राजस्थान सरकार

वित्त (बी.ए एंड डी.) विभाग

क्रमांक: एफ.1(8)विभ/साबिलेनी/2011 जयपुर, दिनांक 24 फरवरी, 2013
परिपत्र 5/7/2013

परिपत्र

जैसा कि आपको विदित है, राजस्थान राजपथ में जारी अधिसूचना दिनांक 24.01.2013 द्वारा राजस्थान लोक उपायन में पारदर्शिता अधिनियम, 2012 (Rajasthan Transparency in Public Procurement Act, 2012) एवं राजस्थान लोक उपायन में पारदर्शिता नियम, 2013 (Rajasthan Transparency in Public Procurement Rules, 2013) राज्य में दिनांक 28.01.2013 से प्रभावी हो गये हैं। समस्त उपायन संस्थाएँ (Procurement Entities) जिसमें राज्य सरकार के समस्त विभाग, सरकार के राजस्थानीय या नियंत्रणाधीन कोई भी राज्य पब्लिक सेक्टर उपाय, संविधान द्वारा स्थापित या गठित कोई भी निकाय जिसके द्वारा व्यय की पूर्ति राज्य की समन्वित निधि से की जाती है, राज्य विभाग मंडल के किसी अधिनियम द्वारा स्थापित या गठित कोई निकाय या बोर्ड या निगम या प्राधिकरण या सोसाइटी या न्याय या स्थायित्व निकाय या राज्य सरकार के राजस्थानीय या नियंत्रणाधीन कोई निकाय, राज्य के द्वारा सामग्री, सेवा, संकल्प (Works) के उपायन (Procurement) के नामों में उक्त अधिनियम एवं नियमों की अक्षरशः पालना सुनिश्चित किया जाना आवश्यक है।

उक्त अधिनियम की धारा 50 के अन्तर्गत राज्य उपायन सुविधा प्रक्रिया (State Procurement Facilitation Cell) को गठन किया जा चुका है। उक्त प्रक्रिया का नोडल अधिकारी संयुक्त सचिव, वित्त (बी.ए एंड डी.) विभाग को बनावा गया है यदि उपायन संस्था उक्त अधिनियम एवं नियमों के संदर्भ में कोई जानकारी की अपेक्षा रखती है तो प्रशासनिक विभाग के माध्यम से प्रक्रिया राज्य उपायन सुविधा प्रक्रिया को प्रशिक्षित किया जा सकता है।

उक्त अधिनियम की धारा 17 में दिये गये प्रावधान के तहत राज्य लोक उपायन पोर्टल (http://sppp.raj.nic.in) बना दिया गया है। उपायन संस्था अधिनियम की धारा 17 (2) एवं राजस्थान लोक उपायन में पारदर्शिता नियम, 2013 के प्रावधानों के अनुसार पालना सुनिश्चित करना आवश्यक है।

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उक्त अधिनियम के अंतर्गत 3 एवं नियमों के अंतर्गत 7 के अनुसार बोली लगाने वाला या भावी बोली लगाने वाला (bidder or prospective bidder) उपायन प्रक्रिया के दौरान उपायन संस्था के किसी निर्णय, कार्यवाही या लोप, इस अधिनियम या इसके अधीन जारी नियमों के उपबन्धों के उल्लंघन में है तो वह अपील दाखिल कर सकता है। इस संबंध में बोली दस्तावेजों, पूर्व अर्थता दस्तावेजों, रजिस्ट्रीकरण दस्तावेजों में प्राथमिक अपील अधिकार का पदार्थित (designated) विनिर्दिष्ट (specified) उल्लेख उपायन संस्था हरा बिना योजना आवश्यक है। अतः, अधिनियम की धारा 3 (2) में उल्लिखित समस्त विधान/संगठन अपने स्तर पर प्राथमिक अपील अधिकार का नियारण कर विभाग को दिनांक 15 फरवरी, 2013 तक सूचित करें। यहाँ यह उल्लिखित करना सुविधा होगा कि प्राथमिक अपील अधिकारी उपायन संस्था से एक स्तर उच्च होना आवश्यक है। द्वितीय अपील अधिकारी राज्य सरकार के विभागों के लिए सबसे प्राथमिक विधान होगा। यदि प्राथमिक विभाग स्तर उपायन संस्था या प्राथमिक अपील अधिकारी है तो विभाग प्राथमिक/द्वितीय अपील अधिकारी होगा। ऐसे मामलों में जहाँ विभाग प्राथमिक अपील अधिकारी है तो द्वितीय अपील अधिकारी प्रकरण विवेष के अनुसार राज्य सरकार हरा पदार्थित (designated) किया जाएगा।

