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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 16916/2024 & CM APPL. 71679/2024**

KALPANA SINGH

.....Petitioner

Through: Mr Nakul Dewan, Sr Advocate with
Mr Mohd. Fuzail Khan, Ms Shisba
Chawla and Mr Gaurav Kumar,
Advocates.

versus

GOVERNEMENT OF NCT OF DELHI

.....Respondent

Through: Mr Anuj Aggarwal, ASC, Mr Vikrant
Chawla, Mr Yash Upadhyay, Mr
Siddhant Dutt, and Ms Ishita Pandey,
Advocates for GNCTD.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

10.12.2024

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1. The petitioner has filed the present petition, *inter alia*, impugning the notification bearing No.F.No. DTO/VIU/TPT/2024/396/075776799 (hereafter *the impugned notice*) issued by the Transport Department, Government of NCT of Delhi.

2. The respondent (Transport Department, Government of National Capital Territory of Delhi) had issued the impugned notice inviting Expression of Interest (EOI) from various bidders to manage the Automated Testing Station (hereafter *the ATS*) for testing fitness of the vehicles through automated equipment and for issuance of the fitness certificates. The impugned notice identified five locations where Automated Testing Stations are required to be set up.

3. The petitioner is aggrieved by the impugned notice on essentially two fronts. First, it is submitted that the eligibility criteria for bidders is framed



in a manner so as to favour one M/s. Rosmerta Technologies Limited (hereafter *the RTL*) in as much as the RTL has the highest “operation experience of managing vehicle fitness centres in India”. Thus, providing a selection criteria, which accords a high weightage to past experience in managing of ATS, would essentially ensure that the bidding process tilts in the favour of RTL. Second, it is submitted that the selection criteria providing a decisive weightage for experience has no rational nexus with the object of selecting bidders for operating ATS and, therefore, the said criteria is violative of Article 14 of the Constitution of India.

4. At the outset, it is relevant to set out the Article 10 and 11 of the impugned notice which is at the heart of the petitioner’s challenge in this case.

“10. TECHNICAL EVALUATION:

S.No.	Qualification conditions	Scoring Criteria	Documents to be submitted
1	The Applicant/any member of Consortium (in case of Consortium) must have experience of operation of ATS/ Inspection & Certification Centre/ Automated Fitness Centre for at least six months during the last three years preceding last date of submission of bid. Work experience will be counted for last three years preceding last date of submission of bid. For illustration: In case, last date of submission of	i.. More than 6 months but below 12 months - 10 marks ii. More than 12 months but below 18 months - 20 marks iii. 18 months or above - 30 marks	Notarized Copy of license granted by the registering authority on form 39/ form 62 of CMVR. Notarized undertaking from the Applicant along with certified copy from the authority regarding experience of operation.



	bid is 30th Sep 2024, then last three years will be: Year 1: 30 th Sep 2023-30th Sep 2024. Year 2: 30th Sep 2022-30th Sep 2023 Year 3: 30th Sep 2021-30th Sep 2022		
2	Equipment Supplier/OEM must have supplied at least 10 test lane comprising of Roller Brake Tester, Side Slip Tester, Suspension Tester, Speedometer and Joint Play Tester in India in the last three years preceding last date of submission of bid.	10 Test Lanes - 10 Marks 20 Test Lanes - 20 Marks 30 Test Lanes and above - 30 Marks	Notarized undertaking from the Applicant along with certified copy from the respective authority regarding and supply of specified Test Lane Equipment
3	The Applicant must have suitable Project Land for establishment of ATS as accepted by the Transport Department in accordance with point 8 of EOI.	1. Distance of proposed Notarised document of land from NH or State Highway: i. Up to 25 meters : 25 marks ii. More than 25 meters to 75 meters : 15 marks iii. More than 75 meters to 150 meters : 5 Marks.	Notarized document of land ownership (e.g., Transfer Deed/Khatauni etc.) in the name of Applicant or Copy of registered Lease Deed for a lease period of at least 10 years from the date of allotment of tender, in the name of Applicant along with Location Map of the Project Land, demarcating the boundaries and National Highway or State Highways
4	When evaluating bids for this project that involves setting up test lanes, a key criterion is the number of test lanes that each	Maximum 15 Marks	Scoring Criteria: 5 test lanes- 15 marks 4 Test lanes-12 marks



