



COMPETITION COMMISSION OF INDIA

Suo Motu Case No. 03 of 2018

In Re: Alleged cartelization in road construction work in the State of Uttar Pradesh

CORAM

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

Order under Section 26(6) the Competition Act, 2002

1. The present case was initiated by the Commission *suo-motu* after taking cognizance of possible instances of bid rigging by contractors engaged in road construction in response to the various tenders floated by the State of Uttar Pradesh, on the basis of a report of the Comptroller and Auditor General (“CAG”) titled “Performance Audit of Construction Management in Road Works (Government of Uttar Pradesh, Report No. 04 of the year 2017)” (“the report”).
2. As per the report, Uttar Pradesh is the most populous state in the country and has made massive investments in the road sector in recent years to improve connectivity. The Public Works Department (PWD) is responsible for the construction and maintenance of roads, buildings and bridges in the state. The PWD had established two public sector corporations, namely the Uttar Pradesh State Bridge Corporation Limited (UPSBC) in 1972 and the Uttar Pradesh Rajkiya Nirman Nigam Limited (UPRNN) in 1976 for the construction and maintenance of major bridges and buildings respectively in the State. The road works are executed by PWD by awarding work to various contractors. Chapter 7 of the report talked about cartelization in various tenders floated/bids submitted for road construction undertaken in the state during the period 2011-2016. In this regard, CAG



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examined 802 contract bonds executed by PWD in selected districts and noted large scale deviations from the laid-down criteria for the technical evaluation of bids.

3. The CAG analyzed data of bids received during 2011-2016 with respect to various tenders floated by the PWD and observed that a majority of the tenders were not competitive as only one or two bids were received despite large number of registered contractors in each district. CAG also noted lack of competition in the tendering process and observed that, out of the total 802 test-checked contract bonds executed during 2011-2016, 110 contract bonds were awarded on the basis of a single bid. In none of these cases were re-tendering done. Further, 488 contract bonds were awarded in test-checked districts to bidders where only two bids were received. In all these cases also, re-tendering was not done in any of the test-checked districts. The audit observed that, out of the total 802 cases, three or more bids were received in only 204 cases. Thus, competitive bids were received only for a small fraction of tenders.
4. On analysis of data furnished by divisions/circles pertaining to 2011-2016, CAG noted that there was an increasing trend of only two bids being received against the works. Further, in various instances, the contractors, who submitted the bids, were found to be related to each other.
5. Considering the CAG report and the observations made therein, the Commission, *vide* its order dated 26.06.2018 passed under Section 26(1) of the Competition Act, 2002 (**‘the Act’**), *prima facie* opined that the contractors have engaged in practices to determine the prices in respect of various tenders of road works and construction of bridges floated by PWD in the State of UP and there appeared to be a contravention of the provisions of Sections 3(3)(a) and 3(3)(d) of the Act read with Section 3(1) thereof. However, considering the large number of contracts that were examined by CAG, the Commission initially decided to take up limited number of tenders for examination having a value of above Rs. 10 Crore, as detailed and specified in the said order.



6. Accordingly, *vide* the aforesaid order, the Commission directed the Director General (“DG”) to cause an investigation and submit an investigation report. The DG submitted the investigation report on 30.07.2021.
7. To investigate the matter, the DG sent notices to the Engineer-in-Chief (Development) and HoD, Uttar Pradesh Public Works Department (UP PWD) seeking information regarding the tenders floated in respect of Gorakhpur and Basti circles, including copies of complete file noting(s) wherein decisions in respect of the tenders had been taken. The DG also summoned contractors who had participated in the bidding for the impugned works.
8. To begin with, the DG examined the issue of common partners or related ownership and found that UP PWD, in its response to the comments of the CAG report, stated that entities/firms with related ownership were separately registered with the UP PWD, proper advertisement and publicity had been made with regard to tenders, no bid rigging arrangements were made with the bidders and the process of tendering was unbiased. It was further stated that, as per the terms of the tenders, there was no restriction on bidders or contractors to take part in the bidding process if they were registered with the Department as independent entities, even if two or more bidding entities had common partners or related ownership.
9. The DG also called for the response of UP PWD regarding tenders with only one bidder where no re-tendering was done. In this regard, the Chief Engineer (UP PWD) pointed out that the tender conditions did not have any provision to cancel a tender if only one bid was received in response.
10. Further, the DG called for the tender documents in respect of Basti circle where identical percentage rates were submitted by the bidders. The DG noted that works were awarded to bidders who quoted the same percentage rate in relation to the estimated cost calculated by the Department. Similarly, the DG noted that, in Gorakhpur circle, even after negotiation, two bidders who participated had quoted equal rates. The DG had called for



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these tender documents and found that these works were awarded to bidders who quoted the same percentage rates in relation to the estimated cost calculated by the Department.