उक्त अधिनियम के अनुसार सामान्य, सेवा, संकर्म के उपायन के लिए स्टेंडर्ड बिडिंग डीक्वूयूमेन्ट्स प्रक्रियाधीन है। अधिनियम की धारा 59 (Savings) के अनुसार इस अधिनियम में उपबन्धित सामान्य, सेवा एवं संकर्म के उपायन पर संबंधित समस्त नियम, विनियम, आदेश, अविलुप्त, विभागीय संहिताओं, निर्देशिकाओं, उपविषयां, शासकीय जानकारी या परियोजना जो इस अधिनियम के तत्त्व की तारीख को प्रभावित थे, उनको इस अधिनियम के उपबन्धों से संगत होने की सीमा तक तब तक प्रवर्तन बने रहेगी जब तक कि उनको इस अधिनियम के अनुसार जारी कर दिया जाता। अतः, उक्त अधिनियम एवं नियमों के अनुसार सामान्य, सेवा के उपायन के लिए वर्तमान प्रक्रिया बिड दस्तावेज सामान्य वित्तीय एवं लेख नियम पार्ट II में दिखा गया। अधिनियम के अंतर्गत 14, 15, 16 और 17 तथा संकर्म के उपायन के लिए सार्वजनिक प्रकाशित वित्तीय एवं लेख नियम के अंतर्गत XI में दिखा गया वर्तमान प्रक्रिया बिड दस्तावेज बोली दस्तावेजों के लाभ में अधिनियम एवं नियमों के प्रावधानों की सीमा तक प्रयोग किये जा सकते, जब तक कि नवीन स्टेंडर्ड बिडिंग डीक्वूयूमेन्ट्स जारी नहीं किये जाते हैं। तथापि निम्नांकित तत्त्वक (Annexures) वर्तमान प्रक्रिया बोली दस्तावेजों के साथ सम्बन्धित करते हुए ही बिड दस्तावेज जारी किया जाना प्रारम्भ में किया जाएँ—

Annexure A : Compliance with the Code of Integrity and No Conflict of Interest
Annexure B : Declaration by Bidders regarding Qualifications

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Annexure C: Grievance Redressal during Procurement Process
Annexure D: Additional Conditions of Contract

अतः प्रशासनिक विभाग अपने अधीन समस्त विभाग, कार्यालयों एवं संगठनों से उक्त निर्देशों की
कार्यार्थता से पालना सुनिश्चित कराएँ।
संलग्न: Annexure A to D

(अखिल अरोप)
शासन सचिव, वित्त (जेब)

प्रतिलिपि निम्नांकित को सूचनार्थ एवं आक्षेप कार्यालय हेतु प्रेषित है—
1. निजी सचिव, राज्यपाल / मुख्यमंत्री / समस्त मंत्री / राज्य मंत्री
2. निजी सचिव, मुख्य सचिव / समस्त अधु. मुख्य सचिव / समस्त प्रमुख शासन सचिव / समस्त शासन सचिव / समस्त विभाग शासन सचिव
3. सचिव, राजस्थान विधान सभा, राजस्थान, जयपुर।
4. सचिव, राजस्थान लोक सेवा अभियोग, अलमेह।
5. रजिस्ट्रेटर, राजस्थान उच्च न्यायालय, जोधपुर / जयपुर।
6. समस्त संयुक्त शासन सचिव / उप शासन सचिव / सचिवालय के समस्त अधिकार / विभाग।
7. प्रमुख महालेखाकार (सचिव लेखा परिषद) राजस्थान, जयपुर।
8. महालेखाकार (प्रार्थित एवं वाणिज्यिक लेखा परिषद) / (ए एच ई) राजस्थान, जयपुर।
9. समस्त विभागाध्यक्ष / विज्ञ. कलेक्टर / सभागीत आयुक्त।
10. रजिस्ट्रेटर, राजस्थान विभाग सेवा अधीन अधिकार, जयपुर।
11. समस्त कर्मचारी।
12. समस्त विभागाध्यक्ष, विभ. विभाग की भेजकर लें तथा परिपत्र को की विश्वास की वेबसाइट पर प्रकाशित कराने
की आश्वास्त कराएँ।

(जयीला जोशी)
संयुक्त सचिव

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Annexure A : Compliance with the Code of Integrity and No Conflict of Interest

Any person participating in a procurement process shall -
(a) not offer any bribe, reward or gift or any material benefit either directly or indirectly in exchange for an unfair advantage in procurement process or to otherwise influence the procurement process;
(b) not misrepresent or omit that misleads or attempts to mislead so as to obtain a financial or other benefit or avoid an obligation;
(c) not indulge in any collusion, Bid rigging or anti-competitive behavior to impair the transparency, fairness and progress of the procurement process;
(d) not misuse any information shared between the procuring Entity and the Bidders with an intent to gain unfair advantage in the procurement process;
(e) not indulge in any coercion including impairing or harming or threatening to do the same, directly or indirectly, to any party or to its property to influence the procurement process;
(f) not obstruct any investigation or audit of a procurement process;
(g) disclose conflict of interest, if any; and
(h) disclose any previous transgressions with any Entity in India or any other country during the last three years or any debarment by any other procuring entity.

