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No.G-20016/13/2012-TF.II
Government of India
Ministry of Road Transport & Highways
Finance Wing

New Delhi, dated: 24.05.2013

Office Memorandum

Subject: Implementation of Court Order dated 13.04.2012, passed by the Hon,ble Delhi High Court in WP (C) No. 2092/2012.

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The under signed is directed to enclose herewith a copy of OM No.26/5/2013-PPD dated 20.05.2013 received from Department of Expenditure, Ministry of Finance on the subject cited above for information and strict compliance by all concerned.

1048904/CE(NHDP)IV
28/5/13

Fd-SE(NHDP)IV

(Smt. P.L.Kaushik)
Assistant Financial Adviser
Tel: 23711472
6514

Encl: As above.

To

1. DG (RD) & SS / ADG-1/ ADG-II/ ADG-III
2. Pr. CCA
3. JS (T) / JS (H) / JS (LA&C) / JS (IC)
4. All CEs

Copy to:

PPS to AS & FA

PS to Dir (Fin)

28/5
SE (NHDP IV)

28/5/13

EE(NHDP-IV) RKG.
EE(NHDP-IV) Sr. R. Kapoor

No. 26/5/2013-PPD
Government of India
Ministry of Finance
Department of Expenditure
(Procurement Policy Division)

North Block, New Delhi
Dated: 20th May, 2013

OFFICE MEMORANDUM

Subject:- Implementation of Court Order dated 13.4.12, passed by the Hon'ble Delhi High Court in WP(C) No. 2092/2012.

Reference is invited to this Department's O.M. of even No. dated 25th April, 2013, (copy enclosed for ready reference) vide which all Ministries/Departments were requested to comply with the Hon'ble High Court of Delhi's Order dated 13th April, 2012 regarding disclosing the reasons for rejecting/non issuing of tenders where enquiries are made by a contracting party.

2. In its Order dated 13th May, 2013 in another WP(C) No.3079/2013, the Hon'ble Delhi High Court has again observed that the petitioner's bid was disqualified without disclosing the reasons, though the petitioner had asked for the same.

3. In the light of above, it is requested that all the procuring authorities in your Ministry/Department may be directed to mandatorily comply with the provisions of Rule 160(ii) of the General Financial Rules, 2005 which stipulates that suitable provision in the bidding document should be made to enable a bidder to question the bidding conditions, bidding process and/or rejection of its bid. The reasons for rejecting a tender or non issuing a tender document to a prospective bidder must be disclosed where enquiries are made.

(Vivek Ashish)
Under Secretary to the Government of India
Te.No.2309 5629

DIR-F.
23/5/13

To

1. The Secretaries of the Ministries/Departments of the Govt. of India.
2. The Financial Advisers of the Ministries/Departments of the Govt. of India.

SO(T-II)
23/5/13
(To be circulated)

23/5/13

No.26/5/2013-PPD
Government of India
Ministry of Finance
Department of Expenditure
(Procurement Policy Division)

North Block, New Delhi
Dated 25th April, 2013

Office Memorandum

Subject:- Implementation of Court Order dated 13.4.12, passed by the Hon'ble Delhi High Court in WP(C) No. 2092/2012.

It has been observed that there are many instances of a tender being rejected or tender documents not being issued and when the party enquires reasons, the same are not communicated, leading to unnecessary litigation. In such cases the first round of litigation is to find out the reasons and the second round is to challenge the reasons.

2. In this context, the Hon'ble Delhi High Court, in its Final Order in WP(C) No. 2092/2012, has directed that a communication be circulated to all Government Departments to disclose reasons in such cases where enquiries are made by a contracting party, so as to avoid unnecessary litigation.

3. In this context it is mentioned that procurements made by the Central Government are regulated by the General Financial Rules (GFRs), 2005 and manuals and procedures issued there-under. While Chapter 6 of the GFRs contains the general rules applicable to all Ministries/Departments regarding procurement of goods required for use in public service, detailed instructions relating to procurement of goods are required to be issued by the procuring departments. These instructions need to be broadly in conformity with the general rules contained in this Chapter.

4. Further, in terms of Rule 137 of GFRs, 2005, every authority delegated with the financial powers of procuring goods in public interest shall have the responsibility and accountability to bring transparency in matters relating to public procurement and for fair and equitable treatment of suppliers and promotion of competition in public procurement.

5. Attention is also invited to Rule 160 of the GFRs which lists out certain measures required to be taken to ensure that all Government purchases are made in a transparent manner. Rule 160(ii) stipulates that suitable provision in the bidding document should be made to enable a bidder to question the bidding conditions, bidding process and/or rejection of its bid.

6. It may therefore be ensured that necessary instructions be issued (if not already in place) to all the procuring authorities to the effect that a provision, in line with Rule 160 (ii) of the GFRs should invariably be made in the bidding documents. The reasons for rejecting a tender or non-issuing a tender document to a prospective bidder must be disclosed where enquiries are made by the bidder.

7. The undersigned is also directed to forward herewith a copy of the Order dated 13th April, 2012, passed by Hon'ble High Court of Delhi in WP(C) No. 2092/2012: M/s. Amit Brothers vs Chief Engineer R&D and Another. The importance of complying with the Court Order in letter and spirit cannot be over-emphasized.

(Vivek Ashish)
Under Secretary to the Government of India
Tel: 23095629

To
1. The Secretaries of the Ministries/Departments of the Govt. of India
2. The Financial Advisers of the Ministries/Departments of the Govt. of India

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 2092/2012 and CM No.4549/2012 (Stay)

M/s AMIT BROTHERS ..... Petitioner

Through: Mr.Sameer Sharma and Mr.Varun

Gupta, Advocates.

versus

CHIEF ENGINEER, R and D AND ANR ..... Respondent

Through: Mr.Sachin Datta, Advocate/Standing

Counsel for UOI.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

13.04.2012

The grievance of the petitioner is that the tender documents are not being issued to the petitioner though the petitioner is a registered contractor.

We may note that we have repeatedly emphasized in various orders/judgments that whenever a tender is rejected or tender documents are not issued and a party enquires reasons, it is necessary that the reasons be communicated to such a party to avoid unnecessary litigation as otherwise the first round of litigation is to find out the reasons and

the second round of litigation is to challenge the reasons. Despite this, the authorities persist in keeping silent over such representations, which we strongly deprecate. We call upon the learned standing counsel for UOI to ensure that all the Government departments are circulated a communication to disclose reasons in such cases where enquiries are made by a contracting party to avoid unnecessary litigation and a compliance report be filed within two weeks. A copy of this order be circulated along with the communication.

Insofar as the present case is concerned, learned standing counsel for UOI states that the reasons why tender documents have not been issued to the petitioner shall be communicated on or before 16.04.2012 through a written communication with a copy being handed over to learned counsel for the petitioner.

The writ petition stands disposed of with the aforesaid directions with liberty to the petitioner to challenge any adverse decision, if so advised, in accordance with law.

Dasti to learned counsel for the parties under the signatures of the Court Master.

SANJAY KISHAN KAUL, J

RAJIV SHAKDHER, J

APRIL 13, 2012/dm