



KERALA STATE ELECTRICITY BOARD Ltd

(Incorporated under the Companies Act, 1956)

Registered Office: Vidyuthi Bhavanam, Pattom, Thiruvananthapuram – 695 004

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ABSTRACT

Execution of Civil and Hydro Mechanical works of Upper Sengulam Hydro Electric Project (1x24MW/53.22Mu) - Amendment in Letter of Acceptance issued to M/s PGCCPL - Aryacon Consortium - Sanctioned - Orders issued.

Corporate Office (SBU-G/C)

B.O.(FTD) No. 117/2024 (DGC/AEEV/Up-Seng/2015)
Thiruvananthapuram.

Dated:19-03-2024

- Read :
1. B.O. (FB) 1497/2013 (GPC4(C)/ SEN-EXTN/17/08) dated 09.07.2013.
 2. G.O.(RT) No:292/2013/PD dated 01.11.2013.
 3. B.O. (FTD) No. 619/2020 (DGC/AEEV/Up-Sen/2015) dated 07.10.2020.
 4. B.O. (DB) No. 662/2020 (DGC/AEEV/Up-Sen/2015) dated 03.11.2020.
 5. B.O. (DB) No.254/2022 (DGC/AEEV/Quoting System/2021) dated 30.03.2022.
 6. e-tender No. CECCS/01/2022-23 dated 03.05.2022 (ID:2022_KSEB_488856_1).
 7. Judgment dated 31.01.2023 on WA No.1716 of 2022 in WP(C) No.32855 of 2022 filed by the L2 Bidder.
 8. Remarks of FA no. FA/Tender-I/98/2022 (1) (1) dated 09.02.2023.
 9. Remarks of LA&DEO No. LAII 7990/2022 dated 13.02.2023.
 10. Record of Proceedings from Supreme Court of India on Special Leave Petition to Appeal(C) No. 2874/2023.
 11. Letter No. PGCCPL/KSEBL/HO/555/2023 dated 22.11.2023 of M/s. PGCCPL.
 12. Office Order(DGC)No.1864/2023(DGC/AEEV/Up-Seng/2015) dated18.12.2023.
 13. Letter of Acceptance No. 03/CECCS/2023-24 dated 22.12.2023 issued to M/s PGCCPL & Aryacon Consortium.
 14. Letter No. PGCCPL/KSEBL/USHEP/HO/620/2023 dated 28.12.2023 of M/s PGCCPL.
 15. Remarks No. LA&DEO/R/08/2024/12 dated 16.01.2024 of LA&DEO.
 16. Note No. CECCS/USHEP/2023-24/96 dated 19.01.2024 of the Chief Engineer (Civil - Construction) South.
 17. Note No. DGC/AEEV/Up-Seng/2015 dated 24.01.2024 of the Director (Generation - Civil) to the Full Time Directors.
 18. Note No. CECCS/USHEP/2023-24/286 dated 23.02.2024 of the Chief Engineer (Civil - Construction) South.
 19. Note No. DGC/AEEV/Up-Seng/2015 dated 24.02.2024 of the Director (Generation - Civil) to the Full Time Directors (Agenda No. 29 -03/2024).

ORDER

The Upper Sengulam Hydro Electric Project envisages utilization of surplus water that will be available at Sengulam Balancing Reservoir after commissioning of Sengulam

Augmentation Scheme and 60MW Pallivasal Extension Scheme. The Scheme is located at Vellathooval Panchayath of Devikulam Taluk of Idukki District. Presently the main source of inflow into the reservoir is from the tail race of existing Pallivasal HEP. It is proposed to pump the tail water of the existing Pallivasal Scheme to the tail race weir of Pallivasal extension Scheme and from there it is conveyed through a steel pipe to the existing tunnel by gravity to the Sengulam Balancing Reservoir. With the commissioning of the Sengulam Augmentation Scheme, water diverted from the Western Kallar River would also be augmented to the Sengulam Balancing Reservoir. This project comprises of an Intake structure near the existing intake arrangement of Sengulam HEP at Muthuvankudy, 2659.103 m power tunnel from intake to surge shaft located at Elkunnu, pressure shaft from surge shaft to power house which is located at 500 m upstream to the existing Sengulam power house. Total catchment area of the scheme is 304.735 sq. km and design head is 330m. Expected annual generation from the Scheme is 53.22 million units. The period of completion of the project is proposed as 48 months.

