

I/609062/2023

28/07/2023

ਪੰਜਾਬ ਸਰਕਾਰ  
ਵਿੱਤ ਵਿਭਾਗ  
(ਵਿੱਤ ਪ੍ਰਸ਼ੋਨਲ-2 ਸ਼ਾਖਾ)

ਸੇਵਾ ਵਿਖੇ,

ਸਮੂਹ ਵਿਸ਼ੇਸ਼ ਮੁੱਖ ਸਕੱਤਰ, ਵਧੀਕ ਮੁੱਖ ਸਕੱਤਰ, ਵਿੱਤੀ ਕਮਿਸ਼ਨਰ;  
ਪ੍ਰਮੁੱਖ ਸਕੱਤਰ ਅਤੇ ਪ੍ਰਬੰਧਕੀ ਸਕੱਤਰ, ਪੰਜਾਬ ਸਰਕਾਰ;  
ਪੰਜਾਬ ਰਾਜ ਦੇ ਸਮੂਹ ਵਿਭਾਗਾਂ ਦੇ ਮੁੱਖੀ;  
ਡਵੀਜ਼ਨਾਂ ਦੇ ਕਮਿਸ਼ਨਰ;  
ਸਮੂਹ ਡਿਪਟੀ ਕਮਿਸ਼ਨਰ ਅਤੇ  
ਸਮੂਹ ਸਬ ਡਵੀਜ਼ਨਲ ਮੈਜਿਸਟ੍ਰੇਟ।

ਵਿਸ਼ਾ:-

Regarding Proper implementation of Section 49 of the Punjab  
Transparency in Public Procurement Act, 2019 Read with Rule 42 of the  
Punjab Transparency in Public Procurement Rules, 2022.

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ਸ਼੍ਰੀਮਾਨ/ਸ਼੍ਰੀਮਤੀ ਜੀ,

ਉਪਰੋਕਤ ਵਿਸ਼ੇ ਦੇ ਹਵਾਲੇ ਵਿਚ।

2. ਮੈਨੂੰ ਇਹ ਲਿਖਣ ਦੀ ਹਦਾਇਤ ਹੋਈ ਹੈ ਕਿ ਵਿੱਤ ਵਿਭਾਗ ਦੇ ਧਿਆਨ ਵਿਚ ਆਇਆ ਹੈ ਕਿ ਪੰਜਾਬ ਰਾਜ ਵਿਚ ਖਰੀਦਦਾਰੀ ਸਬੰਧੀ 'The Punjab Transparency in Public Procurement Act 2019' ਅਤੇ ਇਸ ਨਾਲ ਸਬੰਧਤ Rules 2022 ਲਾਗੂ ਹੋ ਜਾਣ ਦੇ ਬਾਵਜੂਦ ਕਈ ਵਿਭਾਗਾਂ ਵਲੋਂ ਇਸ ਦੀ ਪਾਲਣਾ ਨਹੀਂ ਕੀਤੀ ਜਾ ਰਹੀ ਜਿਸ ਕਰਕੇ ਵਿਭਾਗ ਨੂੰ ਬੇਲੜੀਂਦੀਆਂ ਕਾਨੂੰਨੀ ਕਾਰਵਾਈਆਂ ਅਤੇ ਕੋਰਟ ਕੇਸਾਂ ਦਾ ਸਾਹਮਣਾ ਕਰਨਾ ਪੈ ਰਿਹਾ ਹੈ।

3. ਇਸ ਲਈ ਇਸ ਸਬੰਧੀ ਐਡਵੋਕੇਟ ਜਨਰਲ ਦਫਤਰ ਦੇ ਅੱਧ ਸਰਕਾਰੀ ਪੱਤਰ ਨੰ: 18760 ਮਿਤੀ 06.07.2023 ਦੀ ਕਾਪੀ ਭੇਜਦੇ ਹੋਏ ਲਿਖਿਆ ਜਾਂਦਾ ਹੈ ਕਿ 'The Punjab Transparency in Public Procurement Act 2019' ਅਤੇ ਇਸ ਅਧੀਨ ਬਣਾਏ ਗਏ 'The Punjab Transparency in Public Procurement Rules 2022' ਦੀ ਇੰਨ ਬਿੰਨ ਪਾਲਣਾ ਕਰਨੀ ਯਕੀਨੀ ਬਣਾਈ ਜਾਵੇ।

