290.113	131.366	1421.48
3	Sathyamangalam Tiger Reserve (Sathyamangalam Division and Hassanur Division)	1455.30	0	1455.309
Total Survey area				4699.81

A detailed Request for Proposal was uploaded in Tamil Nadu Forest Department official website on 03.03.2023 and in the print media viz., Daily Thanthi and Hindu newspapers it is published on 06.03.2023, mentioning that bid meeting scheduled on 13.03.2023 at 03.00 pm and last date for submission of Request for Proposal with supporting documents fixed on 20.03.2023 at



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03.30 pm and this Writ Petition filed on 20.03.2023.

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3(e).As per the counter affidavit, to conduct pre-bid meeting on 13.03.2023, the following Technical Scrutiny Committee was constituted in the Proceedings of the Principal Chief Conservator of Forests (Head of Forest Force) in Ref.No.GIS/754/2022, dated 10.03.2023, which consists of other technical experts in addition to the departmental people for transparency and technical expertise:

1	Thiru.Akash Deep Baruah, I.F.S., Additional Principal Chief Conservator for Forests (Project Tiger), O/o.Principal Chief Conservator of Forests (HoFF)	Chair Person
2.	Tmt.S.Sudha, I.F.S., Head of Division (Land use), State Planning Commission, Chennai & Deputy Conservator of Forests (GIS) (FAC), O/o.Principal Chief Conservator of Forests (HoFF)	Member
3	Dr.Sanjeevi, Ph.D (Remote Sensing) Professor (Rtd.), Anna University, Chennai	Member Specialist
4	Selvi.S.Askari, Forest Range Officer (GIS), O/o.Principal Chief Conservator of Forests (HoFF)	Member

4.Heard the learned counsel for the Petitioner and the learned Additional Advocate General appearing for the Respondent.



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5(a).The learned Additional Advocate General had produced the original records, wherein it is found that on 13.03.2023, 21 vendors participated and some clarifications/requests were received. All those were clarified and uploaded in the department website on 16.03.2023. Only 4 bidders had submitted their proposal for technical bid as well as financial proposal on 20.03.2023, which were received before 3.00 PM on that date. Subsequently, technical bids of 4 bidders were opened at 4.15 PM on 20.03.2023 itself by the above said Technical Scrutiny Committee.

5(b).Further more the above said Technical Scrutiny Committee evaluated all these 4 technical proposals and recommended that 3 Request for Proposals (RFPs) have been qualified for technical presentation based on the pre qualification criteria evaluation. Accordingly, it has been fixed for presentation by the 3 qualified proposals on 21.03.2023. But it has been postponed due to administrative reasons.

5(c).The reduction of time is also based on the approval of the Principal Chief Conservator of Forests (Head of Forest Force) who is higher authority to the Principal Chief Conservator of Forests (Information Technology), since the



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time is getting elapsed and ending of the financial year. Therefore, the provision of minimum period of 30 days for the tenders exceeding value of Rs.2 crores will not be applicable here for the reason stated above since reduction in time was accepted by the Principal Chief Conservator of Forests (Head of Forest Force), Chennai, while perusing and approving the RFP and constituting the technical committee for further evaluation. In this case of RFP, the transparent procedure has been followed by giving wide publicity in Department website/paper advertisement which is evident for number of participants during the Pre-bid meeting and equal opportunity is also given to all willing participants.

6.To substantiate the case of the Respondent, the following judgments have been produced by the learned Additional Advocate General:

- (i) ***Balaji Ventures Pvt. Ltd., Vs. Maharashtra State Power Generation Company Ltd., & Another*** reported in ***2022 Live Law (SC) 295***
- (ii) ***Airport Authority of India Vs. Centre for Aviation Policy, Safety & Research (CAPSR) & Others*** reported in ***2022 Live Law (SC) 814***
- (iii) ***M/s.Agmatel India Pvt. Ltd., Vs. M/s.Resoursys Telecom & Ors.*** reported in ***2022 Live Law (SC) 105***



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7.The original records produced by the learned Additional Advocate General, consists of the necessary approval given by the Principal Chief Conservator of Forests (Head of the Forest Force). It is also noted that as per the provision mentioned in Request for Proposal, it is mandatory to release a payment of 5% of Contract value at the first week of commencement of work such as Mobilization of Man power, equipments, submission of inception report, methodology. The value of 5% of contract amount will come to Rs.75 lakhs approximately in case of projected value of work as Rs.15 crores, which is very tentative.

8.In the case of ***M/s.Agmatel India Pvt. Ltd., Vs. M/s.Resoursys Telecom & Ors.*** reported in ***2022 Live Law (SC) 105***, the Hon'ble Supreme Court held as follows:

“17...it amply clear that the author of the tender document is taken to be the best person to understand and appreciate its requirements; and if its interpretation is manifestly in consonance with the language of the tender document or subserving the purchase of the tender, the Court would prefer to keep restraint. Further to that, the technical evaluation or comparison by the Court is impermissible; and even if the interpretation given to the tender document by the person inviting offers is not as such acceptable to the Constitutional



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Court, that, by itself, would not be a reason for interfering with the interpretation given.”