KSEB as per B.O. read as 1st above has accorded Administrative Sanction for the Project for Rs.255.55 Crores including IDC at 2012 price level and Government has also accorded Administrative Sanction as per G.O. read as 2nd above. Later, KSEBL as per order read as 3rd above has accorded sanction for modifications to the project components with respect to approved DPR of Upper Sengulam Hydro Electric Project.

Later, KSEBL as per B.O. read as 4th above has accorded revised Administrative Sanction for the implementation of Upper Sengulam Hydro Electric Project at an estimated cost of Rs.276.2 Crores based on DSR 2016 with cost index of Munnar @49.69% on condition that detailed estimate shall be prepared in PRICE software and Technical sanction shall be based on detailed investigation and design. Sanction was also accorded to invite separate tenders for Civil works and Electro Mechanical works for the Project.

An estimate amounting to Rs.189 Crores was sanctioned as per order No. CECCS/04/2021-22 dated 07.05.2021 for the Civil and Hydro mechanical work of the Project. Later, as per the adoption of schedule of rates DSR 2018 in KSEBL with effect from 15.08.2021, as per order B.O. (FTD) No. 709/2021 (DGC/AEEII/ General/2016) dated 30.09.2021, the project estimate was revised based on DSR 2018 with cost index for Munnar @ 39.83%. Technical sanction has been issued as per order No. CECCS/USHEP/2013-14 dated 25.02.2022 for an amount of Rs.211 Crores and the work was tendered based on percentage contract system on 28.02.2022.

Later, KSEBL as per B.O. read as 5th above, has decided to follow item rate system for all works above Rs.1 Crore subject to the following conditions:

(i) If the quoted rate of any item is greater than 110% of the applicable DSR or LMR, the payment will be limited to 110% of the respective DSR/LMR and the balance will be released only after completion and commissioning.

(ii) For excess quantities up to 25% more than the agreement quantity, the quoted rate shall prevail. For quantity in excess of 25% of the scheduled quantity, the admissible rates shall be limited to Technical Sanctioned Estimate Rate modified by overall tender excess/tender deficit, as the case may be, subject to a maximum of PWD local market rates prevailing at the time of ordering.

The tender invited based on percentage rate system was cancelled as per the direction of the Director (Generation - Civil). The estimate was again revised based on 2018 Schedule with a cost index for Munnar @39.83% for an amount of Rs.215 Crores incorporating the modifications in taking quantities for lining of tunnel invert and overt as per the decision of Board.

The work was tendered as item rate contract as per tender read as 6th above. The probable amount of contract for the work is Rs.175,86,25,744/-, excluding GST. The last date of bid submission was extended up to 13.07.2022. The pre-qualification bids were opened on 20.07.2022.

The following bidders have submitted their offers.

- i. M/s PGCCPL & Aryacon Consortium, Aishwarya Towers, Puthencruz Road, Karimugal P.O., Kochi - 682303.
- ii. M/s. Anchor-SSIPL-MIPL Consortium, Eloor House, Kolenchery P.O, Ernakulam - 682311.
- iii. M/s. PES - KSR JV, 1st Floor, Pancom Chambers, 6-3-1090/1/A, Raj Bhavan Road, Somajiguda, Hyderabad 500082 Telangana.
- iv. M/s Sri Avantika Contractors(I) Limited, D No: 8-2-603/23/3&15, 3rd floor, HSR Summit, Road No. 10, Banjara Hills, Hyderabad - 500 034.

After obtaining remarks of Financial Adviser and LA&DEO, the Pre-qualification Committee held on 06.10.2022 had decided to pre-qualify the following three bidders:

- i. M/s PGCCPL & Aryacon Consortium, Aishwarya Towers, Puthencruz Road, Karimugal P.O., Kochi - 682303.
- ii. M/s. Anchor-SSIPL-MIPL Consortium, Eloor House, Kolenchery P.O, Ernakulam - 682311.
- iii. M/s. PES - KSR JV, 1st Floor, Pancom Chambers, 6-3-1090/1/A, Raj Bhavan Road, Somajiguda, Hyderabad 500082 Telangana and to disqualify M/s Avantika Contractors(I) Limited, Hyderabad.

