
(2007) 03 DEL CK 0217
In the Delhi High Court
Case No : Writ Petition (C) No. 6730 of 2006

Siemens Ltd.

APPELLANT

Vs

HSCC (India) Ltd. and Others

RESPONDENT

Date of Decision : 06-03-2007

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 19, 226

Citation : (2007) 1 CTLJ 453

Hon'ble Judges : Mukul Mudgal, J;Aruna Suresh, J

Bench : Division Bench

Advocate : Sandeep Sethi, C. Mukund, Shashank Sharma and Avneesh Garg, for the Appellant; Saurabh Mishra, for Respondent No. 1, Naveen Sharma and A.M. Singhvi Abhinav Vashisht and Harshita Priyanka, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—This writ petition under Article 226 of the Constitution of India challenges the action of the Respondent No. 1 M/s HSCC (India) Ltd. and the Respondent No. 2 Government of Madhya Pradesh, in opening the price bid of the Respondent No. 3 M/s Wipro GE Medical Systems Ltd. on 19th April 2006 and seeks issuance of a writ of mandamus and / or order and / or direction inter alia directing the respondents 1 and 2 to award the contract in favor of the petitioner in respect of IFB No. HSCC/PUR/MP/RDC/2005 dated 8th August 2005.

2. The brief facts of this case are as follows:

a) On 8th August 2005, the Respondent No. 1 invited the bids for supply of 90 CT scan machines for the Regional Diagnostic centers in the State of Madhya Pradesh on the basis of total "all inclusive lump sum price." According to the bid document, sealed bids were asked to be submitted in "Single Stage Two Bids system", i.e. Techno Commercial Bid (Unpriced) and the Price Bid and the bidders were also required to furnish a bid security for Rs. 22, 50,000 along with the bid in the form of Account Payee Demand Draft in favor of respondent NO.1

from any nationalized bank payable at NOIDA.

b) On 20th August 2005, the petitioner, M/S Siemens Limited, wrote a letter to the respondent No. 1 and sought certain clarifications and on 30th August 2005, the Respondent No. 1 replied to the petitioner's letter dated 20th August 2005.

c) On 30th August 2005, the petitioner, on receiving the clarifications from the Respondent No. 1 submitted its Techno Commercial bid and its Price Bid.

d) On 10th September 2005 the Respondent No. 1 opened the Techno Commercial bid in the presence of the representatives of both the petitioner and the Respondent No. 3.

e) On 10th October, 2005 the respondent No. 1 wrote a letter to the petitioner asking it to confirm that all the terms and conditions stipulated in the Invitation for Bids (hereinafter referred to as the IFB) dated 8th August 2005 are acceptable to the petitioner without any deviation and on 10th October 2005, the petitioner replied to the letter of the Respondent No. 1 confirming that all the terms and conditions stipulated in the IFB were dated 8th August 2005 were acceptable to the petitioner.

f) On 27th October 2005, the respondent No. 1 wrote another letter to the Petitioner asking to confirm technical aspects in respect of the equipments being offered by it against the IFB dated 8th August 2005 and on 28th October 2005 the petitioner gave necessary clarifications as sought for by the Respondent No. 1 through its letter dated 27th October 2005.

g) On 2nd November 2005, the respondent No. 1 wrote another letter to the petitioner and sought further clarifications with respect to the equipment offered by the petitioner and on 7th November 2005 the petitioner replied to the letter and the clarifications sought by the respondent No. 1.

h) On 7th November 2005, the petitioner received a letter whereby the respondent sought to extend the date of the clarification sought by the respondent No. 1.

i) After the petitioner visited the website of the respondent No. 3 it came to the petitioner's notice that the machine quoted by the Respondent No. 3 did not meet the standards specifications of the requirements of the bid and that the Respondent No. 3 had materially deviated from the same and Therefore on 23rd March 2006 the petitioner addressed a communication to the Respondent No. 1 with a copy marked to the Respondent No. 2 indicating the material deviations in the techno-commercial bid of the Respondent No. 3.

j) On 17th April 2006, the petitioner received a letter from respondent No. 1 inter-alia informing the petitioner to be present on the opening of the price bid which supposed to be held on 9th April 2006.

k) On 19th April 2006, the respondents No. 1 and 2 opened the price bid of the respondent No. 3 which was lower than the bid of the petitioner company.

It is against this action of the respondents No. 1 and 2 that the present writ petition has been filed.

3. The learned Senior Counsel for the petitioner Mr. Sandeep Sethi submitted as follows:

a) The process by which the respondents No. 1 and 2 have ignored the material deviations and are trying to award the contract to the respondent No. 3 is violative of Article 14 and 19 of the Constitution in as much as the petitioner is being discriminated for adherence to its tender conditions which the respondent No. 3 knowingly and willfully to comply with.

b) The tender specifications for a Dual C.T. Scanner, which is a health related product, annexed with the bidding documents are mandatory and go to the root of the contract. Therefore, no material deviations is permissible while awarding the contract for such health related products to any of the parties.

c) Clause 5(a)(iii) and (iv) of Instructions to Bidders (hereinafter referred to as the "ITB") state that in the event there being any deviation to technical specifications, the same should be set out very clearly which was not done by the respondent No. 3 in the instant case and Therefore, the bid of the respondent No. 3 will not meet with the technical requirements and cannot be allowed to pass through. Clause 5(a)(iii) and (iv) reads as follows:

5. DOCUMENTS COMPRISING THE BID:

The two-part Bid, that is, Technical commercial bid and Price bid prepared by the Bidder shall comprise the following:

a) Technical commercial Bid (unpriced bid): This should inter alia include the following:

(i) xxx xxx xxx (ii) xxx xxx xxx (iii) Statement of Deviations parameter wise from Tendered Commercial conditions, if any;

(iv) Statement of Deviations parameter wise tendered Technical specifications if any.

d) Clause 17.4 of the ITB states that it is mandatory on the respondent No. 1 to determine the "substantial responsiveness" of each bid to the bid document and Clause 17.5 of the ITB states that the bid is not substantially responsive, the same will be rejected by the respondent No. 1. Clause 17.4 and 17.5 of the ITB read as follows:

17.4 Prior to the detailed evaluation, pursuant to ITB Clause 18, the Purchaser will determine the substantial responsiveness of each bid to the bidding documents. For purposes of these Clauses, a substantially responsive bid is one which conforms to all the terms and conditions of the bidding documents without deviations from or objections or reservations to critical provisions such as those concerning Performance Security (GCC Clause 6) Warranty (GCC Clause 26).

Force Majeure (GCC Clause 17). Applicable law (GCC Clause 22) and Taxes & Duties (GCC Clause 24) will be deemed to be material deviation. The purchaser's determination of a bid's responsiveness is to be based on the contents of the bid itself.

17.5 In normal circumstances if a bid is not substantially responsive, it will be rejected by the purchaser.

e) Clause 20 .1of the ITB states that the purchaser shall award the contract to a successful bidder whose bid has been determined to be techno-commercially acceptable and lowest and Therefore, non-compliance of the technical requirement rendered the bidding party incapable of consideration. Clause 20 .1of the ITB reads as follows:

AWARD CRITERIA

Subject to Clause 22, the purchaser will award the contract to the successful Bidder whose bid has been determined to be techno-commercially acceptable and lowest, provided further that the Bidder is determined to be qualified to perform the contract satisfactorily.

f) The undertaking given by the bidder in the Bid Form that it accepts all the technical and Techno commercial terms and conditions stipulated in the Tender document without deviations estoppels on the respondent No. 3 for bid for a machine which does not meet such technical specifications.

g) The repeated clarifications sought for by the respondent No. 1 by the petitioner form time to time with respect to technical specifications and the petitioner's adherence to the same reiterates the mandatory nature of the technical and Techno commercial specifications stated in the tender document.

h) The bid submitted by the respondent No. 3 is Hi-Speed Cte Dual CT Scanner System and the following are its technical specifications:

(I) It has a Gantry Aperture of only 65 cm whereas Clause 1(i) of the Tender document states that the Gentry Aperture should be at least 70 cm, thus making the bid of the respondent No. 3 technically incompetent and the Gantry Tilt of the product bid by respondent No. 3 is +/- 20 degrees, whereas Clause 1(ii) of the Tender document requires that the Gantry Tilt should be at least +/- 25 degrees, thus, making the bid of the respondent No. 3 technically incompetent. Further, a 20 degree tilt has limitation qua Coronal Scanning, Spine Studies and PNS Studies making the same incompatible in so far as the requirements of the respondent No. 1 are concerned.