ਸ਼੍ਰੀਮਤੀ : ਵਿੱਤ ਸਕੱਤਰ

ਬਲਜਿਤ ਕੌਰ  
Baljit Kaur

Deputy Secretary

28/07/2023

ਐਡਵੋਕੇਟ ਜਨਰਲ, ਪੰਜਾਬ  
Advocate-General, Punjab

Sub  
14/7/23  
PA/10/6  
SF



Tel. : 0172-2740287  
0172-6612280  
0172-6612222

DO No. 18760  
6<sup>th</sup> July, 2023

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Sub: CWP-10322-2023, CWP No.10972\_of 2023  
Titled as Wah Kong Construction India Pvt. Ltd. and others Versus State of Punjab & ors.  
In Re: Lack of proper implementation of Section 49 of the Punjab Transparency in Public Procurement Act, 2019 Read with Rule 42 of the Punjab Transparency in Public Procurement Rules 2022.

SECRETARY FINANCE  
Department of Finance  
Date 11 JUL 2023

ACFA  
17/07/23  
DSF(R)

OS/15

Dear

10/7/23

PS (Finance)  
SF (GAS)

This is to bring to your kind notice that many Writ Petitions are being filed before the Hon'ble Punjab and Haryana High Court in "tender matters" wherein the challenge is usually to the rejection or not consideration of the bid submitted by the petitioner party. In all these cases/matters either notice of motion is issued by the Hon'ble Bench for further hearing or the matter is disposed of with an order to the concerned authority to pass a speaking order in terms of the representation/complaint of the petitioner concerned. The undersigned has noticed that in most cases, though an appellate adjudication process has been envisaged as per Section 49 of the Punjab Transparency in Public Procurement Act, 2019, however, the said provision is not being properly implemented or in many cases not implemented at all, which is leading to undue burden and docket explosion before the Hon'ble High Court and thus also burdening the office of the Advocate General, Punjab as well as other senior State Authorities. It is also leading to depriving the rejected bidders of an opportunity to file an appeal before the concerned procuring agency and instead rushing to the High Court. It also takes away an opportunity to decide and resolve the matter at the level of the executive authorities itself.

Section 3 of the 2019 Act shows that all Gove. Departments/Agencies/Instrumentalities/Trust/Commission/Societies/PSU and other statutory/constitutional authorities including local bodies like panchyats and Municipal Bodies all come within the ambit of term procuring entity and therefore must comply with the mandate of the Act, 2019. The relevant part of the said Section is reproduced as under:-

"Section 3: This Act shall apply to all procurements which are met from the Government Accounts, including the Consolidated Fund of the State, Public Accounts and Contingent Fund of the State. (2) For the purposes of this Act, "procuring entity" means,-  
(a) any department of the Government of Punjab or its attached or subordinate office;  
(b) any Public Sector Enterprise owned or controlled by the Government of Punjab;  
(c) any entity established or constituted by the Constitution of India or an Act of Parliament, whose expenditure is met from the Consolidated Fund of the State;  
(d) any entity or Board or Corporation or authority or Society or Trust or Commission or autonomous body (by whatever name called) established or constituted by an Act of the State Legislature;  
(e) any entity that receives grant or financial aid out of the Consolidated Fund of the State or retains any levy/user charges/fees etc. collected from the public after being authorized to do so by the State Government and is owned, or controlled or managed by the Government of Punjab;  
(f) any other entity which the State Government may, by notification, specify to be a procuring entity for the purpose of this Act, being an entity that receives substantial financial assistance from the State Government in so far as the utilization of such assistance towards procurement is concerned; and  
(g) any procurement support agency or procurement agent or procurement consultant involved in procurement on behalf of the procuring entities specified in clauses (a) to (f) above."

Discussed.  
Pl. put up urgently

S. G. S.  
ਦਫਤਰ ਪੁਨਿਖ ਸਕੱਤਰ ਵਿੱਤ, ਡਾ. ਨੰ: 2378 ਮਿਤੀ 11.07.2023 ਡਾਇਰੀ ਨੰ: 676 ਮਿਤੀ 11/07/23  
ਦਫਤਰ ਪੁਨਿਖ ਸਕੱਤਰ ਵਿੱਤ, ਡਾ. ਨੰ: 2424180 ਮਿਤੀ 11/07-2023

ਸਕੱਤਰ, ਵਿੱਤ, ਡਾ. ਨੰ: 2420 ਮਿਤੀ 14.7.2023

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Advocate-General, Punjab

Furthermore, Section 5 & 6 of the Act prescribe certain fundamental principles to be followed during public procurement and the necessity of the documentary record for the procurement proceedings. Section 7 of the Act provides code of integrity for procurement entities and bidders. Furthermore the subsequent chapters deal with other relevant areas regarding procurement planning (Ch.-3), pre tendering (Ch.-4), tendering (Ch.-5), procurement methods (Ch.-6), bid evaluation and award of contract etc. (Ch.-7).

