

CMC Dept.

email - cgmmc.ecl.cil@coalindia.in

Ref: ECL / HQ / CMC / Transport / 2024 / **5368**

To

M/s JAI BALAJEE TRANSPORT COMPANY,
Bijulia Ramgarh Cantt,
Ramgarh, Jharkhand-829122.

Dated: 30.03.2024.

e-Mail: jbtc123456@gmail.com

Sub: Debarment of your Partnership Firm namely M/s Jai Balajee Transport Company alongwith partners of the firm i.e. Shri Anil Kumar Jain and Shri Bikash Kataruka from participating in future tenders of ECL for a period of 02 (Two) years in respect of tender floated on GeM portal vide GeM Bid id no. GEM/2024/B/4439566 Date: 05.01.2024.

References:

1. Name of Work: "Contractual loading and transportation of 20 LTe coal from Depot/Railway Siding/Dump to TRS Hopper of New CHP/Silo for the period of 02 years".
2. e – NIT No: ECL / HQ / CMC / Transport / NIT / SBA / 2024 / 5311, Date: 05.01.2024
3. GEM Bid ID: GEM/2024/B/4439566 Date: 05.01.2024
4. Show-cause notice ref. no. ECL/HQ/CMC/Transport/2024/5351, dated 26.02.2024 issued to you by the undersigned.
5. Personal Hearing Notice ref. no. ECL/HQ/CMC/Transport/2024/5355, dated: 04.03.2024 issued to you by the undersigned.

Dear Sir,

In reference to the tender vide GEM Bid ID: GEM/2024/B/4439566 Date: 05.01.2024 and your bid submitted for the same, it may be noted that Part-II (Price Bid) of the said tender was opened on 12.02.2024 and upon opening of the same, it was noted that you had emerged as L-1 bidder in the instant tender having quoted accepted percentage of 78.25% on the estimated value and final offered value arrived at Rs. 6,69,98,276.00 (Including GST) and Rs. 5,67,78,200.00 (Excluding GST). Upon scrutiny of your financial bid, it was found that your offered value is abnormally lower than estimated work value put to tender.

In this context, clause No. 4.6 of General Terms and Conditions of Section-II of the referred tender documents states that

Additional Performance Security (APS): *There should be no provision in the Bid Documents regarding submission of Additional Security Deposit / Bank Guarantee (BG) in case of Abnormally Low Bids. There shall be a provision in the Bid document regarding Abnormally Low Bid that the Procuring Entity may in such cases seek written clarifications from the Bidder, including detailed price analyses of its bid price in relation to scope, schedule, allocation of risks and responsibilities, and any other requirements of the bids document. If, after evaluating the price analyses, Procuring Entity determines that the Bidder has substantially failed to demonstrate its capability to deliver the contract at the offered price, the Procuring Entity may reject the bid/ proposal.*

In light of the above, you were requested to furnish price justification through an email on dated 14.02.2024 vide letter no: ECL/HQ/CMC/Transport/2024/5342 Dated: 14.02.2024 and subsequent reminder through email on dated 20.02.2024.

In response, price justification through mail on dated 21.02.2024 containing a letter ref. no. Nil dated Nil was submitted by you, salient points of your letter is as below:

1. Due to clerical mistake, you have entered the rate 78.25% instead of 88.25%.
2. You also stated that local people of Raniganj Area will not let you allowed to execute the contract and the tender was floated for the people located in the nearby villages.
3. You have requested to reject your bid.

In light of the clarifications provided by you, tender committee of the instant tender noted the following:

1. It is the whole and sole responsibility of the bidder for submitting the bid on GeM portal after reading & examining the conditions of the contract, scope of work, technical specifications, BOQ and other documents carefully. Thus, price quoted by the bidder on GeM portal i.e. 78.25% of the estimated value put to tender is firm, final and unconditional.
2. Further, tender committee referred clause no. 6 of Section-I (Instructions to bidders) of the instant tender wherein it is stipulated that bidder shall fully acquaint himself with the working conditions and other prevalent conditions of the working place mentioned in the instant tender. Hence, the statement of bidder regarding people at Raniganj will not let him to work, is completely baseless.
3. Instant open tender has been floated on GeM portal vide GeM bid ref. no. GEM/2024/B/4439566 Date: 05.01.2024 which is open to all the eligible bidders as per clause no. 6 of NIT. There is no such restrictive criteria that allows only local people located in nearby villages of Raniganj to get participation in the instant tender. Hence, the said statement of the bidder is completely baseless and unjustified.