The price bids of the above pre-qualified bidders were opened on 10.10.2022. The total bid amount of each bidder quoted for the subject work are tabulated as follows.

Sl. No.	Name of the bidder	Total agreed amount (Rs)	Bid Rank
1	M/s. Anchor-SSIPL-MIPL Consortium	Rs.154,04,46,896/-	L1 (12.41% below PAC)
2	M/s PGCCPL & Aryacon Consortium	Rs.155,72,16,321/-	L2 (11.45% below PAC)
3	M/s. PES - KSR JV	Rs.160,53,35,819/-	L3 (8.72% below PAC)

In the meantime, L2 bidder, M/s PGCCPL has filed a WP(C) No.32855 of 2022 before Hon'ble High Court of Kerala to disqualify the L1 bidder, but the case has been dismissed in favour of the L1 bidder as per judgment dated 09.11.2022. Subsequently, L2 bidder has filed a Writ Appeal, W.A No.1716 of 2022 making an argument that the Asset and Business Operation Transfer Agreement entered into between Dr. Sasi Eloor and M/s Anchor Structurals on 01.04.2022 is only an agreement to take over the assets and liabilities and no details have been furnished in the said agreement as regards the turnover of the transferor company. The Division Bench of Hon'ble High Court of Kerala has admitted the Writ Appeal and dismissed the case in favour of L2 bidder as per judgment dated 31.01.2023, read as 7th above. As per the judgment, the appellants, M/s PGCCPL had agreed to match their bid with the bid submitted by the third respondent, M/s Anchor Structurals.

Remarks of Financial Adviser and LA&DEO in this regard were obtained read as 8th and 9th above.

Meanwhile, the L1 bidder, M/s Anchor-SSIPL-MIPL Consortium has filed a Special Leave Appeal Petition No 2874/2023 before the Hon'ble Supreme Court of India, against the above judgment dated 31.01.2023 in WA No. 1716/2022 passed by the Division Bench of High Court of Kerala. The Hon'ble Supreme Court of India has disposed of the petition vide Record of Proceedings dated 31.10.2023 read as 10th above, stating that "*the Court is not inclined to interfere with the impugned order passed by the Division Bench of High Court dated 31.01.2023 in WA No 1716/2022.*"

M/s PGCCPL as per their letter read as 11th above has informed that they intend to match the bid submitted by M/s Anchor Structurals by reducing their amount with an overall rebate of 1.077% to bring their bid amount to Rs.154,04,45,101/- which is Rs 1,795/- lower than the amount quoted by M/s Anchor Structurals. The Chief Engineer (Civil Construction) South had negotiated with M/s PGCCPL as per the remarks of the Financial Adviser dated 09.02.2023. As such, M/s PGCCPL had offered their negotiated overall

rebate of 1.08% so as to bring down the bid amount to Rs 154,03,98,384/-, which is Rs 48,512/- lower than the L1 bid amount and 12.409% lower than the estimated PAC amount.

Office Order read as 12th above has been issued for awarding the work to M/s PGCCPL at their negotiated offer of an overall deduction of 1.08% on their bid amount and the revised bid amount is Rs.154,03,98,384/-.

The Chief Engineer (Civil Construction) South as per letter read as 13th above has issued Letter of Acceptance (LoA) to M/s PGCCPL- Aryacon Consortium incorporating the conditions mentioned in the B.O. read as 5th above to follow item rate system, as clause 13 and 14, which were not included in the tender conditions. The clauses added are as follows:

Clause 13 - If the quoted rate of any item is greater than 110% of the applicable DSR or LMR, the payment will be limited to 110% of the respective DSR/LMR and the balance will be released only after completion and commissioning.

Clause 14 - For excess quantities upto 25% more than the agreement quantity, the quoted rate shall prevail. For quantity in excess of 25% of the scheduled quantity, the admissible rates shall be limited to Technical Sanctioned Estimate Rate modified by overall tender excess/tender deficit, as the case may be, subject to a maximum of PWD local market rates prevailing at the time of ordering.

