

एक मिनी रत्न कंपनी)
(कोल इण्डिया लिमिटेड की सहायक कंपनी)
कां०प०स० U10101JH1972GOI000918
संविदा प्रबंधन प्रकोष्ठ
पंजीकृत कार्यालय: कोयला भवन,
कोयला नगर, धनबाद - 826005, झारखण्ड
टेलीफोन/फैक्स - 0326-2230206
वेबसाइट: www.bcclweb.in
ईमेल - gmcmc.bccl@coalindia.in



VARIANT COMMERCIAL COAL LTD.
(A Mini Ratna Company)
(A Subsidiary of Coal India Ltd.)
CIN U10101JH1972GOI000918
Contract Management Cell
Registered Office: Koyla Bhawan,
Koyla Nagar, Dhanbad - 826005, Jharkhand
Telephone/Fax - 0326-2230206
Website: www.bcclweb.in
E. mail - gmcmc.bccl@coalindia.in

Ref. No. BCCL/CMC/Tptn43/Debar/BKB/2022/137

Date: 24.03.2022

To
M/s BKB TRANSPORT PVT LTD.
2F VATIKA APARTMENT
LINE TANK ROAD RANCHI
PIN- 834001

E-mail/Speed Post
Email: dilipchatterjee32@gmail.com

Sub: Debar from Participating in future bids of BCCL, in individual capacity or as a Joint Venture, for a period of 2 (Two) years.

- Ref:**
1. e-Tender Notice No.-TPTN-43;
 2. Tender ID No.: 2021_BCCL_207625_1
 3. NIT No: BCCL/CMC/F-e-NIT/Coal/Tptn43/Bastacolla/2021/182 dated:29.05.2021
 4. Name of the work: "Long Term Coal Transportation including crushing of coal from different sources of Bastacolla Area, BCCL to BNR Siding BCCL including allied jobs".
 5. Show Cause Notice issued to you vide ref. no. BCCL/CMC/Tptn43/Show_Cause/BKB/2021/549, Date: 03.12.2021.
 6. Your 1st reply to the Show Cause Notice BKBTP/R/2021-22/39, Date: 14.12.2021.
 7. Your 2nd reply to the Show Cause Notice BKBTP/R/2021-22/39, Date: 19.01.2022.

Dear Sir,

An e-tender notice was floated vide reference numbers as mentioned above. M/s BKB TRANSPORT PVT LTD had participated in the tender. The technical Bid (Part-I) of the tender under reference was opened on 22.06.2021.

During the technical evaluation of the documents uploaded by M/s BKB TRANSPORT PVT LTD, it appeared that 'Arun Kumar Agrawal, one of the directors of M/s BKB TRANSPORT PVT LTD is in relationship with 'Sourav Agrawal, S/o Arun Kumar Agrawal, one of the Directors of M/s VARIANT COMMERCIAL PVT. LTD. This was later accepted by Dilip Kumar Chatterjee, authorized signatory of M/s BKB TRANSPORT PVT LTD on being asked by BCCL, through tendering portal, to clarify it on an Affidavit.

In this respect attention is invited towards clause 4 of Instructions to bidders of Tender Document which is as below:-

Quote...

4. ONE BID PER BIDDER

4.1. Each Bidder shall submit only one Bid, either individually, or as a partner in a partnership firm or a partner in a Joint Venture or as a Company registered under

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Companies Act. A Bidder who submits or participates in more than one Bid (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the proposals with the Bidder's participation to be disqualified.

4.2. Conflict of Interest.

A Bidder may be considered to have a Conflict of Interest with one or more parties in this bidding process, if:

- a) they have controlling partner(s) in common; or
- b) they receive or have received any direct or indirect subsidy/financial stake from any of them; or
- c) they have the same legal representative/agent for purposes of this bid; or
- d) they have 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
- e) a Bidder or any of its affiliate participated as a consultant in the preparation of the design or technical specification of the contract that is the subject of the bid; or
- (f) in case of a holding company having more than one Subsidiary/Sister Concern having common business ownership/management only one of them can bid. Bidders must proactively declare such sister/common business/management in same/similar line of Business;

All such Bidders having a Conflict of Interest, shall be disqualified.