11. The DG observed that identical bids in a tender, and thereafter, during negotiation, may be indicative of collusion among two bidders in that work. However, investigation could not find any evidence to corroborate and substantiate such suspicion.
12. With regard to sole bidder participation, the DG noted that the Department gives adequate publicity to the tenders so that more bidders can respond to it. Further, it was noted that in the absence of any rule regarding a single bid, it would have been difficult for the Department to cancel a tender merely because there is only one responsive bid. In this regard, it was found by the DG that the Department usually proceeds to award the work in such situations if it finds that the bid rate is in line with the estimated cost.
13. With regard to Basti and Gorakhpur circle investigation on identical bids and percentage rate, the DG observed from the reply of Chief Engineer (UP PWD) that, in the case of identical bids by two bidders, the work is divided between the bidders. This ensured the quality of work being completed below the approved cost and that the Department had not suffered any loss or any litigation; and the work was in line with past practices.
14. The DG noted in the investigation report that bids in any tender quoting a rate higher than the estimated price of the Department, is not anti-competitive by itself. Pertinently, the DG noted that in the works awarded in respect of Basti and Gorakhpur circles, there was not one case where the work was awarded at a cost above the cost estimated by the Department. As such, it was noted by the DG that awarding a work at a higher than the estimated cost does not appear to be the norm in UP PWD tenders.
15. Having examined the DG report and the material available on record, the Commission, at the outset, notes that as regards related parties submitting bids or parties having common ownership, the Commission is of the opinion that mere commonality of ownership of participating firms, in itself, is not sufficient to record any conclusion about bid rigging in the absence of any material indicating collusion amongst such bidders while



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participating in tenders. The Commission has consistently held that mere common ownership is not sufficient to record any findings of contravention of the provisions of Section 3 of the Act. In this regard, reference may be made to a few of such previous orders passed by the Commission. *In Re: Ved Prakash Tripathi v. Director General Armed Forces Medical Services & Ors.* (Case No. 10 of 2020), the Commission held that: “...mere commonality of directors or ownership of participating firms, in itself, is not sufficient to record any prima facie conclusion about bid rigging in the absence of any material indicating collusion amongst such bidders while participating in the impugned tender.... Further, *In Re: Reprographics India v. Hitachi Systems Micro Clinic Pvt. Ltd. & Ors.* (Case No. 41 of 2018), the Commission held that: “...merely having common business linkages between the OPs as projected by the Informant, cannot be the basis to suggest collusion in the bidding process. Moreover, there is no material on record to suggest that the OPs were engaged in Bid Rotation etc. Therefore, the allegation of supportive bid does not find favour with the Commission...”. Resultantly, mere commonality of ownership does not imply contravention of the provisions of Section 3(3)(d) of the Act, unless there is material on record to substantiate the allegations of bid rigging by way of collusion.

16. The Commission agrees with the DG’s finding with respect to sole bidder(s), that in the absence of any rule regarding a single bid, it would have been difficult for the Department to cancel a tender merely because there is only one responsive bid, much less to draw any inference of anti-competitive conduct in the absence of any material on record in this regard. In such cases, the procurer may consider reviewing its procurement processes and norms to ensure that the procurement parameters do not impose entry barriers or restrictions upon potential bidders. In case of suspicion of cartel formation, the same can be reported to the Commission with relevant material.
17. On a careful reading of the material on record, the Commission is of the considered opinion that the investigation has not brought out any material which warrants further inquiry into the matter. The material brought forth by the DG are not sufficient to record any finding of contravention of the provisions of Section 3(1) of the Act read with Section



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3(3) thereof. Resultantly, the present matter is ordered to be closed forthwith in terms of the provisions of Section 26(6) of the Act.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

Date: 11/11/2021

Place: New Delhi