(II) The KV ranges bid by the respondent No. 3 is in the range of 120 to 140 KV, whereas Clause 3 (v) of the Tender specifications requires that the selection of KV ranges should be between 80-130 KV, thus, making the bid of the respondent No. 3 technically incompetent.

(III) The CTE Dual Machine bid by the respondent No. 3 has a Spatial resolution

of 10LP/cm @ 5% MTF and in Spiral scans and 13.3 LP/cm @ 0% MTF in Axial scans, whereas Clause 9(i) of the Tender specifications requires that the Spatial resolution should be greater than 14 LP/cm mentioning about the Modulation Transfer Function, thus making the bid of the respondent No. 3 technically incompetent.

(IV) The bid submitted by the respondent No. 3 with respect to its CTe Dual Machine has a minimum scan time for 360 degree rotation as "one second" whereas Clause 10 (ii) read with Clause 10 (i) of the tender specifications requires that the Scan time for spiral mode "sub second" and the time for rotation of function mode may be specified. The specification of the sub second has admittedly not being catered to in the machine bid of the respondent No. 3 thus making the bid of]the respondent No. 3 technically incompetent.

i) The petitioner has a legitimate expectation of being considered in a just a fair manner and in accordance with the principles of law and all actions of the respondents No. 1 and 2 in opening the price bid of a technically incompetent bidder is vocative of such principle of fairness and, Therefore, liable to be struck down.

j) The respondents No. 1 and 2 have breached the principles of natural justice since the petitioner in spite of informing the respondents No. 1 and 2 of the technical incompetence of the respondent No. 3 was not informed as to why and under which circumstances the respondent No. 3 was considered for awarding the contract in issue.

k) The bid documents does not give any power of relaxation to the respondents No. 1 and 2 and thus they are bound by the tender specifications quoted by them.

l) The actions of the respondents 1 and 2 in not rejecting the techno-commercially bid of the respondent No. 3 in spite of the such bid having major technical deviations is indicative or legal malice or malice in law on part of the respondents 1 and 2 and such act has resulted in substantial prejudice and irretrievable injury to the petitioner since the petitioner strictly conformed to the bid conditions and submitted its price quotation accordingly. Thus, the action of the respondent No. 1 and 2 vitiated on all the three material grounds, i.e., arbitrariness, hostile discrimination and mala-fide.

4. The learned Counsel for the respondent No. 1 Mr. Saurabh Mishra, submitted as follows:

a) This Court does not have the territorial jurisdiction in this matter because the relief is being sought against the respondent No. 2, i.e., State of Madhya Pradesh and C.T. Scan Machine are also to be supplied in Madhya Pradesh where the project is under implementation. Further, the expert committee at Bhopal had approved the Techno commercial valuation of both the bidders and the approval for opening of the price bid has also been issued from Bhopal. Further, the invitation bids for procurement the CT Scan had been invited from the corporate

office of the respondent No. 1 at NOIDA, the bid had been issued from NOIDA, the bids were to be submitted at NOIDA, the bids were to be opened at NOIDA and all the letters to be bidders had been issued from NOIDA. Even though the Clause 31 confers jurisdiction on Delhi courts, but the same is subject to Clause 20 for the amicable settlement of dispute and thereafter for reference to arbitration. This jurisdiction clause comes into operation once the contract has been signed between the purchaser and the supplier and the contract is awarded to the successful bidder. The Respondent NO.1 relied upon the position laid down by the Hon'ble Supreme Court in Union of India and Others Vs. Adani Exports Ltd. and Another, . The relevant extract of the said judgment reads as follows:

17. It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. If we apply this principle then we see that none of the facts pleaded in para 16 of the petition, in our opinion, falls into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmedabad.

b) The present writ petition is premature as the contract is yet to be awarded and the earnest money deposit has also not been returned to the bidders, thus no cause of action to file the present writ petition.

c) The techno commercial bid was opened on 1st September 2005 and the Price Bids were opened on 19th April 2006. The petitioner had participated in joint meetings with the respondents and only after opening of the Price Bids when it has come to the knowledge of the petitioner that its price bid is higher than that of the respondent No. 3, it has now approached this Court. Thus, the action of the petitioner in approaching this Court after 8 months of opening of the techno commercial bids is not bonafide and shows that the petitioner had not approached this Court with clean hands.

d) The invitation for the Bids was to be submitted in single stage two bid system i.e., The Techno Commercial Bid and the Price Bid. The techno commercial bids of those bidders who had not complied with the provisions of the tender documents were not opened and since the bid security provisions of the tender document were complied by both the bidders, as such the techno commercial bids of both the bidders were opened.

e) The techno commercial evaluation was done on 1st September 2005 and there were tender deviations by both the petitioner and the respondent No. 1 and 3.

f) On 2nd March 2006 the expert committee along with the representatives of the petitioner and the respondents held a joint meeting and it was decided by the expert committee that the machines of the petitioner and the respondent No. 3 were not identical and Therefore no comparison should be made between the two machines. But, it was also concluded that both the machines met the clinical utility requirement. Thereafter, the respondent No. 1 specifically asked for the approval of the opening of the price bids and the same was granted by the Respondent No. 2.

g) The opening of the price bid was intimated to the bidders and the price bid was opened on 19th April 2006. According to Clause 20.1 of the ITB, the contract is to be awarded to a bidder whose bid has been techno-commercially acceptable and the lowest. Both the bidders were found to be substantially responsive in terms of Clause 17.4 of the ITB and according to the Clause 18 of ITB, the techno-commercial evaluation followed by the price bid evaluation has been done for both the parties.

h) In terms of the Clause 14 and 16 of the special condition of the contract, there has been a total transparency in the techno commercial evaluation of the bid.

5. Dr. A.M. Singhvi, the learned Senior Counsel, appearing for the Respondent No. 3 submitted as follows:

a) In view of the advancements and improvements made in the state of art technologies involved in the CT Scanner Machines, different manufacturers invent and use different and ever changing technologies in their equipments. Therefore, it is not necessary that a machine which prima facie does not appear to have complied with certain specifications does not render the required performance. Section 16 of the Special Conditions of Contract which was a part of the IFB issued by the Respondent No. 2 through the Respondent No. 1, specifically contains the following conditions:

Every effort has been taken to put forth general specifications in this bid documents. If inadvertently any of the specification drawn happens to match with the specifications any one particular firm's product only, in respect of critical parameters then it will not automatically mean that this particular firm's offer is only technically suitable. In general, the specifications offered by other firms will be assessed in their own entirety to ascertain whether or not the board functions in general expected of the equipment are available with reasonable tolerance on the desired requirements of the purchaser and accordingly the offers would be considered based on prudent assessment of the purchaser.