...Unquote

Attention is also invited towards declaration submitted by M/s BKB TRANSPORT PVT LTD in Annexure-N at the time of submission of bid which is quoted below:-

Quote ...

*I/We, **Dilip Kumar Chatterjee**, Accredited Representative of M/S. BKB Transport (P) Ltd, 2F, Vatika Apartment, Line Tank Road, Ranchi -834001, solemnly declare that my/our bid is being submitted in compliance of the clause 4 of Instructions to bidders of Tender Document. If any violation to this clause is found at any stage of tender/contract, BCCL may initiate penal actions as per provisions of the NIT/Tender Document against me/us. (In case of JV/Consortium etc., all partners are liable for action)*

...Unquote

Further, Point no. 12 of undertaking as submitted by M/s BKB TRANSPORT PVT LTD during submission of bid under Annexure-C of Tender Document states the following:

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Quote...

12. If any information and document submitted is found to be false/ incorrect at any time, department may cancel my/our Bid and action as deemed fit may be taken against me/us, including termination of the contract, forfeiture of all dues including Performance Security deposit and to ban us for minimum two years (including all individual partners of JV/Partnership firm) from being eligible to submit bids in future tenders of CIL and its subsidiaries. Additionally, Company, without prejudice to any other right or remedy, be at liberty, to initiate other legal actions against me/us.

...Unquote

A Show Cause notice vide ref. no. BCCL/CMC/Tptn43/Show_Cause/BKB/2021/549, Date: 03.12.2021 was issued to M/s BKB TRANSPORT PVT LTD requesting therein to submit reply within 21 days of date of issue of the Show Cause Notice.

The 1st reply to the Show Cause notice was submitted by M/s BKB TRANSPORT PVT LTD vide ref. no. BKBTP/LR/2021-22/39, Date: 14.12.2021, and subsequently in pursuant to liberty granted by the Hon'ble Jharkhand High Court, 2nd reply to the said Show Cause notice was submitted by M/s BKB TRANSPORT PVT LTD vide ref. no. BKBTP/LR/2021-22/39, Date: 19.01.2022, the contention raised by you in both the replies to the show cause notice are summarized below:

- In your reply, you have stated that we have filed a Writ Petition before the Hon'ble High Court of Jharkhand being W.P.(C) No.4427 of 2021 (BKB Transport Pvt. Ltd. Vs. Bharat Coking Coal Ltd. and ors) requesting to keep the aforesaid Show Cause Notice in abeyance till our Writ Petition being W.P.(C) No. 4427 of 2021 is finally heard and decided by the Hon'ble High Court. Subsequently, you had filed another Writ Petition before the Hon'ble High Court being W.P.(C) No. 15 of 2022, wherein you had challenged the Show Cause Notice under reply dated 03.12.2021 and also prayed for stay of the said Show Cause Notice during the pendency of the aforesaid Writ Petition being W.P. (C) No. 15 of 2022, wherein the Hon'ble High Court not granted stay in respect of the Show Cause Notice dated 03.12.2021, but, the Hon'ble High Court had ordered that any decision taken by BCCL pursuant to the issuance of the said Show Cause Notice would be subject to the final outcome of the aforementioned Writ Petition being W.P.(C) no. 15 of 2022. Further, the Hon'ble High Court in the said Writ Petition while passing the aforesaid order dated 17th January, 2022 directed M/s BKB TRANSPORT PVT LTD to file a detailed reply to the impugned Show Cause Notice dated 03.12.2021 before BCCL within the period of 15 days which shall be accepted by said authority.
- Further, in your reply, you said that Clause-4 of Instructions to Bidders is not applicable in the case of our company in view of the fact that our company is deemed to be

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registered under the Companies Act, 2013 and is having no relationship with another Bidder namely, Variant Commercial Pvt. Ltd. which is also a company deemed to have been registered under the Companies Act, 2013, and, merely because one of the Directors of the said company namely M/s. Variant Commercial Pvt. Ltd. is the son of the Director of our company would not attract Clause-4 of the Instructions to Bidders.