Conflict of Interest:-

The Bidder participating in a bidding process must not have a Conflict of Interest.

A Conflict of Interest is considered to be a situation in which a party has interests that could improperly influence that party’s performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations.

i. A Bidder may be considered to be in Conflict of Interest with one or more parties in a bidding process if, including but not limited to:
   a. have controlling partners/ shareholders in common; or
   b. receive or have received any direct or indirect subsidy from any of them; or
   c. have the same legal representative for purposes of the Bid; or
   d. have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Bid of another Bidder, or influence the decisions of the Procuring Entity regarding the bidding process; or
   e. the Bidder participates in more than one Bid in a bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which the Bidder is involved. However, this does not limit the inclusion of the same subcontractor, not otherwise participating as a Bidder, in more than one Bid; or
   f. the Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the Goods, Works or Services that are the subject of the Bid; or
   g. Bidder or any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity as engineer-in-charge/ consultant for the contract.

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Annexure B: Declaration by the Bidder regarding Qualifications

Declaration by the Bidder

In relation to my/our Bid submitted to .................. for procurement of ..................... in response to their Notice Inviting Bids No............... Dated............. I/we hereby declare under Section 7 of Rajasthan Transparency in Public Procurement Act, 2012, that:

1. I/we possess the necessary professional, technical, financial and managerial resources and competence required by the Bidding Document issued by the Procuring Entity;

2. I/we have fulfilled my/our obligation to pay such of the taxes payable to the Union and the State Government or any local authority as specified in the Bidding Document;

3. I/we are not insolvent, in receivership, bankrupt or being wound up, not have my/our affairs administered by a court or a judicial officer, not have my/our business activities suspended and not the subject of legal proceedings for any of the foregoing reasons;

4. I/we do not have, and our directors and officers not have, been convicted of any criminal offence related to my/our professional conduct or the making of false statements or misrepresentations as to my/our qualifications to enter into a procurement contract within a period of three years preceding the commencement of this procurement process, or not have been otherwise disqualified pursuant to debarment proceedings;

5. I/we do not have a conflict of interest as specified in the Act, Rules and the Bidding Document, which materially affects fair competition;

Date: 
Place: 
Signature of bidder
Name:
Designation:
Address:

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Annexure C : Grievance Redressal during Procurement Process

The designation and address of the First Appellate Authority is ______________________
The designation and address of the Second Appellate Authority is ____________________

(1) Filing an appeal

If any Bidder or prospective bidder is aggrieved that any decision, action or omission of the Procuring Entity is in contravention to the provisions of the Act or the Rules or the Guidelines issued thereunder, he may file an appeal to First Appellate Authority, as specified in the Bidding Document within a period of ten days from the date of such decision or action, omission, as the case may be, clearly giving the specific ground or grounds on which he feels aggrieved:

Provided that after the declaration of a Bidder as successful the appeal may be filed only by a Bidder who has participated in procurement proceedings:

Provided further that in case a Procuring Entity evaluates the Technical Bids before the opening of the Financial Bids, an appeal related to the matter of Financial Bids may be filed only by a Bidder whose Technical Bid is found to be acceptable.

(2) The officer to whom an appeal is filed under para (1) shall deal with the appeal as expeditiously as possible and shall endeavour to dispose of within thirty days from the date of the appeal.

(3) If the officer designated under para (1) fails to dispose of the appeal filed within the period specified in para (2), or if the Bidder or prospective bidder or the Procuring Entity is aggrieved by the order passed by the First Appellate Authority, the Bidder or prospective bidder or the Procuring Entity, as the case may be, may file a second appeal to Second Appellate Authority specified in the Bidding Document in this behalf within fifteen days from the expiry of the period specified in para (2) or of the date of receipt of the order passed by the First Appellate Authority, as the case may be.

(4) Appeal not to lie in certain cases

No appeal shall lie against any decision of the Procuring Entity relating to the following matters, namely:-
(a) determination of need of procurement;
(b) provisions limiting participation of Bidders in the Bid process;
(c) the decision of whether or not to enter into negotiations;
(d) cancellation of a procurement process;
(e) applicability of the provisions of confidentiality.