Clause no. 6 of Section-I (Instructions to bidders) of the instant tender states that

“6. SITE VISIT

- 6.1 The Bidder, at the Bidder's own responsibility, cost and risk, is encouraged to visit and examine the Site of Work and its surroundings, go through the mine plans / drawings / bore hole details connected to the work, if / as available and obtain all information that may be necessary for preparing the Bid and entering into a contract for execution of the Works. The costs of visiting the Site shall be at the Bidder's own expense.*
- 6.2 It shall be deemed that the Bidder has visited the site/area and got fully acquainted with the working conditions and other prevalent conditions and fluctuations thereto whether he actually visits the site/area or not and has taken all the factors into account while quoting his rates.*
- 6.3 It shall be deemed that the Bidder has got himself acquainted with the mining conditions and geological details available for the proposed work site”.*

Clause no. 6 of NIT of the instant tender states that

“6. Eligible Bidders:

- 1. The Invitation for Bid is open to all Bidders / Sellers registered in GeM Portal including an Individual, Proprietorship firm, Partnership firm, Company registered under Companies Act or Joint Ventures (JV)/Consortium. The registered Bidders / Sellers shall be eligible to participate only if they fulfill the qualifying/eligibility criteria specified in the Buyer Added ATC / GeM Bid.*
- 2. Joint Venture (JV)/ Consortium: ”*

Thus, your action to request the tender inviting authority to reject your bid through the letter submitted against the price justification sought, tantamount to withdrawal of bid after opening of price bid. This

was further evident on the specific request of the bidder in his letter that *“Therefore, sir we apologies and like your consideration for rejecting our price rate for the above-mentioned tender and sir it is impossible to work in the said area”*.

Withdrawal of bid after opening of price bid was dealt as per clause no. 17 (2) of Section-I (Instructions to bidders) read with clause no. 4 (i) of guidelines on debarment of firms from bidding of the instant tender.

Clause no. 17 (2) of Section-I (Instructions to bidders) of the instant tender which is reproduced as below:

“2. If the request of withdrawal is received after online notification for opening of price bid, the EMD will be forfeited and the Bidder will be debarred for a minimum period of one year from participating in tenders in CIL/Subsidiary. The Price-bids of all eligible Bidders including this Bidder will be opened and action will follow as under:

- i). If the Bidder withdrawing his bid is other than L-1, the tender process shall go on.*
- ii). If the Bidder withdrawing his bid is L-1, then re-tender will be done”.*

Unquote

Since, price bid of the instant tender was opened on 12.02.2024 and you being the L-1 bidder, requested for rejection of your bid which tantamount to withdrawal of bid; hence, you are liable for following penal provisions as per above mentioned clause:

1. Forfeiture of EMD
2. Debarment of bidder for a minimum period of one year from participating in tenders in ECL.

Clause no. 4 (i) of GUIDELINES ON DEBARMENT OF FIRMS FROM BIDDING states that

“4. The contracting entity may be debarred from bidding in the following circumstances: -

- i) Withdrawal of Bid as per relevant provisions of tender document”.*

In the context of forfeiture of EMD, it may be noted that being an MSE bidder (Micro Enterprise), you have opted the option of EMD exemption and uploaded UDYAM registration certificate as per NIT. Hence, penal action against forfeiture of EMD has become redundant.

Regarding debarment of your firm in accordance with the above stated clauses, tender committee also referred clause no. 1, clause no.5, clause No. 7 and clause no. 8 of guidelines on debarment of firms from bidding for debarment of your Partnership firm i.e. M/s JAI BALAJEE TRANSPORT COMPANY.

Regarding observance of Principle of Natural Justice, clause no. 1 of GUIDELINES ON DEBARMENT OF FIRMS FROM BIDDING states that:

“Observance of Principle of Natural Justice before debarment of firm from Bidding. The bidder/contractor shall not be debarred unless such bidder/contractor has been given a reasonable opportunity to represent against such debarment (including personal hearing, if requested by the bidder/contractor)”.

Regarding effective date of debarment, clause no. 5 of GUIDELINES ON DEBARMENT OF FIRMS FROM BIDDING states that

“Such ‘Debarment, if any when effected, shall be with prospective effect only. The effect of ‘Debarment’ shall be for future tenders from the date of issue of such Order. No contract of any kind whatsoever shall be placed to debarred firm after the issue of a debarment order by DoE/MoC/CIL/Subsidiary (as applicable) if such debarment has been done before the last date of bid submission. Even in the case of risk purchase, no contract should be placed on such debarred firms”.

Period of debarment shall be dealt as per clause No. 7 of GUIDELINES ON DEBARMENT OF FIRMS FROM BIDDING states that

*"The debarment shall be for a minimum period of one year and shall be effective for the concerned Subsidiary for the tenders invited at Subsidiary level. Similarly, in case of tenders of CIL HQ, debarment shall be for CIL HQ. However, if such 'debarment' has to be made effective for entire CIL and its Subsidiaries then approval of Chairman, CIL shall be required. **The period of debarment shall not exceed 02 (Two) years.** In case of clause no. (4)(vi) & (xv) above, period of debarment shall be 02(Two) years".*

Regarding applicability of debarment from bidding in respect of Partnership Firm clause no. 8 of GUIDELINES ON DEBARMENT OF FIRMS FROM BIDDING states that

*"Once a contracting entity is debarred, it shall be extended to the constituents of that entity, i.e. partners (jointly and severally) in case of Joint Venture, **all the partners (jointly and severally) in case of Partnership Firm**, owner/proprietor in case of Proprietorship Firm. The names of partners should be clearly specified in the Debarment Order. If such debarred owner/Proprietor/ Partner make/form different Firms/entity and attempts to participate in tenders, the same shall not be entertained during the currency of such debarment. In case the contracting entity being debarred is a Company then only the Company shall be debarred".*

Further, in order to observe Principle of Natural Justice as per clause no. 1 of guidelines on debarment of firms from bidding, a show-cause notice was issued to you on dated 26.02.2024 vide ref. no. ECL / HQ / CMC / Transport / 2024 / 5351, dated 26.02.2024.