Thus, it was categorically mentioned that the Special Conditions of Contract would wherever there was a conflict, prevail over the general conditions.

b) After obtaining the tender documents the respondent No. 3 found that the

specifications of the Dual Slice CT Scanner seemed to be closely matching with the specification of the product of a particular firm. Therefore, the respondent No. 3 wrote a letter dated 20th August 2005 to the respondent No. 1 which stated that such specifications by the respondent No. 1 may discourage the maximum participation and fair and transparent evaluation and that the respondent No. 3 was still considering to bid in the said tender keeping in view the Clause 16 of the Respondent No. 1's Special Condition of the Contract under Clause 3 of the Bid Documents, which clearly stated that the offers of all the firms would be assessed in their own entirety and the offers would be considered on the prudent assessment of the purchaser after giving reasonable consideration to the desired requirements of the purchaser. The relevant portion of the letter dated 20th August 2005 reads as follows:

The specifications of the Dual Slice CT Scanner seem to be closely matching with the specifications of a product of a particular firm. We hope this is not intentional and could have happened inadvertently. Such specifications may discourage maximum participation and fair and transparent evaluation. We are still considering to bid in this tender keeping in view the Clause 16 of your "special conditions of contract" u/s 3 of your bid document. It clearly states that the offers of all the firms will be accessed in their own entirety and accordingly the offers would be considered on prudent assessment of the purchaser after giving reasonable tolerance on the desired requirement of the purchaser.

c) On 30th August 2005, the respondent No. 1 in response to the letter dated 20th August 2005 addressed to it by the petitioner stated that the petitioner may refer to the Clause No. 16 of the Special Condition of Contract which was self-explanatory. The relevant portion of the letter dated 30th August 2005 reads as follows:

You may refer to Clause No. 16 of Section III (Special Condition of Contract), which is self-explanatory.

Therefore, even before tendering, the Respondent No. 4 had made it clear that the equipments which the Respondent No. 3 was intending to offer the Respondent No. 1, did not strictly fall within the stipulated technical specifications, what was otherwise clinically capable of performing all the desired functions.

d) Clause 17.4 of the ITB defines the material deviations and Clause 17.5 requires the bids to be substantially responsive. A perusal of the said Clauses 17.4 and 17.5 read with Clause 16 of the Special Conditions of Contract shows that the Respondent No. 1 and 2 considered as "material deviations" only in the commercial terms and for the purposes of deciding whether a bid was substantially responsive to the requirements of the Invitation for Bids entitling the Respondents No. 1 and 2 to reject the bid.

e) As per Clause 22 of the ITB , the purchaser reserved their rights to accept or reject any bid. The relevant clause reads as follows:

22. PURCHASER'S RIGHT TO ACCEPT OR REJECT ANY OR ALL BIDS.

The Purchaser reserves the right to accept or reject any Bid and annul the Bidding process and reject all Bids at any time prior to award of contract, without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds of the purchaser's action. The purchaser is not bound to accept the lowest or any bid

After the respondent No. 3 had submitted its bid, the respondent No. 1 by two letters dated 27th October 2005, raised certain queries on the technical aspects of the machine offered by the Respondent No. 3 and the respondent No. 3 clarified the issues which were raised by the respondent No. 1 by its letters dated 29th October 2005 and 10th November 2005.

f) Further, the Technical Committee of the respondent No. 2 who were experts in their field and were aware of the performance capabilities of the machines offered by both the petitioner and the respondent No. 3 held a meeting with the bidders and came to the conclusion that the deviations offered by the respondent No. 3 were minor in nature and there was no impact on the clinical utility of the machine. The machine was found to be technically acceptable and met with the clinical requirements of the Respondent No. 2. Thus, the technical bid of the respondent No. 3 was accepted by the petitioner.

g) The Hon'ble Supreme Court in the cases of *Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others*, , and *Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others*, , held that the courts should not interfere in matters of the technical and commercial terms stipulated by the purchaser and that if the tender permits the purchaser to accept deviations in the technical terms, the purchaser would be free to accept such variation/deviation, without any interference from the courts. The relevant paragraphs of the said judgments read as follows:

i) *Air India Limited's case (supra)*

7. The law relating to award of a contract by the State, its corporations and bodies acting as instrumentalities and agencies of the Government has been settled by the decision of this Court in *Ramana Dayaram Shetty v. International Airport Authority of India*, *Fertilizer Corporation, Kamgar Union (Regd.) v. Union of India*, *CCE v. Dunlop Indian Ltd.*, *Tata Cellular v. Union of India*, *Ramniklal N. Bhutta v. State of Maharashtra* and *Raunaq International Ltd. v. IVR Construction Ltd.* The award of a contract a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reason, if the tender conditions permit such a relaxation. It may not accept the offer even though it

happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great action and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene." (emphasis supplied)

ii) Raunaq International's case (supra)

15. Where the decision-making process has been structured and the tender conditions set out the requirements, the court is entitled to examine whether these requirements have been considered. However, if any relaxation is granted for bona fide reasons, the tender conditions permit such relaxation and the decision is arrived at for legitimate reasons after a fair consideration of offers, the court should hesitate to intervene.

27. In the present case, however, the relaxation was permissible under the terms of the tender. The relation which the Board has granted to M/s Raunaq International Ltd. is on valid principles looking at the expertise of the tenderer and his past experience although it does not exactly tally with the prescribed criteria. What is more relevant, M/s IVR Construction Ltd. who have challenged this award of tender themselves do not fulfill the requisite criteria. They do not possess the prescribed experience qualification. Therefore, any judicial relief at the instance of a party which does not fulfill the requisite criteria seems to be misplaced. Even if the criteria can be relaxed both for M/s Raunaq International Ltd. and M/s IVR Construction Ltd., it is clear that the offer of M/s Raunaq International Ltd. is lower and it is on this ground that the Board has accepted the offer of M/s Raunaq International Ltd. We fail to see how the award of tender can be stayed at the instance of a party which does not fulfill the requisite criteria itself and whose offer is higher than the offer which has been accepted. It is also obvious that by stopping the performance of the contract so awarded, there is a major detriment to the public because the construction of two thermal power units, each of 210MW, is held up on account of this dispute. Shortages of power have become notorious. They also seriously affect industrial development and the resulting job opportunities for a large number of people. In the present case, there is no overwhelming public interest in collateral reasons for granting the contract to M/s Raunaq International Ltd.

h) A comparison of the technical specifications mentioned in Annexure A of the

bid documents and the technical specifications of the CT Scanner of the Respondent No. 3 show that there were material deviations, rather, there was a substantial compliance of the tender and that the CT scanner machine offered by the Respondent No. 3 was superior and exceeded the tender specifications on at least ten counts. A comparison of the technical specifications mentioned in Annexure A of the bid documents and the technical specifications of the CT Scanner of the Respondent No. 3 is as under:

TENDER COMPLIANCE FOR DUAL SLICE SPIRAL CT SCANNER

S.

No.

Tender Specifications

Wipro GE Hi-Speed Dual Multi-slice Helical CT Scanner

Remarks

I.

GENERAL REQUIREMENTS

(a)

The complete machine must be FDA approved or should bear the CE marking in case of imported equipment (relevant certificates to be enclosed).

The Hi-Speed Dual is a FDA/CE-compliant equipment which satisfies regulations regarding Electro-Magnetic Compatibility(EMC) and Electro-Magnetic Interference (EMI), pursuant to IEC-601.

Meets tender specifications.

"(b)

The tenderer should provide complete technical literature and catalogue of the quoted

machine.

Product brochure and data sheet has been enclosed.

Meets tender specifications.

(c)

The tenderer should have an office /service station/service franchisee/authorised dealer in Madhya Pradesh with a team of trained service engineers and workshops to provide more than 95% uptime of the equipment.

Wipro GE has a full-fledged sales, service office at Bhopal. This office is registered under Sales Tax and Shop and Establishment Acts, Madhya Pradesh

with its address at Wipro GE Medical Systems Ltd., E4/54, Arera Colony, Opposite Bhojpur Club, Bhopal -462016; Ph. Nos. 0755-2466968/2463470/ 5272147; Fax No. 5293879. We have service offices at Indore to cater Malwa region and at Raipur/Nagpur to cater to Chhattisgarh and parts of Madhya Pradesh.

Meets tender specifications.

(d)

The company should have a standing of at least 10 years in the State of Madhya Pradesh and should have supplied the equipment to government and public health sector undertakings in MP and other states.