- Further, in your reply, you said that we have not submitted any false/incorrect information and/or document along with our bid and, hence, Clause 13 of Annexure 'C' is not at all attracted in our case. Moreover, from bare perusal of Annexure 'C', it would be evident that action in terms of Annexure 'C', in context of the present dispute, can be initiated only if there is violation of Clause 10 of Annexure 'C' which reads as under:-

"I/We have submitted only one bid as per provision of Clause no. 4.1 of ITB of Tender Document."

A bare reading of Clause 10 read with Clause 13 of Annexure 'C' i.e. 'FORMAT OF UNDERTAKING' would reveal that the action pertaining to forfeiture of EMD/security deposit including ban for minimum two years from being eligible to submit bid in future tender of CIL and its subsidiaries can be only initiated against our company, if our company has violated Clause 4.1 of ITB of Tender Document.

- Further, in your reply, you said that, Clause-4 of the Tender Document is not attracted, even if, for the sake of arguments, it is presumed that Clause-4 of the Tender Document is attracted, the same, at best, could have led to disqualification of the Bids submitted by our company and that of M/s. Variant Commercial Pvt. Ltd., and, violation of the aforesaid Clause cannot be invoked for forfeiture of the Earnest Money Deposit/Security Deposit of the Our company including banning Our company for a minimum period of two years from being eligible to submit bids in future tenders of Coal India Limited and its subsidiaries.
- Further, in your reply, you said that apart, the Tender Document itself, vide Clause 14, provides the circumstances when the Bid Security/Earnest Money Deposit of a Bidder can be forfeited. From bare perusal of said Clause 14 of 'Instructions to Bidders', it would be evident that violation of Clause 4 would not attract Clause 14 of 'Instructions to Bidders', which provides for forfeiture of the Bid Security/Earnest Money Deposit.
- Further, in your reply, you said that apart, issuance of the present Show Cause Notice amounts to abuse of the process of law, as, by issuance of the present Show Cause Notice, BCCL is seeking to re-open and re-litigate the issue which has been finally concluded by the decision of the Hon'ble Jharkhand High Court rendered in L.P.A. No. 150 of 2020 (Tribhuvan Carriers Pvt. Ltd. Vs. Bharat Coking Coal Ltd. and ors.) with L.P.A. No. 197 of 2020 (M/s. SGPL TCPL BP (JV)- Versus-Bharat Coking Coal Limited and ors).

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- Further, in your reply, you said that in view of the cumulative facts and circumstances mentioned hereinabove, we would like to request your goodself to consider our Show Cause Reply and to drop the present proceedings. In this regard, we would like to further state that we would require an opportunity of personal hearing so that we can appraise your goodself of the relevant facts as has been pleaded by us in detail in our instant reply.

We have perused and gone through the reply submitted by M/s BKB TRANSPORT PVT LTD and upon consideration of the same, the causes shown are not acceptable to us for the following reasons: -

1. At the outset it is being clarified that the undertaking submitted by BKB Transport Pvt. Ltd. as Annexure C of the Bid document also stipulates at its clause no. 12 that "If any information and document submitted is found to be false/ incorrect at any time, department may cancel my/our Bid and action as deemed fit may be taken against me/us, including termination of the contract, forfeiture of all dues including Performance Security deposit and to ban us for minimum two years (including all individual partners of JV/Partnership firm) from being eligible to submit bids in future tenders of CIL and its subsidiaries. Additionally, Company, without prejudice to any other right or remedy, be at liberty, to initiate other legal actions against me/us." BKB Transport Pvt. Ltd. at the time of submission of bid has also made declaration in form of Annexure N declaring therein that bid is being submitted in compliance of the clause 4 of Instructions to bidders of Tender Document. If any violation to this clause is found at any stage of tender/contract, BCCL may initiate penal actions as per provisions of the NIT/Tender Document against me/us. The submission of false declaration in form of Annexure N attracts clause 12 of Annexure C as submitted by BKB Transport Pvt. Ltd. Therefore the contention that violation of undertaking submitted in form of Annexure C is not attracted, founds no ground under the eyes of law.
2. All the terms and conditions of the NIT are absolutely clear and are unambiguous. So far as Clause relating to conflict of interest is concerned, the same is equally clear and unambiguous and during the bidding process, no clarification was sought for by any bidder including M/s BKB TRANSPORT PVT LTD in respect of the true scope and purport of Clause 4.2.
Clause 4 is one of the clauses in the tender document, which seeks to deal with transparency in the bidding process and also integrity of a bidder, thus, has to be adhere to with all strictness. There is no dispute that the relationship between one of the Directors of M/s BKB TRANSPORT PVT LTD and one of the Directors of the other firm namely M/s. Variant Commercial Pvt. Ltd. is squarely covered within the ambit of Clause 4.2, and it can be safely concluded that the relationship between the above two, were

