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Report on
PMC's Tender Nos. 34, 35, 44, 62 and 63 of 2014
Design, Supply, Installation, Commissioning, Operation & Maintenance of
Municipal Organic & Inorganic Solid Waste Processing Plant(s)

Introduction

1. Nagrik Chetna Manch accessed information about tenders floated by Pune Municipal Corporation ("PMC" for short) pertaining to "Design, Supply, Installation, Commissioning, Operation & Maintenance of Municipal Organic & Inorganic Solid Waste Processing Plant(s)" for tender numbers 34, 35, 44, 62 and 63 of 2014. The information is from PMC's web site at:

<https://pmctenders.abcprocure.com/pmctenders/EProc.jsp>.

Violation of the Competition Act, 2002

2. The Competition Act, 2002 prohibits any agreement, which causes, or is likely to cause, appreciable adverse effect on competition in markets in India. In the above tenders, there is clear evidence of "courtesy bidding" between enterprises. Bidders have colluded and acted in concert. They have manipulated the bidding process resulting in elimination of real competition and causing restricted participation in the bid process, adversely affecting public spending.

3. The net worth certificate for Fortified Security Solutions ("Fortified" for short) for tender no. 34-2014 (Annexe 1) shows Bipin Vijay Salunke as owner of both Fortified and Ecoman Environmental Solutions Private Limited ("Ecoman" for short) with the same office address. There is, thus, collusion with PMC to rig all the five tenders. There is a clear conspiracy to put up bogus companies, which are not in the business of solid waste processing plants to ensure a minimum of three technically qualified bidders, which is mandatory as per paragraph 2.4.5 of PMC Commissioner's Office order No. D/661 dated 23/03/2011 (Annexe 2) to avoid further extension of time. Time extension could have enabled larger response with lower prices. The result is that Ecoman Environmental Solutions Pvt Ltd became L1 in five tenders in 2014 bagging contracts worth ₹16,75,79,600 (about ₹ 16.76 crores).

4. The evidence further leads us to the possibility of a system of compensation by dividing a certain percentage of profits of the successful bidder not only to the unsuccessful bidders but also to some officials connected with approving the bids. This too is a violation of the Competition Act, 2002. The officials involved in shortlisting technically qualified bidders have blatantly overlooked tender conditions. It appears that the technical evaluation is done cursorily or has deliberately ignored important critical details.

Doubts about Financial Strength of L1 in the Five Tenders

5. For AY 2013-14, Ecoman has shown its total taxable income as ₹ 2612090 and total tax and interest payable as ₹ 707512. Ecoman's IT return for AY 2012-13 shows net taxable income of ₹ 197910 and tax plus interest as ₹ 207091 i.e. more than 100 % of the taxable income. The turnover as per the certificates from the Chartered Accountants is between ₹ 4.5 to 4.75 Crores for the two years. (Annexes 3, 4 and 5). The figures in the IT returns, especially for AY 2012-13 and the turnover give rise to the apprehension that PMC did not carry out thorough financial scrutiny of Ecoman with a view to finding out whether it has the financial strength to implement five projects almost simultaneously and how its income jumped 13 times in just one year. PMC has not recorded its assessment in this regard. The accounts, thus, need a thorough review.

Attracts Provisions of Prevention of Corruption Act, 1988

6. Ecoman has shown the address in the abstract of the tender form as Gat No. 189, Jyotiba Nagar, Bhokkar Chowk, Talawade 412114 (Annexe 6). However, the mailing address shown in the Certificate of Incorporation (Annexe 7) [and also as per the record with the Registrar of Companies and for registration for VAT, CST and for LBT (as chief place for business)] is A-10 Shreyas Apartment, Opposite E Square, Shivaji Nagar, Pune 411016. The person carrying out business for Ecoman in the LBT certificate is Bipin Vijay Salunke. He has shown the same address as his chief place of business for Fortified (Annexe 8). Both these companies had submitted bids for tender numbers 34, 35 & 44 of 2014.