“24...the process of interpretation of terms and conditions is essentially left to the author of the tender document and the occasion for interference by the Court would arise only if the questioned decision fails on the salutary tests laid down and settled by this Court in consistent decisions, namely, irrationality or unreasonableness or bias or procedural impropriety.”

In the case of Airport Authority of India Vs. Centre for Aviation Policy, Safety & Research (CAPSR) & Others reported in 2022 Live Law (SC) 814,
the Hon'ble Supreme Court held as follows:

6....the High Court has erred in quashing and setting aside the eligibility criteria/tender conditions mentioned in the respective RFPs, while exercising the powers under Article 226 of the Constitution of India. As per the settled position of law, the terms and conditions of the Invitation to Tender are within the domain of the tenderer/tender making authority and are not open to judicial scrutiny, unless they are arbitrary, discriminatory or mala fide. As per the settled position of law, the terms of the Invitation to Tender are not open judicial scrutiny, the same being in the realm of contract. The Government/tenderer/tender making authority must have a free hand in settling the terms of the tender.



9. At this juncture, it remains to be stated that RFP and tender cannot be brought under one and same platform, since both are meant for different purposes. Rule 4 of the Tamil Nadu Transparency in Tenders (Public Private Partnership Procurement Rules, 2012) is usefully extracted as follows:

“4. Two Stage Open Competitive Tendering.-

The two stage open competitive tendering shall include the following stages.-

- (a) Request for Qualification (RFQ) stage for short-listing Qualified Applicants, in accordance with Chapter-IV: and*
- (b) Request for Proposal (RFP) stage for selection of the most Lowest Tenderer, in accordance with Chapter-VI.”*

10. A tender is a procurement method used when the scope of the work is well defined and rule and the goods or services to be procured are of a standard nature. The tender process involves issuing a public notice inviting bids from interested parties, who then submit sealed bids. The bids are evaluated based on the evaluation criteria specified in the Tender document and the contract is awarded to the bidder who meets the specified requirements and offers the lowest price.

11. On the contrary it is to be noted that the Request for Proposal (RFP) is a procurement method used when the scope of work is complex or not well defined, and the buyer is seeking proposals from vendors for a solution to a



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specific problem or need. The RFP process involves issuing a public notice inviting proposals from interested parties, who then submit detailed proposals outlining their proposed approach, methodology, experience and cost. The proposals are evaluated based on the evaluation criteria specified in the RFP document, and the contract is awarded to the bidder whose proposal is deemed most advantageous to the buyer. The Request for Proposal (RFP) is the document to be used for obtaining offers from the consultants for the required service and hence it differs from the tender as the tender is an "offer" which the bidders accept in submitting a bid, resulting in a bid contract. The RFP is meant for seeking their technical and Financial Proposals. The RFP should contain:

- i. A letter of invitation
- ii. Information to Consultants regarding the procedure for submission of proposal
- iii. Eligibility and pre-qualification criteria
- iv. List of key position whose CV and experience would be evaluated.
- v. Bid evaluation criteria and selection procedure.
- vi. Standard formats for technical and financial proposal
- vii. Proposed contract terms.
- viii. Procedure proposed to be followed.



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The Petitioner has not participated in the tender called for by the Respondent. The object of the work involves technologies and entire project is pursuant to the order passed by the Hon'ble Supreme Court.

12.Hence, I find that the Writ Petition has been filed on the misconception and misappropriate understanding between the term of Request for Proposal and Tender.

13.With regard to the another point raised by the learned counsel for the Petitioner, it is to be noted that the turnover fixed is 20 crores over 5 years, which comes to 4 crores per year, which is reasonable for this project. By accepting this condition, 21 participants attended the pre bid meeting on 13.03.2023. The same was also clarified in pre bid meeting. Since, the petitioner has not attended the pre bid meeting and not sent any of his representative, he is not aware of the said fact. In short, the tender process or RFP process does include the concept of bid contract and hence, all the contentions raised by the learned counsel for the Petitioner stands negated.

14.In view of the counter affidavit and the version put forward by the Respondent, I find that there is no violation in calling for Request for Proposal,



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considering the nature of the work that is to be involved as narrated in the presiding paragraphs and hence all the contentions raised by the Petitioner stands negatived and I am of the considered view that the case of the Petitioner does not have any merit.

15.In fine, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

09.06.2023

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

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To

WEB COPY

The Principal Chief Conservator of Forests,
(Head of Forest Force) Forest Headquarters,
Guindy – Velachery Main Road,
Near Kannigapuram Check post,
Guindy, Chennai 600 032



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RMT.TEEKAA RAMAN.J,

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Pre-delivery Order made in

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and

WMP.Nos.9045 & 9046 of 2023

Dated: 09.06.2023