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of such nature that it put both the above entities in a position to have excess to information about or influence on the bid of another bidder. Thus, there is no doubt that Clause 4.2 has been deliberately violated and you have also intentionally given an undertaking in Annexure-C, which was known to be false to you as false declaration in form of Annexure-N of the Tender Document was furnished for participating in the bidding process for the work under reference. Therefore, such deliberate and intentionally act goes to the root of matters touching upon transparency of the bidding process and integrity of the bidder and as such needs to be dealt with accordingly.

3. The contention raised by BKB Transport Pvt. Ltd. in paragraph 26 of reply dated 19.01.2022 is misleading. Clause 14 of the Instruction to bidder of the bid document is separate and distinct provision pertaining to withdrawal of bid and the management action has not been initiated against you under clause 14 of Instruction of Bidder. The content of show cause notice are self-explanatory and contains no ambiguity.
4. In reply to the show cause BKB Transport Pvt. Ltd. has tried to create parity with the penal action initiated by the management of BCCL against one SGPL TCPL BP JV and its constituent members. It may be pertinent to mention herein that "One bid per bidder" clause of the NIT No. BCCL/CMC/e-Tender/F-HEMM-OS/2018/12 dated 06.01.2018 under which actions were initiated contains only provisions stipulated in clause 4.1 of the tender under reference. However in the instant tender Clause 4.2 in form of "conflict of interest" exists to avoid manipulation of price, bid rigging and/or cartelization and also for transparency of the bidding process and integrity of the bidder. Further, BCCL management has filed S.L.P before Hon'ble Supreme Court of India against decision of the Hon'ble Jharkhand High Court rendered in L.P.A. No. 150 of 2020 (Tribhuvan Carriers Pvt. Ltd. Vs. Bharat Coking Coal Ltd. and ors.) with L.P.A. No. 197 of 2020 (M/s. SGPL TCPL BP (JV)- Versus-Bharat Coking Coal Limited and ors). It is to further clarify that the clause 'One Bid per Bidder' of Tender Document is completely modified in the present case.
5. So far as possibilities of opportunity of personal hearing is concerned, it is to clarified that we have already given sufficient time and opportunity of 2nd reply as directed by the Hon'ble court and any further opportunity to defend the said Show cause notice is regretted.

The acts on the part of M/s BKB TRANSPORT PVT LTD attracts penal action in terms of clause 12 of undertaking as submitted by you in form of Annexure-C as false declaration in form of Annexure-N of the Tender Document was furnished for participating in the bidding process for the work under reference.

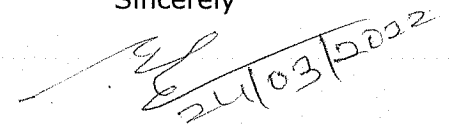
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Thus in view of the seriousness and gravity of the acts on your part as a bidder (M/s BKB TRANSPORT PVT LTD), the competent authority of Bharat Coking Coal Limited has approved for debarring M/s BKB TRANSPORT PVT LTD from participating in future bids in all tenders of BCCL for a period of 2 (Two) years.

Accordingly, M/s BKB TRANSPORT PVT LTD is hereby debarred from participating in future bids in all tenders of BCCL, in individual capacity or as a Joint Venture, for a period of 2 (Two) years from the date of issue of this order.

This issues with the approval of competent authority.

Sincerely

Handwritten signature and date: 21/03/2022

GM (CMC), BCCL

Handwritten signature: Wangga

Copy To:

1. CMD, BCCL.
2. CVO, BCCL
3. D(T) OP, BCCL
4. D(T) P&P, BCCL
5. GM, Bastacolla
6. GM(System), BCCL- With a request to upload it on BCCL Website.