Yes, Wipro GE has been in operations since April 1990 in Madhya Pradesh. Earlier to that it has been running operations in Madhya Pradesh as I.G.E. (India) Ltd. We have supplied more than 200 X-rays, 3 CT Scanners, 2 Cathlab, etc. to the Government of Madhya Pradesh.

We have been the major suppliers to the Government/PSUs of Madhya Pradesh and Chhattisgarh for more than 25 years. We have been the only supplier of CT Scanner equipment to the Government of Madhya Pradesh.

(e)

The tenderer should enclose a list of users of repute like Corporate/ Government Medical Colleges, PSU Hospitals, etc.

Yes, list of installed base attached. We have installed base of more than 30 CT Scanners in the State of Madhya Pradesh and Chhattisgarh.

List attached with the tender.

The supplier shall also quote separately the PRICE FOR SINGLE SLICE SPIRAL CT SCAN MACHINE with complete technical specifications IN ADDITION TO DUAL SLICE SPIRAL CT SCAN MACHINE.

Yes, single slice model? GE Hi-Speed CTE Plus has been quoted separately along with Hi-Speed Dual as required by tender.

Meets tender specifications.

1.

GANTRY

(i)

Gantry Aperture - Should be at least 70 cms.

Hi-Speed Dual has been designed with the shortest tube to detector distance of 949 mm thereby delivering the highest efficiency of X-ray and allowing dose reduction (Inverse Square Law) of up to 40% compared to conventional longer geometry designs by other manufacturers. The Hi-Speed Dual has a Gantry

Aperture of 65 cms. Please refer attachment Image No. 1 and Annexure B.

The higher efficiency X-ray and reduction in dose of up to 40% directly contributes to its capability of delivering long helicals with clinically relevant mA. With a 65 cms Gantry there is hardly any clinical application which cannot be performed. Please refer the images enclosed showing most of the procedure performed on Hi-Speed Dual.

(ii)

Gantry Tilt? Should be at least +/- 25 degree. Wide range preferred.

+/-20Deg.

In the New Spiral/ Helical CT Scanners Tilted CT has a very limited role and applications such as L5 SI spine, etc. are acquired in the Helical/ Spiral mode with 0 Degree tilt. The image quality is similar to the Axial scans. Hi-Speed Dual with the specified tilt performs all types of scans. Additionally for specific cases a coronal head holder has been provided. Please refer spine Image Sheet No. 2.

(iii)

Please specify focus to isocentre distance system. Minimum preferred.

541 mm.

The technology feature which is critical in contribution for reduction of dose is a short geometry or short tube to detector distance. GE Hi-Speed Dual has the shortest tube to detector distance of 949 mm. This is based on the principle of Inverse Square Law, where longer tube to detector distance will require more mA to achieve similar image quality as compared to a CT Scanner with a short geometry. Please refer to Image Sheet No. 1.

(iv)

Slip rings - Low voltage slip rings.

Low voltage slip rings.

Meets tender specifications.

(v)

Please specify distance between scan plane to front of the Gantry cover. It should to facilitate better patient access especially during CT interventions. Lowest distance preferred.

The Hi-Speed Dual has a flared Gantry design with the scan plane located in the front thereby allowing CT intervention procedures conveniently.

Meets tender specifications.

2.

X-Ray TUBE

(i)

Tube warranty should be 1,20,000 scan seconds or 2,40,000 scan slices on pro rata basis.

Pro rata tube warranty of 1.20 lakhs rotations has been offered which effectively in dual slice mode would be 2.40 lakhs slices. Also based on approximate calculation shown in the Annexure Sheet No. A effectively it is more than 4 lakhs scan seconds.

Warranty in scan seconds cannot be directly compared to warranty in slices as there cannot be any direct correlation of scan seconds and slices. This is because scan seconds are calculated on the basis of scan time x number of seconds X-ray exposure given. E.g. if the scan time selected is 1 .5 sees and total exposure is 10 sees, then scan seconds will be $1 .5 \times 10 = 15$ scan sees. Whereas slices are based on every 360 Deg rotations and when X-ray is on for a similar scan time of 1 .5 seconds for 10 seconds a maximum of 6.6 slices will be consumed. The user in this method will get lesser warranty in scan seconds in comparison to warranty in slices. Please refer to Annexure No. A.

(ii)

Please specify type of tube cooling (air/water cooled) and power consumption.

Air/Oil cooled. Maximum power 24 KW.

Meets tender specifications.

[iii)

Anode heat storage capacity 2 MHU or more and should deliver entire spiral length, without dropping Ma required for low contrast detectability.

Yes, 2 MHU tube offered. It can deliver the required mA for entire spiral length without dropping Ma required for low contrast detectability.

Meets tender specifications.

(iv)

Please mention focal spot size. Focal spot sizes should be sharp.

0.6 (W) mm x 0.7 (L) mm.

GE provides very sharp focal spot size of 0.6 x 0.7 mm which demonstrates the capability of GE system and tube to deliver even higher Ma on a smaller focus thereby producing sharper images at higher Ma.

(v)

Anode heat dissipation rate should be more than 450 KHU/ mt.

500 KHU/min.

Exceeds tender specifications.

3.

GENERATOR

(i)

It should be minimum 24 KW high frequency with power rating.

Yes, is a 24 KW high frequency generator.

We provide actual 24 KW - 200 Ma generator which can be calculated as Maximum Ma x Maximum KVp divided by 1000, i.e. $200 \times 120 / 1000 = 24$ KW. When taken at a higher KVp, i.e. 140 KVp it can deliver $200 \times 140 / 1000 = 28$ KW.

(ii)

It should be able to support at least 60 seconds continuous spiral. Longer spiral preferred.

Yes, 60 sees continuous spiral offered. Capable of performing up to 120 sees of continuous spiral acquisition.

Meets tender specifications.

(iii)

Please specify low contrast resolution and parameters of low contrast detectability of system.

5.0 mm @ 0.3% contrast @ 9 mGy Scan Tech-nique: 120 kVp, 80 mAs as measured on 20 cms CATPHAN phantom.

Hi-Speed Dual comparatively needs much lower radiation dose (9 mGy) to achieve the low contrast resolution. Meets tender specifications.

(iv)

The Ma station range should be 3-160 Ma (Specify the number of mA stations).

10 to 200 mA, in 5 mA increments.

Capable of doing most challenging procedures requiring higher mAs. Meets tender specifications.

(v)

The selection of KV should be in between 80-130 KV.

Yes, 120, 140 kVp. For better penetration of dense anatomy.

Higher KVp helps in better penetration in dense anatomy.

4.

Detectors

(i)

The CT Scanner should have minimum two rows of detectors.

Yes, two rows of detector of 10 mm each. (Total 20 mm.). It helps in achieving 2 x 10 mm, 2x7mm, 2x5mm, 2x3mm, 2x1 mm, 2x2mm, 2 x 0.6 mm slice thicknesses.

Hi-Speed Dual is a true dual slice CT Scanner with two independent rows of detectors of 10 mm each thereby achieving 20 mm of maximum coverage in one rotation. Please refer to Image Sheet No. 3.

(ii)

The number of active measurement channels should be > 600.

1416 detector elements.

We have two rows of detectors, each row has 708 elements and channels per row thereby the total amounts to 1416 elements or rows. More the number of detector elements more is the data collected resulting in a better image quality.

(iii)

The warranty of the detector should be specified.

5 years warranty on detector has been offered.

Meets tender specifications.

(iv)

The detector should be solid state type.

Yes, Hi-Speed Dual utilises patented solid state ceramic GE Hi Light detector which has the highest conversion efficiency.

Meets tender specifications.

5.

OPERATOR'S CONSOLE

(i)

Coloured monitor of at least 17". Mention the refresh rate of FPs.

18" LCD coloured monitor provided. Refresh rate of 75 Hz.

Exceeds tender specifications.

(ii)

The number of active segments on the monitor should be minimum 4 on I, more will be preferred.