7. The bidder with the best credentials but still not fully technically qualified is Ecoman. The other bidders do not qualify technically for design, installation, commissioning and O&M of municipal organic & inorganic solid waste processing plants. Certificates from clients are absent in all cases except Ecoman. In the case of Ecoman, the certificates from clients do not expressly state that Ecoman installed the machines. Importantly, no purchaser has certified that the output is compliant with the MSW (Management & Handling) Rules, 2000, which is the most critical condition of the contract to gauge the success of the equipment.

8. The two qualified bidders; Sanjay and Mahalaxmi, in tender nos. 62-2014 and 63-2014 are wholesalers in medicines and dealers in cement/iron/steel tubes, pipes, etc (Annexes 9 & 10). Two bidders in tender nos. 34, 35, 44 of 2014, Lahs & Fortified also do not qualify technically but all have nevertheless been approved for opening their financial bids. Evidence in respect of Lahs & Fortified is given subsequently.

Documentary Evidence of PMC Deliberately Ignoring Infirmities

9. PMC has accepted the infirm bids to ensure a minimum of three technically qualified bids to avoid re-tendering (Annexe 2). Re-tendering would have given a better response. Almost all forms of bid rigging schemes have one thing in common: an agreement among some or all of the bidders, which predetermines the winning bidder and limits or eliminates competition among the conspiring vendors. In this case, predetermined winner is Ecoman. In the bids under examination, the bid offers by different bidders contain same people or institutions or have similar errors and irregularities (in figures, calculations, distributors, model numbers, notaries, banks etc). This indicates that the designated bid winner had prepared all the bids of the losers. Hence, the motives of the officers dealing with these tenders are also suspect.

10. In support of our statements in paragraph 9 above, below are only samples of the infirmities to establish collusive bidding, entailing cancellation of the tenders:

- a. Fortified and Ecoman have both quoted the same Model no. F-125 (Annexes 11 and 12).
- b. In tender nos. 34 and 44-2014, Ecoman & Lahs Green India Pvt Ltd ("Lahs" for short) have the same notary, same bank for demand draft and in 44-2014, the serial numbers of demand drafts are one after another showing close relationship (Annexe 13).
- c. Fortified have submitted the PAN card and IT returns of the owner, i.e. Bipin Vijay Salunke (who also owns Ecoman) and not of the company. The certificate from the CA is also not for the Company. Hence, the company accounts are either non-existent or not audited at all. Both eventualities are highly questionable (Annexes 14, 15 & 16).
- d. In all the affidavits and indemnity bonds (except for Ecoman), the name of the person signing the affidavit or the indemnity bond is not mentioned and the signatures are also not decipherable (Annexe 17 & 18).

- e. The authorised signatory for Ecoman is one S. V. Salunke who has signed distinctly as such and appears to be related to Bipin Vijay or B. V. Salunke who owns both Fortified and Ecoman (Annexe 17 & 18).
- f. Lahs has submitted the balance sheet only for year ended 31/12/2011 (Annexe 19) and profit & loss statement for year ended 31/03/14 instead of submitting IT Return acknowledgment for FY 2013-14 and 2012-13. This shows that the accounts have not been submitted to the IT Department.
- g. Ecoman, Fortified and Lahs have made a common error in quoting for 500-kg/day waste processing capacity plant in the technical bid for tender no. 44-2014 while the requirement is for 5000 kg/day showing common filling of the tender forms. Nevertheless, all three bidders have quoted for 5000 kg/day in the price bid. Actually, the technical bid of all three should have been rejected and financial bid should not have been opened. (Annexe 20, 21 & 22).
- h. None of the outstation bidders e.g. Lahs are registered with PMC for LBT, which is one of the basic conditions for qualifying, for example Lahs (Annexe 23).
- i. In tender no. 34-2014, Lahs has quoted for Prabhag 50B while the tender was for Prabhag 58B (Annexe 24).
- j. Mahalaxmi has placed an order on Lahs in tender no. 62-2014, clearly showing complementary efforts amongst the bidders (Annexe 25).
- k. Mechanical Equipment Lease & Supply Company Ltd ("Mels" for short) has provided equipment to Fortified in its tender nos. 34, 35 and 44 and to Sanjay Agencies in tender no. 62-2014 showing common suppliers (Annexe 26 & 27).
- l. Mahalaxmi Steel is authorised by Raghunath Industry Private Limited as its distributor in bid no. 63-2014. Raghunath does not have an address or telephone number, does not show the type of goods for distribution and has appointed Mahalaxmi Steel, which is in steel trading, as its distributor for the tender (Annexe 28). It is doubtful if Raghunath Industry Private Limited actually exists.

