

BACKGROUND INFORMATION

Airport Authority of India Ltd. (“**Authority**”), on 1 January 2019, the issued the Notice inviting Tenders (“**NIT**”) for inviting bids for ‘Construction and Maintenance of the Runway No. 12321’ located at Patiala Airport (“**Project**”). The Project required construction of the Runway, installation of anti-slippery layer coating on the constructed runaway and solar power run- multi-coloured blinking lights on both ends of the runway.

M/s Runway Construction Ltd. (“**Contractor**”) submitted its bid for the Project along with bid security/earnest money deposit amounting to Rs. 1,00,00,000 (Rupees One Crores Only) by way of a Bank Guarantee No. 01012 issued by Indian Bank Limited (“**EMD Guarantee**”).

Since the Project required niche technology of installation of solar powered multi-coloured blinking lights and since the same was at a nascent stage of development in India at the time, the Bid Document (Clause 3.2.A.1.2) required the bidder to propose the name of the solar light provider with whom the bidder expects to tie-up for the Project. The Contractor in its bid provided the names of 4 proposed sub-contractors to provide the solar light technology.

The Authority evaluated the bid submitted by the Contractor and vide its letter dated 1 June 2019 informed the Contractor that Bright Light Ltd. had qualified to be the sub-contractor for the Project and accordingly, the Contractor’s bid has been found techno-commercially responsive.

THE AGREEMENT

On 1 July 2019, the Authority issued the letter of award (“**LOA**”) to the Contractor for the Proposed EPC Engineering, Procurement, and Construction (“**EPC**”) Contract, for construction and maintenance of the Runway No. 12321’ located at Patiala Airport including the installation of anti-slippery layer coating on the constructed runaway and solar power-run multi coloured blinking lights on both ends of the runway and any other services specified in the contract documents for the Proposed EPC Contract.

The LoA also stated that Bright Light Ltd. shall be the sub-contractor for the purposes of supplying solar lights technology and shall submit:

- i. Performance bank guarantee equivalent to 5% of the value of work sublet (“**5% PBG**”), in addition to the performance bank guarantee submitted for the entire contract by the Contractor
- ii. A joint undertaking was to be submitted by the Contractor and Bright Light Ltd. for joint and several responsibilities of execution of work sub- contracted by the Contractor (“**Joint Undertaking**”).

DISPUTED FACTS

The Authority wrote several letters to the Contractor to provide the 65% PBG and the Joint Undertaking, however, the Contractor made requests for extension of time in providing the same.

On 1 December 2019, the Authority wrote to the Contractor stating that a final extension was provided to it for submission of 5% PGB and the Joint Undertaking, due to which the signing of the Contract was stalled.

On 10 December 2019, the Contractor wrote to the Authority stating its intentions to engage more sub-contractors for the Project. The Contractor stated that the solar light technology had evolved in due course and it could take the benefit updated technology providers which would save cost and time of the Contractor.

On 15 December 2019, Bright Light Ltd. wrote to the Authority stating that it shall not be able to perform the work sub-contracted to it by the Contractor.

On 20 December 2019, the Authority wrote to the Contractor categorically stating that no further extension shall be granted beyond 30 December 2019. Further, the Respondent also intimated that in case 5% PBG and Joint Undertaking is not signed with Bright Light Ltd., before 30 December 2019, the Authority shall cancel the LOA and forfeit the Bank Guarantee under Clause 31.2 of Instructions to Bidders (“**ITB**”).

On 31 December 2019, the parties failed to execute the Proposed EPC Contract since the Contractor failed to submit the 5% PBG and Joint Undertaking.

On 31 January 2020, the Authority issued the notice of cancellation of the LOA on the ground of failure of the Contractor to submit the 5% PBG and Joint Undertaking and consequent failure of the parties to execute the Contract. The Authority also invoked the EMD Guarantee.

CURRENT STATUS OF THE DISPUTE

The Contractor invoked arbitration under Clause 6 of the General Conditions of Contract (“GCC”) forming part of the Tender Document and the ITB. The Authority disputed the existence of arbitration agreement between the parties. The representatives of Authority and the Contractor are meeting to amicably settle the inter se disputes.

ANNEXURE-1

General Conditions of Contract (GCC)

[OMITTED]

3.2.A.4 Bidders with Sub-contractors:

In case the Sole Bidder does not have all the required experience and also does not wish to enter into a joint-venture or wants to restrict the joint-venture partnership, he can associate Sub-contractor for specified activities (in case of Floatation Device Technology Provider or experience of installation of floating structures) in which he does not have the relevant experience.

[OMITTED]

6.3 Arbitration:

Except as otherwise provided, in GCC clause-6.2 hereinbefore, all questions, dispute or difference in respect of which the decision has not been final and conclusive arising ARB.P. 217/2020 &O.M.P.(I) (COMM.) 162/2020 Page 26 of 76 between the contractor and the Employer, in relation to or in connection with the contract shall be referred for arbitration in the manner provided as under: 6.3.1 Either of the parties may give to the other notice in writing of the existence of such question, dispute or difference which shall be settled in accordance with the Arbitration and Conciliation Act, 1996, as amended up to date.