Yes, available. 4 on 1 active segments available.

The end user will have 4 active zones which can work independently on a single monitor.

(iii)

The display matrix should be 1024 x 1024.

Yes, the display matrix is 1280 x 1024.

Meets tender specifications.

(iv)

The heat units range should be within tolerance limit.

Yes, is within the required range.

Meets tender specifications.

(v)

Integrated post processing on console separate workstation should include MPR, SSD, 3D, CT Angio, Cine, Virtual Endos-copy, Volume measurements.

Yes, GE Hi-Speed Dual offers Xstream work flow and advanced post processing facility on the Linux Console. This package includes real-time MPR, MPVR Volume analysis, Volume viewer, Volume rendering, CT Angio, Cine, Advanced Virtual Endos-copy "Navigator" package, etc. Additional workstation as per tender is also offered.

Meets tender specifications.

(vi)

The operating language of the software should be based on windows for easy upgradability.

Offered latest Linux based operating system more stable than windows and is easily upgradable. Please see Annexure C.

Exceeds tender specifications.

6.

COMPUTER ARCHITECTURE

HIGH PERFORMANCE

(i)

Specify the make.

GE Hi-Speed Dual offers HP make INTEL Dual Xeon Processor of CPU 2.66 GHz and 2GB RAM Workstation with Linux based operating system.

Meets tender specifications. GE has offered the latest Xeon based dual processor workstation. (This is much faster than the Pentium based Home PC).

(ii)

The CPU should be SGI or SUN or intel platform.

Hi-Speed Dual offers HP workstation with "INTEL Dual Xeon Processor" CPU 2.66 GHz, 2 GB RAM with Linux based operating system. It is a high performance, expandable dual processor workstation with enhanced visualisation performance.

GE has offered latest and more advanced based INTEL Xeon HP workstation with Dual Processor which can do faster and parallel processing of data.

(iii)

The RAM should be at least 500 MB or more.

2 GB RAM

Exceeds tender specifications.

(iv)

Specify the hard disk capacity which should be minimum 60 GB and storage capacity should be at least 1,00,000 images.

219 GB Hard disk with 1,00,000 uncompressed 512 x 512 images and 10,000 raw data images. (1 raw data image is approx. equal to 8 images). So effective storage is equal to 1.8 lakhs.

Exceeds tender specifications.

(v)

CDR will be preferred. For CDR please offer 1200 numbers of CDs.

CD writing provided and also 1200 numbers CD offered. Hi-Speed Dual also has the facility to write DVD.

Exceeds tender specifications.

7.

PATIENT TABLE

(i)

Table height should be lower than 52 cms to facilitate easy transfer of patients to the table.

Yes, minimum table height is 40 cms. Better than that specified to facilitate easy

transfer of patients to the table.

Exceeds tender specifications.

(ii)

Metal free scannable range should be greater than 100 cms.

120 cms.

Exceeds tender specifications.

(iii)

Possibility to start scan at Gantry without patient registration.

Yes, available.

Meets tender specifications.

8.

STANDARD SOFTWARE WITH THE MAIN SYSTEM SHOULD BE:

(i)

3D shaded surface.

Yes, provided in Volume viewer as standard.

Also in Hi-Speed Dual 3D coloured Volume rendering is possible on the main console (Please see the coloured images). This shows the capability of a system to process huge data required to reconstruct the volume rendered images. Refer to Image Sheet Nos. 4-18.

(ii)

Real-time multi-planar reformatting.

Yes, provided.

The Hi-Speed Dual offer an unmatched advanced post processing software which has the capability to post process in the shortest possible time.

(iii) (iv)

Dynamic CT.

CT Angiography should be possible to reconstruct the MIP type angiography and its reconstruction should be possible on the main console/workstation.

Yes, available.

Yes, provided in volume analysis package.

The Hi-Speed Dual offer an unmatched advanced post processing software which has the capability to post process in the shortest possible time. Meets tender

specifications. Refer to Image Sheet Nos. 4-18.

9.

IMAGE QUALITY

(i)

The spatial resolution should be greater than 14lp/cm mentioning about the modulation transfer function.

13.3lp/cm at 0% MTF and 9.5lp/cm at 50% MTF.

The high contrast resolution shown in our datasheet is at 2 mm slice thickness. As you know thinner the slice better is the resolution. Resolution at 0% MTF has no clinical relevance as in the clinical environment imaging is done at around 50% MTF. GE offers 9.5lp/cm at 50% MTF which is by far the best in its class.

(ii)

Specify and mention about low contrast resolution capacity of system to get good image quality.

5.0 mm @ 0.3% contrast @ 9 mGy.120 kVp, 80 mAs as measured on 20 cms CATPHAN phantom.

CT Scanner is basically a low contrast modality and Hi-Speed Dual achieves the low contrast specification at the lowest mAs (80 mAs) and dose (9 mGy) in the industry. This proves that the Hi-Speed Dual needs lesser dose to achieve same image quality than the competition's Dual Slice CT.

(iii)

The water phantom heat units should not exceed 4 HU in cross-field uniformity over 20 cms FOV (Field of View) with water or pt. should not receive more than 25 mGy.

+/-0HU.

Exceeds tender specifications.

(iv)

Specify ability to push images towards the workstation from CT in background mode.

Yes, available. With the GE's Unique Xstream work flow.

Meets tender specifications.

10.

SCAN PARAMETERS

(i)

Scan time for full 360 degree rotation should be minimum sub-second. Mention for other scan times also.

1.0, 1.5, 2.0, 3.0 and 5.0 sec full scans (360° acquisition).

Hi-Speed Dual routinely uses 1.0 sec scan time for all applications. Sub-second scanning is not of use in a lower end machine as the maximum mAs achieved at the sub-second cannot be used for any clinical examination. E.g. max ma 180 ma, sub-second 0.8 s, total mAs 144 mAs which is not useful for most of the clinical applications. For getting actual benefit of sub-second you need to have at least a 300 ma generator. In GE offered machine you get the benefit of 0.5 second (in 1 sec 360 degree rotation) the coverage is 20 mm. Effectively you are achieving 10 mm coverage in 0.5 sees without compromising in mAs. Thus, in GE machine you get 1 x 200 mA = 200 MaS and also get the benefit of 0.5 sees scan time. Also GE gives

four other scan times for various applications. Please refer to Annexure A and Image Sheet No. 3. NOTE : WE ARE OFFERING SUB-MILLIMETER 0.6 MM SLICE THICKNESS FOR BETTER TEMPORAL AND SPATIAL RESOLUTION.

(ii)

Scan time for spiral mode should be sub-second and conventional modes please mention the time of rotation. It should not be greater than 1 .5 sees.

Hi-Speed Dual routinely uses 1.0 sec scan time for all applications. In helical mode we have 1. 1.5, 2.0 and 3.0 sec scans and in axial we have 1 .0, 1 .5, 2.0, 3.0 and 5.0 sec scans.

Exceeds tender specifications.

(iii)

Please mention the partial scan time.

0.7 sees.

Meets tender specifications.

(iv)

Slice thickness should have a selection from 1 mm to 10 mm thickness.

GE Hi-Speed Dual is a true Dual Slice CT Scanner with a 10 mm x 2, 7 mm x 2, 5 mm x 2, 3 mm x 2, 2 mm x 2 and 1 mm x 2, 0.6 x 2 slice thicknesses.

Hi-Speed Dual is a true dual slice CT Scanner with two independent rows of detectors of 10 mm each thereby achieving 20 mm of maximum coverage in one rotation. Almost 70% of the cases in routine scanning are performed with 7 mm or 10 mm (for ex. routine brain 10 mm slices of supratentorial region, or in the case of routine chest and abdomen the choice of slice thickness is 7 mm or 10 mm. That means in routine practice, systems which cannot do 2 x 7 mm or 2 x

10 mm slices per rotation will work like a

single slice scanner. The system without 2x7 mm or 2 x 10 mm thickness has to spend double the number of slices compared to Hi-Speed Dual. SUB-MILLIMETER SCANNING IMPROVES SPATIAL RESOLUTION. USEFUL FOR HIGH RESOLUTION IMAGING. THIN SLICES ALLOWS VERY GOOD DISPLAY OF INNER EAR OSSICLES. FASTER SCAN FOR IMPROVED TEMPORAL RESOLUTION. VERY CRITICAL IN IMAGING TEMPORAL BONE AND MAS-TOIDS.