(5) Form of Appeal
(a) An appeal under para (1) or (3) above shall be in the annexed Form along with as many copies as there are respondents in the appeal.
(b) Every appeal shall be accompanied by an order appealed against, if any, affidavit verifying the facts stated in the appeal and proof of payment of fee.

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(c) Every appeal may be presented to First Appellate Authority or Second Appellate Authority, as the case may be, in person or through registered post or authorised representative.

(6) Fee for filing appeal
(a) Fee for first appeal shall be rupees two thousand five hundred and for second appeal shall be rupees ten thousand, which shall be non-refundable.
(b) The fee shall be paid in the form of bank demand draft or banker’s cheque of a Scheduled Bank in India payable in the name of Appellate Authority concerned.

(7) Procedure for disposal of appeal
(a) The First Appellate Authority or Second Appellate Authority, as the case may be, upon filing of appeal, shall issue notice accompanied by copy of appeal, affidavit and documents, if any, to the respondents and fix date of hearing.

(b) On the date fixed for hearing, the First Appellate Authority or Second Appellate Authority, as the case may be, shall,
   (i) hear all the parties to appeal present before him; and
   (ii) peruse or inspect documents, relevant records or copies thereof relating to the matter.

(c) After hearing the parties, perusal or inspection of documents and relevant records or copies thereof relating to the matter, the Appellate Authority concerned shall pass an order in writing and provide the copy of order to the parties to appeal free of cost.

(d) The order passed under sub-clause (c) above shall also be placed on the State Public Procurement Portal.
FORM No. 1
[See rule 83]

Memorandum of Appeal under the Rajasthan Transparency in Public Procurement Act, 2012

Appeal No ...........of ............... 
Before the ................. (First / Second Appellate Authority)

1. Particulars of appellant:
   (i) Name of the appellant:
   (ii) Official address, if any:
   (iii) Residential address:

2. Name and address of the respondent(s):
   (i)
   (ii)
   (iii)

3. Number and date of the order appealed against
   and name and designation of the officer / authority
   who passed the order (enclose copy), or a
   statement of a decision, action or omission of
   the Procuring Entity in contravention to the provisions
   of the Act by which the appellant is aggrieved:

4. If the Appellant proposes to be represented
   by a representative, the name and postal address
   of the representative:

5. Number of affidavits and documents enclosed with the appeal:

6. Grounds of appeal:
   ........................................................................................................
   ........................................................................................................
   ............................................................................................................ (Supported by an affidavit)

7. Prayer:
   ........................................................................................................
   ........................................................................................................

Place ........................................................
Date ......................................................
Appellant's Signature
Annexure D: Additional Conditions of Contract

1. Correction of arithmetical errors

Provided that a Financial Bid is substantially responsive, the Procuring Entity will correct arithmetical errors during evaluation of Financial Bids on the following basis:

i. if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Procuring Entity there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;
ii. if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
iii. if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (i) and (ii) above.

If the Bidder that submitted the lowest evaluated Bid does not accept the correction of errors, its Bid shall be disqualified and its Bid Security shall be forfeited or its Bid Securing Declaration shall be executed.

2. Procuring Entity’s Right to Vary Quantities

(i) At the time of award of contract, the quantity of Goods, works or services originally specified in the Bidding Document may be increased or decreased by a specified percentage, but such increase or decrease shall not exceed twenty percent, of the quantity specified in the Bidding Document. It shall be without any change in the unit prices or other terms and conditions of the Bid and the conditions of contract.

(ii) If the Procuring Entity does not procure any subject matter of procurement or procures less than the quantity specified in the Bidding Document due to change in circumstances, the Bidder shall not be entitled for any claim or compensation except otherwise provided in the Conditions of Contract.

(iii) In case of procurement of Goods or services, additional quantity may be procured by placing a repeat order on the rates and conditions of the original order. However, the additional quantity shall not be more than 25% of the value of Goods of the original contract and shall be within one month from the date of expiry of last supply. If the Supplier fails to do so, the Procuring Entity shall be free to arrange for the balance supply by limited Bidding or otherwise and the extra cost incurred shall be recovered from the Supplier.
3. Dividing quantities among more than one Bidder at the time of award (In case of procurement of Goods)

As a general rule all the quantities of the subject matter of procurement shall be procured from the Bidder, whose Bid is accepted. However, when it is considered that the quantity of the subject matter of procurement to be procured is very large and it may not be in the capacity of the Bidder, whose Bid is accepted, to deliver the entire quantity or when it is considered that the subject matter of procurement to be procured is of critical and vital nature, in such cases, the quantity may be divided between the Bidder, whose Bid is accepted and the second lowest Bidder or even more Bidders in that order, in a fair, transparent and equitable manner at the rates of the Bidder, whose Bid is accepted.