Section 49 of the 2019 Act provides for the provisions of appeal and is reproduced as follows:

"49. (1) Subject to section 50, 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 this Act or the rules or guidelines issued thereunder, he may file an appeal to such officer of the procuring entity, as may be designated by the procuring entity for the purpose, within such period, as may be prescribed clearly giving the specific ground or grounds on which he feels aggrieved: Provided that after the declaration of a bidder as successful in terms of section 42, the appeal may be filed only by a bidder who has submitted a bid with the procuring entity: Provided further that in case a procuring entity evaluates the technical bid before the opening of the financial bid, an appeal related to the matter of financial bid may be filed only by a bidder whose technical bid is found to be acceptable.

(2) On receipt of an appeal under sub-section (1), the officer designated under that sub-section shall, after affording a reasonable opportunity of being heard to the parties, determine as to whether or not the procuring entity has complied with the provisions of this Act, the rules and guidelines made thereunder and the terms of the pre-qualification documents, bidder registration documents or bidding documents, as the case may be, and pass an order accordingly which shall be final and binding on the parties to the appeal.

(3) The officer to which an appeal may be filed under sub-section (1) shall be specified by the procuring entity in the pre-qualification documents, bidder registration documents or bidding documents, as the case may be.

(4) While hearing an appeal under this section, the officer concerned shall follow such procedure, as may be prescribed.

(5) No information that would impair the protection of essential security interests of India, or impede the enforcement of law or fair competition, or prejudice the legitimate commercial interests of the bidder or the procuring entity, shall be disclosed in a proceeding under this section."

Therefore, you are requested to ensure that if and when appeal is filed by the petitioner under Section 49 of the Punjab Transparency in Public Procurement Act, 2019, the same is considered and decided by the appellate authority as per the Act and Rules there under, after giving due hearing to the petitioner or his representative and pass a speaking order in accordance with law. The matter was must be preferably disposed off within 30 days from the date of receipt, in view of the Rule 42 (4) of the Punjab Transparency in Public Procurement Rules 2022.

The relevant part of the said Section is reproduced as under:-

"42. Procedure for disposal of appeal.

- (1) The Appellate Authority, upon receipt of appeal, shall issue notice accompanied by copy of appeal, affidavit and documents, if any, to the respondents and fix the date of hearing of appeal.
- (2) On the date fixed for hearing, the Appellate Authority shall-
  - (a) hear all the parties to appeal present before him; and
  - (b) peruse or inspect documents, relevant records or copies thereof relating to the matter.
- (3) 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.

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Advocate-General, Punjab

- 4) The Appellate Authority shall dispose off the appeal within a period of thirty days from the date of its receipt. In case the Appellate Authority is unable to dispose off the appeal within thirty days, the reasons for the same shall be recorded in the decision.
- (5) The order passed under sub-rule (3) shall also be published on the State Public Procurement Portal.”

It is further suggested that in the future the name and designation of the appellate authority be mentioned in the tender documents/pre-qualification documents/bidding documents/bidder registration documents, as the case may be, in compliance with Section 49 (3) of the 2019 Act.

Therefore, you are requested to kindly ensure that all necessary steps are taken to ensure implementation of the Punjab Transparency in Public Procurement Act, 2019 and Punjab Transparency in Public Procurement Rules 2022, especially Section 49 and Rule 42 specifically. This ought to be done to ensure transparency and accountability in public procurement in Punjab and to avoid unnecessary burden of litigation on the Hon'ble High Court and State Authorities, in the spirit of Punjab Dispute Resolution and Litigation Policy 2020 and inconsonance with the State's statutory and Constitutional obligations.

Treat it as most urgent.

With Regards

Yours Sincerely,

(Arjun Sheoran)

M.No. 95927-71330

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Chief Secretary to Govt. of Punjab,  
Punjab, Chandigarh