(v)

Specify scan field of view of the system and FOV range.

18 cms for pediatric head/25 cms, 35 cms, 43 cms for body/43 cms for shoulder/25 cms for adult head.

Wide range of scan field of views for different applications available.

(vi)

The reconstruction matrix should be at least 512x512.

512x512.

Meets tender specifications.

Vii)

The display matrix should be 1024 x 1024.

1280 x 1024.

Meets tender specifications.

(viif

The filming matrix should be 512 x 512 or more.

Yes, 512x512.

Meets tender specifications.

(ix)

Specify the reconstruction time of the system.

0.5 sees per image or 2 frames per sec.

The faster reconstruction speed helps the doctor to see the scanned image in almost real time. This simultaneously helps the radiologist to take decision

sion quickly either to continue with extra slices or to curtail the study. This is very important during dynamic contrast studies.

(x)

Scout view/topogram/ scannogram length should be at least 1000 mm for planning of multiple spirals for tall patients.

1200 mm coverage in helical/axial scan can be explicitly planned.

(xi)

Specify the special programme if any for reduction of partial volume artifacts.

GE uses special algorithms for spiral artifact reduction, Z axis elongation, and for motion artifact correction. Thereby allows routine use of thin slices for all scans without any partial volume effect.

Meets tender specifications.

xii)

Specify topo angle.

AP, RLAT, PA, LLAT; or any angle from 0° - 359° (manually selected).

Meets tender specifications.

"xiii"

Specify about reconstruction time for scout view.

Almost real-time.

Meets tender specifications.

11.

SPIRAL/HELICAL TECHNIQUE

(i)

Uninterrupted spiral length and Ma scan time should be at least 60 secs, without dropping the stated Ma.

Yes, uninterrupted spiral length and Ma scan time offered is 60 secs without dropping Ma.

Meets tender specifications.

(ii)

Give information about reconstruction facility parallel to scanning.

The Hi-Speed Dual uses new Xstream work flow, a revolutionary new work flow design, breaks existing limits on speed, image quality and flexibility to provide an op-

Meets tender specifications.

timized work flow with simultaneous scan reconstruction, archiving, data

transfer, filming solution from acquisition to final report. The end user has 4 active zones which can work independently on a single monitor.

12.

SYSTEM FEATURES

(i)

Automatic image transfer to workstation should be possible in the background mode.

Yes, possible.

Meets tender specifications.

(ii)

Confirm about the automatic filming parallel to scanning.

Yes, possible.

Meets tender specifications.

(iii)

Specify how many messages can be programmed and stored at a time in automatic patient instruction.

AutoVoice - 3 preset (English) and 17 user defined messages automatically deliver patient breathing instructions; especially useful for multiple helical scanning.

Meets tender specifications.

13.

DICOM 3.0

Yes, is DICOM 3.0 compliant.

Meets tender specifications.

(i)

The network module for picture archiving and communicating system should DICOM READY.

Yes, possible.

Meets tender specifications.

(ii)

Mention about the network printing capacity.

Filming can be carried out from main console or the workstation.

Meets tender specifications.

(iii)

Quote for CT Scanner will all the six mentioned DICOM classes, i.e. DICOM 3.0 for storage (send/receive), query/retrieve, basic print, worklist, DICOM report format.

DICOM Conformance Standards? DICOM 3.0 Storage Service Class DICOM 3.0 Query/ Retrieve Service Class DICOM 3.0 MOD Media Service Class on 2.3 GB MOD media DICOM Print and DICOM worklist.

Meets tender specifications.

14.

UPGRADIBILITY

(i)

The equipment should have a facility of upgradation for faster sub-second rotation time ONSITE. Quote the upgrade price optionally.

The Hi-Speed Dual offered already performs better than a sub-second scanner at a higher mAs in its class. We are offering 0.6 mm sub-millimeter slice thickness for better spatial and temporal resolution.

Hi-Speed Dual routinely uses 1 .0 sec scan time for all applications. Sub-second scanning is not of use in a lower end machine as the maximum mAs achieved at the sub-second cannot be used for any clinical examination. E.g. max ma 180 ma, sub-second 0.8 s, total mAs 144 mAs which is not useful for most of the clinical applications. For getting actual benefit of sub-second you need to have at least a 300 ma generator. In GE offered machine you get the benefit of 0.5 second (in 1 sec 360 degree rotation) the coverage is 20 mm. Effectively you are achieving 10 nun coverage in 0.5 sees without compromising in mAs. Thus, in GE machine you get $1 \times 200 \text{ mA} = 200 \text{ MaS}$ and also get the benefit of 0.5 sees scan time. Also GE gives four other scan times for various applications.

(ii)

Specify any other additional items to be provided.

Pre-installation requirements like Air conditioning, power and site to be provided.

Meets tender specifications.

15.

STANDARD ACCESSORIES AND OTHER REQUIREMENTS

Patient accessories, head rests, phantoms, coronal head holder, table, chair, etc. provided.

Meets tender specifications.

(i)

DICOM 3.0 by with laser camera of good reput.

Kodak Dyr View 8150 (14 x 17") laser camera has been offered.

Meets tender specifications.

(ii)

Auto film processor of reputed make.

Not required as offered camera is based on Dry Technology.

Meets tender specifications.

(iii)

CT pressure injector system along with 100 disposable syringes of reputed make and injector panel should be located near the CT console.

A 60 Nimoto Pressure Injector with 100 syringes offered.

Meets tender specifications.

(iv)

Uninterrupted power supply for computer system should be provided 125 KVA with 30 mts. Backup UPS.

6 KVA UPS for computer console with 30 min battery back up has been provided as required in our system.

Meets tender specifications.

(v)

Voltage stabiliser of standard make should be provided 200 KVA.

50 KVA voltage stabilizer provided as required in our system.

Meets tender specifications.

(vi)

Lead glass of 8 mm thickness size of 100 x 100 cm with a frame.

80 cm x 100 cm with a frame.

Meets tender specifications.

DATE: 30/08/2005 SEAL AND PLACE: BHOPAL SIGNATURE OF THE UNIT
(emphasis supplied)

i) The technical bid of the respondent No. 3 was assessed and accepted on 1st

September 2005 and it was after 8 months, i.e., on 19th April 2006 that the petitioner challenged the acceptance of the technical qualifications of the respondent No. 3. Thus, the present petition is malafide and the petitioner should not be allowed to make a belated challenge to the acceptance of the technical bid as the petitioner waited to see as to who was the lowest bidder. In *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , the Hon"ble Supreme Court laid down the following position of law:

6. The main contention urged on behalf of the appellant was that in paragraph (1) of the notice inviting tenders the 1st respondent had stipulated a condition of eligibility by providing that a person submitting a tender must be a "registered IInd class Hotelier having at least 5 years experience." This was a condition of eligibility to be satisfied by every person submitting a tender and if in case of toy person, this condition was not satisfied, his tender was ineligible for being considered. The 1st respondent being a State within the meaning of Article 12 of the Constitution or in any event a public authority, was bound to give effect to the condition of eligibility set up by it and was not entitled to depart from it at its own sweet will without rational justification. The 4th respondents had experience of catering only in canteens and did not have 5 years" experience of running a IInd class hotel or restaurant and hence they did not satisfy the condition of eligibility and yet the 1st respondent accepted the tender submitted by them. This was clearly in violation of the standard or norm of eligibility set up by the 1st respondent and the action of the 1st respondent in accepting the tender of the 4th respondents was clearly invalid. Such a departure from the standard or norm of eligibility had the effect of denying equal opportunity to the appellant and others of submitting their tenders and being considered for entering into contract for putting up and running the restaurant and two snack bars. The appellant too was not a registered 2nd class hotelier with 5 years" experience and was in the same position as the 4th respondents vis-a-vis this condition of eligibility and he also could have submitted his tender and entered the field of consideration for award of the contract, but he did not do so because of this condition of eligibility which he admittedly did not satisfy. The action of the 1st respondent in accepting the tender of the 4th respondents had, Therefore, opportunity in the matter of consideration for award of the contract and hence it was unconstitutional as being in violation of the equality clause. This contention of the appellant was sought to be met by a threefold argument on behalf of the 1st and the 4th Respondents. The first head of the argument was that grading is given by the Bombay City Municipal Corporation only to hotels or restaurants and not persons running them and hence there can be a 2nd grade hotel or restaurant but not a 2nd grade hotelier and the requirement in paragraph (1) of the notice that a tenderer must be a registered 2nd grade hotelier was Therefore a meaningless requirement and it could not be regarded as laying down any condition of eligibility. It was also urged that in any event what paragraph (1) of the notice required was not that a person tendering must have 5 years" experience of running a 2nd grade hotel, but he should have sufficient

experience to be able to run a 2nd grade hotel and the 4th respondents were fully qualified in this respect since they had over 10 years' experience in catering to canteens of well known companies, clubs and banks. It was further contended in the alternative that paragraph (8) of the notice clearly provided that the acceptance of the tender would rest with the Airport Director who did not bind himself to accept any tender and reserved to himself the right to reject all or any of the tenders without assigning any reasons. Therefore and it was, Therefore, competent to the 1st respondent to reject all the tenders and to negotiate with any person it considered fit to enter into a contract and this is in effect and substance what the 1st respondent did when he accepted the tender of the 4th respondents. The second head of argument was that paragraph (1) of the notice setting out the condition of eligibility had no statutory force nor was it issued under any administrative rules and, Therefore, even if there was any departure from the standard or norm of eligibility set out in that paragraph justiciable and did not furnish any cause of action to the appellant. It was competent to the 1st respondent to give the contract to any one it thought fit and it was not bound by the standard or norm of eligibility set out in paragraph (1) of the notice. It was submitted that in any event the appellant had no right to complain that the 1st respondent had given the contract to the 4th respondents in breach of the condition of eligibility laid down in paragraph (1) of the notice. And lastly, under the third head of argument, it was submitted on behalf of the 1st and the 4th respondents that in any view of the matter, the writ petition of the appellant was liable to be rejected in the exercise of its discretion by the Court, since the appellant had no real interest but was merely a nominee of A.S. Irani who had been putting up one person after another to start litigation with a view to preventing the award of the contract to the 4th respondents. The appellant was also guilty of laches and delay in filing the writ petition and the High Court was justified in rejecting the writ petition in limine particularly in view of the fact that during the period between the date of acceptance of the tender and the date of filing of the writ petition, the 4th respondents had spent an aggregate sum of about Rs. 1,25,000/- in making arrangements for putting up the restaurant and two snack bars. These were the rival contentions urged on behalf of the parties and we shall now proceed to discuss them in the order in which we have set them out.

j) On the opening of the price bids, it became apparent that the Respondent No. 2 would save about 2 crores if it accepted the proposal of the Respondent No. 3 and thus, it would be in public interest to accept the bid of the Respondent No. 3.

k) This Court does not have the territorial jurisdiction to entertain the petition since no cause of action has arisen because the tender is in respect of the CT scanner machines to be installed in the State of Madhya Pradesh and the tenders were to be submitted at Noida. The Hon'ble Supreme Court in *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others*, inter alia held that if the cause of action did not arise in the jurisdiction of a particular High Court, the said High Court does not have the jurisdiction to entertain the writ petition. The

relevant paragraph of the said judgment reads as follows:

8. From the facts pleaded in the writ petition, it is clear that NICCO invoked the jurisdiction of the Calcutta High Court on the plea that a part of the cause of action had arisen within its territorial jurisdiction. According to NICCO, it became aware of the contract proposed to be given by ONGC on reading the advertisement which appeared in the Times of India at Calcutta. In response thereto, it submitted its bid or tender from its Calcutta office and revised the rates subsequently. When it learnt that it was considered ineligible it sent representations, including fax messages, to EIL, ONGC etc., at New Delhi, demanding justice. AS stated earlier, the Steering CIMMCO at New Delhi on 27.1.93. Therefore, broadly speaking, NICCO claims that a part of the cause of action arose within the jurisdiction of the Calcutta High Court because it became aware of the advertisement in Calcutta, it submitted its bid or tender from Calcutta and made representations demanding justice from Calcutta on learning about the rejection of its offer. The advertisement itself mentioned that the tenders should be submitted to EIL at New Delhi; that those would be scrutinized at the tenderer would be taken at New Delhi. Of course, the execution of the contract work was to be carried out at Hazira in Gujarat. Therefore, merely because it read the advertisement at Calcutta and submitted the offer from Calcutta and made representations from Calcutta would not, in our opinion, constitute facts forming an integral part of the cause of action. So also the mere fact that it sent fax messages from Calcutta and received a reply thereto at Calcutta would not constitute an integral part of the cause of action. Besides the fax message of 15.1.1993, cannot be construed as conveying rejection of the offer as that fact occurred on 27.1.93. We are, Therefore, of the opinion that even if the averments in the writ petition are taken as true, it cannot be said that a part of the cause of action arose within the jurisdiction of the Calcutta High Court.

1) A contract has been defined as "The agreement entered into between the Purchaser and the Supplier, as recorded in the Contract Form signed by the parties...." Under the scheme of the Tender in question, on submission of bids there are 4 stages which are essential to be fulfilled before the contract can be said to have been concluded. They are as follows:

- (i) A Preliminary Examination.
- (ii) An evaluation and the comparison of bids.
- (iii) Award of the contract.
- (iv) Signing of the contract.

A perusal of Clauses 1 to 31 of the General Conditions of Contract clearly show that these provisions become applicable only when the "contract" has been awarded to and signed by the successful bidder at which time, the contract may be proposed to be executed in Delhi, which would confer jurisdiction on the

courts in Delhi to adjudicate on the matters arising out of such a contract.

6. After considering the submissions and hearing the arguments of the learned Counsel for the parties, we are of the view that there is merit in the contention of the learned Counsel of the respondents that Section 16 of the Special Conditions of Contract which was a part of the IFB issued by the respondent No. 2 inter alia stated that the specifications offered by the other firms will be ascertained in their own entirety to ascertain whether they fulfill the desired requirements of the purchaser and that the offers would be considered on the prudent assessment of the purchaser. The table extracted above prepared by the respondent No. 3 which makes a comparison between the technical specifications mentioned in Annexure A of the Bid documents and the technical specifications of the CT scanner Machines offered by the respondent No. 3, clearly shows that the CT Scanner machine offered by the respondent No. 3 was in no way inferior to the technical specifications mentioned in the bid documents to the tender. Thus, the respondent No. 3 was substantially responsive to the requirements of the respondent No. 1 as per Clause 17.5 of the ITB. Therefore, we find no infirmity in the decision of the respondent No. 1 in accepting the bid of the respondent No. 3.

