

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9152 of 2024

Dayton Natural Resources Pvt. Ltd a company limited by shares registered under Companies act having its office at Plot No-302, 3rd Floor, Yadnesh Apartment, Kailash Nagar, Opp Sai Baba Mandir, Dombivli (W), Thane, Maharashtra, India-421202 through its Authorised Representative Deepak Kumar, aged about 29 years, Male, son of Govind Singh, resident of House No. 3/277, Lodipur, Christine colony, PS- Kotwali, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Animal and Fisheries Resources Department, Government of Bihar, Patna.
2. The Director, Animal Husbandry, Animal and Fisheries Resources Department, Government of Bihar, Patna.
3. The Project Director, Bihar Livestock Development Agency, Animal and Fisheries Resources Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Abhinav Shrivastava, Advocate Mr. Nirbhay Prashant, Advocate Mr. Pravin Kumar Sinha, Advocate
For the Respondent/s	:	Mrs. Archana Minakshi, GP-6

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 24-06-2024

The petitioner, who has not even applied under the Request for Proposal (RFP), challenges the eligibility criteria and the conditions prescribed in the RFP as onerous and unreasonable.

2. The RFP, as is produced as Annexure-P/2, was issued for appointing agencies for operation of Mobile



Veterinary Units (MVU) at the different locations in Bihar.

3. We heard Shri Abhinav Shrivastava, learned Counsel for the petitioner and Smt. Archana Minakshi, learned Government Pleader appearing for the State/Respondents.

4. Learned Counsel for the petitioner argued that the RFP should be interfered with for reason of the same being contrary to the Bihar Financial Rules, 1950. The specific contention is that for selecting MVUs even facilities which operate with MBBS doctors are indicated as valid experience. It is also submitted that the tender has intended quality and cost based selection, which would lead to exclusion of the lowest tenderer. It is contended in the writ petition that the pre-bid queries of the petitioner was not answered and that the RFP was tailor made to suit one Bavya Healthcare Service Pvt. Ltd.

5. The learned Government Pleader, however, pointed out that the petitioner has not even applied pursuant to the tender. It is also submitted that the tenderer cannot dictate the conditions on which tenders are invited.

6. At the outset, it has to be noticed that the RFP produced as Annexure-P/2, indicates that there would be a pre-bid meeting on 01.04.2024 at 3:00 P.M. and the bid closing date and time was on 09.04.2024 at 12:05 P.M. The petitioner does



not specifically speak of having appeared in the pre-bid meeting. However, petitioner produces a representation as Annexure-P/3 pointing out the objections as against the RFP, which is dated 02.04.2024. Obviously, the respondent was not obliged to answer the pre-bid queries made after the date on which a meeting was scheduled for answering such queries.

7. Having gone through Annexure-P/3 representation and the objections raised, the petitioner's intention is to reduce the rigor of the conditions so as to suit the petitioner's business. In fact, it has to be pertinently noticed that the writ petition does not indicate any details about the business of the petitioner, but for a bland statement that they are engaged in ambulance, X-ray, and other health related business with call centre. We are of the opinion that the petitioner who had not attended the pre-bid meeting; which is admitted, was not entitled to raise any representation after the meeting date and time. The petitioner also has not applied under the tender and is, hence, not entitled to challenge the RFP.

8. The further ground is raised on the basis of the technical qualification prescribed. The criteria for experience prescribed is operation and maintenance of Mobile Medical Units/Mobile Health Units/Ambulance/Mobile Veterinary Units.



It cannot be said that experience in handling mobile units with MBBS doctors alone was insisted upon. The stress as we see from the technical criteria specified, is on experience in mobile health care; which is perfectly in order considering the RFP having been issued for appointment of agencies to operate and maintain Mobile Veterinary Units.

9. The further contention raised is on the basis of the Bihar Financial Rules. Specific reference is made to Rule 131U to Rule 131ZP. Rule 131U to Rule 131ZH is under the sub-heading of 'Procurement of Services', while Rule 131ZI to Rule 131ZP is under the sub-heading 'Outsourcing of Services'.

10. At the outset, it has to be noticed that no specific rule is pointed out to allege its violation in the issuance of the RFP. Bland statements are made with respect to on-line applications being insisted upon and the awarder being obliged to select the lowest tenderer. Rule 131V, as we see from under the sub-heading 'Procurement of Services', indicates only the fundamental principles applicable to all Departments regarding engagement of consultant(s) and outsourcing of services; while detailed instructions could be issued by the concerned Ministries or Departments, subject only to the condition that the basis rules should not be violated. There is nothing indicating that an on-



line submission is mandatory or the selection of the lowest tenderer.

11. It is trite that there is no obligation on the awarder to choose the lowest tenderer since the quality of the work also is a relevant consideration and the ability to deliver promptly and efficiently is the reigning consideration, to choose successful tenderers. We also see that the quality and cost based selection, as per the RFP, is detailed clearly indicating the criteria and the manner in which it will be carried out; in the RFP itself. We find absolutely no reason to interfere with the RFP on the basis of the objections raised by the petitioner.

12. We have also noted the submission of the petitioner that the RFP is tailor made to suit a particular entity; which entity has not been impleaded in the writ petition. In fact, as we observed, the objections to the RFP, as submitted by the petitioner as per Annexure-P/3, indicate the intention of the petitioner to make the RFP tailor made for the petitioner. As rightly submitted by the learned Government Pleader, the tenderer cannot dictate terms and conditions and in this case the petitioner has not even applied under the RFP.

13. We find absolutely no reason to interfere with the RFP and the writ petition is dismissed both on the ground of



locus standi and the submissions against the RFP being not tenable. The writ petition stands dismissed *in limine*.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	26.06.2024
Transmission Date	