In-turn, reply to the show-cause notice on dated 02.03.2024 through email containing a letter ref. no. Nil, dated 02.03.2024 had been received from you which is reproduced as below:

"As per your letter vide reference no ECL/HO/CMC/TRANSPORT/2024/5351 received on Dated 26-02-2024, requesting a show cause regarding the above mentioned work, sir, I would like to re-emphasize on our earlier letter sent on 21.02.2023 regarding the cause. Sir, we hope you will be kind enough to understand the issue and accept our reasoning".

Unquote

On being examined the reply submitted by you, it was noted that you had re-emphasized on your previous letter ref. no. Nil dated Nil (submitted against the price justification sought from you) wherein you did not produce any other facts and justification to establish the cause of request of rejection of your bid.

In light of the above on being examined your reply to the show-cause notice, it was found unsatisfactory and unacceptable.

Hence, for further observance of Principle of Natural Justice as per clause no. 1 of guidelines on debarment of firms from bidding, one more opportunity in the form of personal hearing was given to you vide personal hearing notice ref. no. ECL / HQ / CMC / Transport / 2024 / 5355, dated: 04.03.2024 and the date of personal hearing was scheduled on 08.03.2024 at 04:30 PM in the office of the undersigned (i.e. Tender Inviting Authority) and the same was re-scheduled on 13.3.2024 and then rescheduled to 15.03.2024 at 12:30 PM on your request, on both occasions.

Accordingly, personal hearing was held on final re-scheduled date i.e.15.03.2024 and was attended by one of the partners of your firm i.e. Shri Anil Kr. Jain whereby he was requested to consider the appeal for not considering your above stated reply against the price justification and also requested to provide three days (i.e. from 16.03.2024 to 18.03.2024) for allowing to submit revised reply through email and

the same was considered by the Management.

Accordingly, revised reply has been received from your end through email on dated 19.03.2024 containing a letter ref. no. JBTC/23-24/ECL-HQ/007, dated 19.03.2024 which is reproduced as below:

Quote

"For the above mentioned tender, I would like to withdraw the letter given at the personal hearing taken place at ECL HQ on 15-03-2024 at 12:30pm and would like you reconsider the letter sent to you on 21-02-2024 as sir the local issue at the site of the above mentioned tender is not being resolved, sir they even mentioned that like this, similarly 2 other company had been awarded the same tender as mentioned above before us but they had not allowed them to start the work, thus making it impossible for me to accept the tender. Sir, I sincerely apologize for the incident.

We hope you will be grant us our request".

Unquote

It may please be noted that no letter has been submitted by you during the personal hearing on dated 15.03.2024 at 12:30PM at ECL HQ. Facts stated by you during personal hearing were recorded in a bound page register and authenticated by you. Further, you have again requested to reconsider your earlier letter ref. no. Nil dated Nil submitted against the price justification wherein you had requested for rejection of your bid.

On being examined the reply submitted by you agisnt the price justification sought, reply to show-cause notice, personal hearing and your letter no. JBTC/23-24/ECL-HQ/007, dated 19.03.2024 vis-à-vis above stated clauses, tender committee recommended to impose maximum period of debarment i.e. 02 (Two) years on you because of the act of bid withdrawal by you being the L-1 bidder at the price justification stage, has wasted the Company's effort and time to finalize the instant tender and award the work. This has result in damages which the Company, shall suffer due to non-execution of work during the period of re-tendering and subsequent award of work. The bidder's responsiveness in the tender process has been found to be very poor, due to withdrawal of bid on flimsy and unsubstantiated grounds and the tender committee recommendations were approved by the competent authority.

In view of the above, You, M/s JAI BALAJEE TRANSPORT COMPANY (Partnership Firm) and partners of the firm i.e. Shri Anil Kumar Jain and Shri Bikash Kataruka are hereby banned for a period of 02 (Two) years from participating in Future tenders of Eastern Coalfields Limited (ECL). The Banning of Business will come into force from the date of issue of this letter.

This is issued with the approval of Competent Authority.

Yours faithfully,


Head of Department

CMC, ECL.

Copy: - (Through respective e-Mail ids)

1. TS to CMD, ECL
2. TS to D(F), ECL
3. TS to D(T) OP, ECL
4. General Manager, Sonapur Bazari Area, ECL
5. TC Members
6. E-procurement cell with a request for updation in ECL portal.