7. The modern State is a welfare State and is under an obligation to fulfill a plethora of functions and to protect a variety of interests including its financial interests. Thus, in protecting its financial interest, the State has a right to refuse even the lowest tender. Such an action on part of the State cannot be struck down by the courts unless it is perverse, unreasonable, arbitrary, smacks of mala fide or if the exercise of power is for a collateral purpose. This position of law has also been laid down by the Hon'ble Supreme Court in the following cases:

(a) In *G.B. Mahajan and Ors. v. Jalgaon Municipal Council and Ors.* (1991) 2 SCC 91, it was held:

37. It was urged that the basic concept of the manner of the development of the real estate and disposal of occupancy rights were vitiated by unreasonableness. It is truism, doctrinally, that powers must be exercised reasonably. But as Prof. Wade points out:

The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The court must Therefore resist the temptation to draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which the legislature is presumed to have intended. Decisions which are extravagant or capricious cannot be legitimate. But if the decision is within the confines of reasonableness, it is no part of the court's function to look further into its merits. "With the

question whether a particular policy is wise or foolish the court is not concerned; it can only interfere if to pursue it is beyond the powers of the authority"

(b) In *Sterling Computers Limited and Others Vs. M and N Publications Limited and Others*, , it was held:

12. At times it is said that public authorities must have the same liberty as they have in framing the policies, even while entering into contracts because many contracts amount to implementation or projection of policies of the Government. But it cannot be overlooked that unlike policies, contracts are legally binding commitments and they commit the authority which may be held to be a State within the meaning of Article 12 of the Constitution in many cases for years. that is why the courts have impressed that even in contractual matters the public authority should not have unfettered discretion. In contracts having commercial element, some more discretion has to be conceded to the authorities so that they may enter into contracts in such matters they have to follow the norms recognized by courts while adjudicate every decision taken by an authority, because many of the Government Undertakings which in due course have acquired the monopolist position in matters of sale and purchase of products and with so many ventures in hand, they can come out with a plea that it is not always possible to act like a quasi-judicial authority while awarding contracts. Under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the overall situation for purpose of taking a decision as to whom the contract be awarded and at what terms. If the decisions have been taken in bona fide manner although not strictly following the norms laid down by the courts, such decisions are upheld on the principle laid down by Justice Holmes, that courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of "play in the joints" to the executive.

(c) In *Tata Cellular Vs. Union of India*, it was held:

70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers of Government bodies in order to prevent arbitrariness or favoritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

80. At this stage, *The Supreme Court Practice*, 1993, Vol. 1, pp. 849, 850, may be quoted:

4. Wednesbury principle.-- A decision of a public authority will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it. (Associated with Provincial Picture Houses Ltd. v. Wednesbury Corporation, per Lord Greene, M.R.)

88... While, as mentioned hereinbefore, fair play in action in matters like the present one is an essential requirement, similarly, however, "free play in the joints" is also a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere as the present one. Judged from that standpoint of view, though all the proposals might not have been considered strictly in accordance with order of precedence, it appears that these were considered fairly, reasonably, objectively and without any malice or ill-will.

...

94. The principles deducible from the above are:

- (1) The modern trend points to judicial restraint in administrative action.
- (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
- (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
- (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.
- (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be rested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.
- (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

8. Thus, we find that while the bid of the Respondent No. 3 did have deviations in respect of specifications but such deviations were indeed evaluated to subserve the purpose for which the tender was invited. Furthermore, Clause 16 itself permitted deviations. It was clearly stated in Clause 16 that the specifications other than those stipulated would be assessed in its entirety to ascertain whether

or not the stipulated functions are available with reasonable tolerance. This ascertainment has been done by the respondent No. 1 which is expert body in the field of hospital equipment. Thus such ascertainment of deviations by an expert body shows that the bid of the Respondent No. 3 was ascertained to be substantially responsive and not hit by Clause 17.4 so as to warrant rejection. Such an ascertainment unless it is flawed materially and is perverse cannot be interfered in the writ jurisdiction.

9. In G.B. Mahajan's case (supra) it was held that if the decision is within the confines of reasonableness, it is not the function of the court to look into its merit. Further, in Sterling Computers' case (supra) it was held that if the decisions have been taken in a bona fide manner although not strictly following the norms laid down by the Court such decisions are upheld on the principle of freedom of "play in the joints" to the executive. In TATA Cellular's case (supra), it was inter alia held that the right to refuse the lowest or any other tender is always available to the government but the principles laid down in Articles 14 of the Constitution have to be kept in view while accepting or refusing a tender and that the right to choose cannot be considered to be arbitrary and unfettered power. Further, the Court also held that free play in the joints is as important as fair play in action and is a necessary concomitant for an administrative body. In Airport India Ltd.'s case (supra) it was held that the State may not accept the offer even though it happens to be the highest or the lowest. In Raunaq International's case (supra) it was held that if the relaxation is granted for bona fide reasons, the tender conditions permit such relaxations and the decision is arrived at for legitimate reasons after a fair consideration of offers, the court should hesitate to intervene. Thus, the decision of the respondent No. 1 in accepting the bid of the respondent No. 3 which would result in financial benefit of about Rs. 2 crores to the respondent No. 2 and also procuring CT Scanner Machines whose technical specifications were in no way inferior in comparison to the technical specifications mentioned in the bid document. A perusal of the table which compares the technical specifications mentioned in Annexure A of the bid documents and the technical specifications of the CT Scanner of the Respondent No. 3 shows as follows:

(i) The Anode Heat Dissipation Rate required by the respondent No. 1 was more than 450 KHU/mt., whereas the Anode Heat Dissipation Rate supplied by the respondent No. 3 is 500KHU/min,

(ii) The measurement of the coloured monitor required by the respondent No. 1 was at least 17 inches, whereas the measurement of the LCD coloured monitor provided by the respondent No. 3 is 18 inches,

(iii) The speed of the Random Access Memory(RAM) required by the respondent No. 1 was at least 500 MB or more, whereas the speed of the RAM of the machine provided by the respondent No. 3 is 2 GB.

(iv) The Hard Disc Capacity was required by the respondent No. 1 to be a

minimum of 60 GB and the storage capacity was required to be at least 1 lakh images, whereas the CT Scanner machines provided by the respondent No. 3 had a Hard Disc Capacity 219 GB with 1,00,000 uncompressed 512x 512 images and 10000 raw data images. 1 raw data image is approx equal to 8 images, Therefore, the effective storage is equal to 1.8 lakhs.

(v) The height of the table required by the respondent No. 1 was to be lower than 52 cm to facilitate easy transfer of patients, whereas the machines provided by the respondent No. 3 has a minimum height of the 40 cm.

(vi) The range of the metal free scannable of the machine required by the respondent No. 1 was to be greater than 100 cm, whereas the range of the metal free scannable machine provided by the respondent No. 3 is 120 cms.

(vii) The water phantom heat units of the machine required by the respondent No. 1 was required not to exceed 4 HU in cross field uniformity over 20 cm Field of View (FOV) with water or Pt. and was required not to receive more than 25 mGy. Whereas the water phantom heat units of the machine provided by the respondent No. 3 is +/-0 HU.

(viii) The scan time for spiral mode of the machine required by the respondent No. 1 was sub second and conventional modes and the time of rotation was required not to be greater than 1.5 sec., whereas the machine provided by the respondent No. 2 uses 1.0 scan time for all applications.

Thus, the CT scanner machines provided by the respondent No. 3 has been ascertained by the respondent No. 1 to be beneficial to the health care system and in accordance with the specifications after taking into account the deviations permissible under Clause 16 and consequently in public interest.

10. Further, we are of the view that the petitioner has not approached this Court with due dispatch as the facts of the case clearly show that the techno-commercial bid was opened on 1st September, 2005 and thereafter the price bids were opened on 19th April 2006. The learned Counsel for the petitioner has not explained to us the reason for approaching this Court after 8 months of opening of the techno-commercial bids.

11. In view of the position of law laid down in the aforesaid judgments, we are of the view that the action of the respondent No. 1 in accepting the bid of the respondent No. 3 was not flawed and it does not warrant interference by this Court under Article 226 of the Constitution. Since we have found no merit in the writ petition we deem it unnecessary to deal with the plea of the respondents about this Court lacking territorial jurisdiction. Indeed, Dr. Singhvi de hors the plea of territorial jurisdiction urged this Court to adjudicate on merits. This writ petition is accordingly dismissed.