Conclusions & Recommendations

11. The enclosures to this report prima facie establish that criminal offences have been committed by personnel concerned of the companies that submitted their bids for tender nos. 34, 35, 44, 62 and 63 of 2014 in collusion with officials concerned of the PMC. This has culminated in the award of contracts worth over ₹16 crores to only one company resulting in huge loss of public funds. *Nagrik Chetna Manch* strongly urges the Municipal Corporation to take the following actions before commencing a preliminary inquiry:

- a. Suspend the approvals or work orders awarded in the above tenders and stop any work that has commenced as per work orders.
- b. If final approvals or work orders have not been granted, freeze the approvals.
- c. Officers of the PMC who have dealt with the above tenders should step aside from their current positions so that they are not in a position to tamper with the evidence.
- d. Senior officers of the status of head of departments and above should not deal with this subject and alternate arrangements made either to hand over their entire charge or all work related to these or similar tenders.
- e. There should be re-tendering after a review of the terms and conditions of the contract to plug the loopholes brought out in this report.
- f. The companies that bid for the above tenders should be barred from bidding for PMC tenders.
- g. The above actions should be reviewed once the preliminary inquiry is complete.

12. The analysis and scrutiny also bring out that the discrepancies attract the provisions of the Prevention of Corruption Act, 1988. PMC should appoint an outside expert of impeccable integrity to carry out the preliminary inquiry. At no cost should the departmental officers or senior officers in charge of the department should be entrusted with the preliminary inquiry. The inquiry to establish the truth should embrace all those involved in the process of evaluating, approving and processing both the technical and financial bids and later preparing and forwarding the proposal to the competent authority for approval. We give below briefly the journey of the bids since their receipt at the Tender Cell of PMC, which will immediately pinpoint the responsibility for evaluation, approval and processing of tender nos. 34, 35, 44, 62 and 63 of 2014 of SWM Department of Pune Municipal Corporation:

- a. Drafting of the criteria, conditions, terms etc for these tenders.
- b. Technical bid evaluation carried out at the SWM Department.
- c. Technical evaluation approved by the Head of SWM Department.
- d. Names of technically approved bidders informed to the Tender Cell.
- e. Financial bids opened in the presence of the bidders.
- f. Financial bids opened and L1 declared.
- g. Docket prepared by SWM Department for approval of the Standing Committee.
- h. Docket sent to OSD Vigilance through Internal Audit.
- i. Docket put up for approval of the Additional Commissioner and the Commissioner, as required.
- j. Docket sent to the Standing Committee for approval.

13. Our analysis and detailed scrutiny clearly bring out the discrepancies in technical evaluation of bids for tender nos. 34, 35, 44, 62 and 63 of 2014, which attract the provisions of the Competition Act, 2002. PMC should, therefore, inform the Competition Commission of India in terms of Section 19 of the Competition Act to seek an inquiry by the Competition Commission under Sub-Section (3) of Section 3 of the Competition Act.

14. *Nagrik Chetna Manch* has identified the following major lacunae in tender processing, which needs immediate corrections:

- a. A properly constituted tender committee should evaluate the technical bids with representation from the department concerned, finance and an allied department. A written report should be submitted certifying that the bids have been checked for each criteria or condition and finding recorded. Finance representative is required because IT returns receipt, balance sheet, profit and loss statement and net worth are submitted along with the technical bids. Additionally, the bid evaluation should also be routed through the legal cell because technical bid contains affidavit and indemnity bond.
- b. There should be strict adherence to the instructions contained in the circular dated 23 March 2011 and a certificate to the effect that evaluation has been done as per the guidelines mentioned therein should be submitted along with the report of the Tender Committee.
- c. The office circular referred to above should be revised in light of the experience gained over the past four years and the latest instructions from Central Vigilance Commission.



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