M/s PGCCPL as per letter read as 14th above has informed that the conditions 13 and 14 in the LoA are not in line with the tender conditions and introduction of new clause cannot be permitted after the finalization of bid and variation in quantities as per clause 5.3.18 cannot be altered as clause 14 and requested to delete these clauses.

The Chief Engineer (Civil Construction) South as per letter read as 16th above has informed that the matter was taken up with the Chairman & Managing Director on 05.01.2024 and the CMD has directed to put up a detailed note to Full Time Directors clearly stating all the actions.

The Chief Engineer has reported that on perusal of newly added clause 13, there will be a block in money flow to the work bill by deferring to a tune of Rs 6.65 Crores in total, until the completion and commissioning of the project and this withheld amount will be released after the works are completed /commissioning. In the case of Clause 14, financial implication can be arrived only on execution phase, if and only if the quantity exceeds 25%

of the agreed quantity.

In this regard, the LA&DEO as per note read as 15th above has opined that *“Having gone through the matter in its entirety, it transpires that introduction of new tender conditions (even at the pretext of experimental basis), having huge financial ramifications to the L1 bidder, at the later stage of a bidding process is a clear abuse of the basic tenets of the law of contracts. It is a cardinal rule in the law of contracts that the rules of the game cannot be changed in the middle. It is seen that the said bidder has won the contract after a prolonged legal battle which has caused the project got delayed for more than a year. Moreover, the L1 turned L2 bidder has quoted a rate which is nearly 12% below the estimated PAC. The attempt from the part of the tendering authority, just to cover up their slip in including a condition as suggested by the Board, to include a post tender condition in the LoA, taking solace of clause 4.17 of Conditions of bid and contract, is not legally sustainable and may be dodged of. There is every possibility that the bidder would approach a court of law which may result in further prolongation of the project and thereby lead to cost escalation and time overrun of the project. In the circumstance instead of beating a dead horse it is advisable to have a pragmatic approach which enables smooth execution of the project with the present L1 bidder at a competitive cost. If at all the Board is resolute to include the suggested conditions, the same can be resorted to, only after reaching a consensus with the bidder.”*

The Chief Engineer has also reported that the negotiated quoted amount of present L1 bidder is Rs.21.82 Crores below the tendered PAC of work. The work was tendered in May 2022 and one year and eight months had already elapsed. The land including the forest land required for the project is under the possession of KSEBL and the office of the Project Manager has started functioning since 2022. Also, if these clauses are introduced at this stage, it will be treated as a post tender deviation from the original tender conditions. The Chief Engineer has requested that considering the facts stated above and in view of legal opinion, sanction may be accorded to amend the LoA issued to M/s PGCCPL after deleting the additional clauses 13 and 14.

The matter was circulated to the Full Time Directors as per note read as 19th above.

Having considered the matter in detail, the Full Time Directors resolved to accord sanction to the Chief Engineer (Civil-Construction) South to amend the Letter of Acceptance issued to M/s PGCCPL - Aryacon Consortium, by deleting the clauses 13 and 14 of Letter of Acceptance, for the work of “Execution of Civil and Hydro Mechanical works of Upper

33/2024

Sengulam HEP”.

Orders are issued accordingly.

By Order of the Full Time Directors

Signed by

Lekha G

Date: 10/11/2024 18:02:36

COMPANY SECRETARY

To:

The Chief Engineer (Civil - Construction) South, Thiruvananthapuram.

Copy to:

The Company Secretary / Chief Engineer (IT,CR&CAPS) / Financial Advisor / LA&DEO /
Chief Internal Auditor / Chief Vigilance Officer

The TA to the Chairman & Managing Director / Director (Generation-Civil) / Director
(Distribution, Safety, SCM & IT) / Director (Transmission, SO & Planning) / Director
(Generation - Electrical, REES, SOURA, Sports & Welfare)

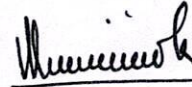
The PA to the Director (Finance & HRM)

The Sr.CA to the Secretary (Administration)

The RCAO/ RAO

Stock File.

Forwarded / By Order



Assistant Executive Engineer