	Applicant proposes to establish. The principle guiding this criterion is that the Applicant who proposes the highest number of test lanes will be given preference. This approach is to ensure that the testing facility can handle a higher volume of vehicles, thereby increasing its capacity and efficiency. A Applicant must propose minimum two lane at one location in that area.		3 Test lanes- 09 marks 2 Test lanes- 06 marks
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11. DETERMINATION OF THE SUCCESSFUL APPLICANT:

- 1) At each of the area, one Preliminary Registration Certificate (PRC) will be issued for setting one ATS (minimum 2 lane and maximum can be any depending on land size availability) at one location within that area.
- 2) A Preliminary Registration Certificate (PRC) will be awarded to the Applicant (after receipt of application through NSWS as per procedure as defined in Rule 175 of CMVR) who scores the highest technical marks for each area, according to the evaluation criteria in this EOI. Each area will be assessed separately by the technical committee, and the Applicant with the highest score in that area will receive the PRC.
- 3) In case of tie of score in a specific area, Applicant with maximum experience in operation of ATS/ Inspection & Certification Centre/ Automated Fitness Centre will be preferred (Counted in terms of lane years= Number of lane operational x period of operation).
- 4) In case of tie in in lane experience as specified in sub clause 3, the applicant with higher availability of land area for a specific location will be preferred.
- 5) However, any single Applicant can only be awarded a maximum of two ATS area. If an Applicant qualifies for a third area, the PRC for that location will go to the next highest scorer.
- 6) The Technical Evaluation Committee shall submit a report with Technical Score of each Applicant and recommendations of highest scorer in each of the five area separately for approval to the approving authority.”

5. As is apparent from the above, the Article 10 sets out the scoring criteria of awarding marks against each qualification condition. The bidder having experience of more than eighteen months in operating ATS would be



awarded 30 marks against the said qualitative criterion. Similarly, the experience in supplying test lanes is required to be awarded marks in accordance with the given scale – 10 marks for 10 lanes; 20 marks for 20 lanes; and 30 marks for 30 lanes and above.

6. Clause 3 and 4 of Article 11 of the impugned notice stipulates the order of preference in case there is a tie in the scores awarded to different bidders.

7. It is the petitioner's case that since RTL has been operating ATS since the year 2014, pursuant to the agreements with Ministry of Transport, it has the highest experience in the said field. It would, thus, follow that in case of a tie of scores between the two bidders, RTL would steal a march over the other bidders by virtue of their past experience.

8. According to the petitioner, the said criteria is arbitrary and unreasonable considering that the experience of more than six months is a qualifying criteria for any bidder to participate in the bidding process.

9. The learned counsel for the respondent has pointed out that clause 5 of Article 11, stipulates that an applicant would be awarded a maximum of two ATS areas (out of five). He submits that by virtue of this condition, RTL cannot be awarded the contract for ATS in all five areas. Subject to RTL scoring the highest marks, it can at the maximum be allocated two ATS areas.

10. There is merit in the contention that given the weightage accorded to the management/operation experience, the bidder with the highest experience in managing ATS, would inevitably have a competitive advantage. Since RTL is the most experienced bidder, in this case, it would have a decisive advantage in case of a tie with other bidders. However, we



are unable to accept that the said condition is arbitrary or unreasonable.

11. Plainly, from the perspective of the respondent, preferring an operator with a higher experience in case of other parameters being equal, is neither irrational nor unreasonable.

12. We are unable to accept that clause 3 of Article 11 is arbitrary or unreasonable.

13. It is also relevant to note that in terms of clause 4 of Article 11, in case there is a tie between the bidders after awarding scores for experience as stipulated under clause 3 of Article 11, the bidder with the maximum availability of the land would be preferred.

14. The contention that the criteria of experience in the given field has no rational nexus with the object to be achieved, is insubstantial. The contract is for operating the ATS. Clearly, preferring an entity who has a higher experience in the said field, has a clear nexus with the object of better management/operation of the ATS. Selecting a person with more experience in a particular field cannot by any stretch be said to be a condition that has no nexus with performance in the given field.

15. The petition is unmerited, and accordingly, dismissed. Pending application also stands disposed of.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

DECEMBER 10, 2024

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[Click here to check corrigendum, if any](#)