



ABSTRACT

Tamil Nadu Transparency in Tenders Act 1998 (T.N.Act 43 of 1998) – Notification under section 16 (f) of the Act – Notifying the NTADCL as consultant for preparation of DPR for WSIS and Sewerage work and Project Management consultancy in respect of Tirupur Corporation under Sub-section (f) of Section 16 of the Tamil Nadu Transparency in Tenders Act 1998 – Issued.

Municipal Administration and Water Supply (MA3) Department

G.O.(Ms).No. 31

Dated: 11.02.2010

Read:

1. Resolution No.56, dated 31.05.07 of Tirupur Municipality.
2. From the Commissioner of Municipal Administration letter No.47150/ 07/ WS1, dated 27.8.2008.
3. From the Managing Director, NTADCL Letter No.T.22-021, dated 29.04.2009.
4. From the Commissioner of Municipal Administration letter No. 47150/ 07/WS1 dated 29.7.2009.

ORDER:

In his letter first read above, the Commissioner of Municipal Administration has stated that the Tirupur Municipal Council had resolved to appoint a Consultant for Water Supply Improvement Scheme to Tirupur Municipality in its resolution No.56, dated 31.05.2007, based on the announcement made in the Assembly. The implementation of Water Supply Improvement Scheme-II was executed by M/s. New Tirupur Area Development Corporation Limited (NTADCL) under a concession agreement with the Municipality.

2. The Commissioner of Municipal Administration has further stated that when the tender for appointment of consultant for Under Ground Sewerage Scheme in Tirupur Municipality was called, the NTADCL has objected and informed that, as per concession agreement, M/s. NTADCL should prepare the Detailed Project Report (DPR) for Water Supply Improvement Scheme or Under Ground Sewerage Scheme. Hence before calling of tender for Water Supply Improvement Scheme, the NTADCL was requested to convey their views on taking up the work by NTADCL.

3. The Commissioner of Municipal Administration has further stated that for preparation of DPR for Tirupur Water Supply Improvement Scheme, the NTADCL has stated that it would be keen to take up the consultancy in terms of the provision in Section 2.3(iv) of the Concession Agreement which reads as follows:

"That it shall not, by itself or through any agency or person within its jurisdiction or control or acting on its behalf, to construct, own, manage, operate and maintain any new facility (ies) in relation to a service similar to

any of the services within the Service Area without first offering the same to NTADCL, unless NTADCL, has submitted to GOTN, in writing, within 30 days from receipt of the offer, its refusal to implement the same, provided if such refusal does not come in writing it shall have been deemed to have been refusal by NTADCL, GOTN by itself or through any Person shall not construct, own manage, operate and maintain any new facility in relation to a Service similar to any of the services within the services Area on terms which are prejudicial to the interests of NTADCL, and so presented by NTADCL to GOTN".

4. In terms of the above provision, their right of first refusal in Tirupur is not restricted to DPR alone but further downstream activities like Project Management, O&M etc. and actual construction. A related issue is in regard to extended areas. The Section 2.5 of the Concession Agreement under the Heading "Extension of Municipal Limits" reads as below:-

Section 2.5 Extension of Municipal Limits

In the event that the Municipal area or jurisdiction of TM or any other Municipality or authority is increased, under the Tamil Nadu District Municipalities Act, 1920, so as to include within such area any of the Sites, Facilities, Sludge Disposal sites or Sites for System or such area that has been acquired by NTADCL in relation to provision of the Services or (ii) any area comprising the service Area falling outside the TM, GOTN shall, at the same time by notification under the Tamil Nadu District Municipalities Act, 1920 or such other law as may be necessary, notify that the Sites, Sites for System, Sludge Disposal Sites, Facilities, or such areas specified in this sub-clause above and the provision of the Services to such part of the Service Area as specified above, shall continue to be subject to the Concession given to NTADCL under this agreement GOTN shall ensure that the charges or Encumbrances of Lenders over Sites, sites for system, Sludge Disposal sites, facilities or such area that has been acquired by NTADCL shall continue to exercise complete and unimpeded control thereon. In the event of Breach of this covenant, GOTN without prejudice to the right of NTADCL to terminate this agreement, indemnifies NTADCL for the losses in Revenues and the amount accelerated and declared as due and payable by NTADCL under the Financing Agreements, resulting as a consequence thereof (which losses and amounts shall be calculated by NTADCL and verified by the independent Auditor).

5. In the above circumstances the Commissioner of Municipal Administration has stated that the following steps are necessary to be taken:-

- (i) Notification has to be issued by the Government identifying the areas which shall continue to be subject to the Concession given to NTADCL; and
- (ii) Charges on encumbrances of lenders over sites etc. acquired by NTADCL shall continue to be undisturbed.

In view of the above provision, the Commissioner of Municipal Administration has requested to pass appropriate orders on the above condition to proceed with the investigation for WSIS in Tirupur Corporation.

6. In this connection the Managing Director, NTADCL has stated that the Section 2.3(iv) of the Concession Agreement contravenes Section 20 of the Transparency Act, however it is to be recognized that the Government is a signatory to the Concession Agreement and the provisions thereon has to be respected and to that limited extent, exemption has to be obtained from the Transparency Act. He has added that the Government may issue appropriate Notification under Section 16(f) of the Transparency Act exempting Tirupur Corporation from the provisions of the Transparency Act for procurement relating to water supply and sewerage and entrustment on sole source basis to NTADCL, in order to comply with the provisions of the Concession Agreement.

7. The Government after careful examination of the proposal of the Director of Municipal Administration, accept the proposal to notify the New Tirupur Area Development Corporation Limited as the Consultant for preparation of Detailed Project Report for Water Supply Improvement Schemes and Sewerage Works and Project Management Consultancy in respect of Tirupur Corporation, under Section 16 (f) of the Tamil Nadu Transparency in Tenders Act, 1998. Accordingly the Government order that the New Tirupur Area Development Corporation Limited may be notified as consultant for preparation of Detailed Project Report for Water Supply Improvement Schemes and Sewerage Works and Project Management Consultancy in respect of Tirupur Corporation, under Section 16 (f) of the Tamil Nadu Transparency in Tenders Act, 1998.

8. Necessary notification in this regard will be issued by Finance Department separately.

9. This order issues with the concurrence of the Finance Department U.O.No.46692/MAWS/09, dated 17.11.2009.

(BY ORDER OF THE GOVERNOR)

NIRANJAN MARDI,
SECRETARY TO GOVERNMENT.

To

The Director of Municipal Administration, Chennai – 600 005.
The Managing Director New Tirupur Area Development Corporation Limited, Anurag, No.15, Murray's Gate Road, Alwarpet, Chennai - 600 018.

Copy to: The Secretary to Chief Minister, Chennai – 600 009.
The Secretary to Deputy Chief Minister, Chennai-600 009.
The Private Secretary to the Chief Secretary, Chennai-600 009.
The Private Secretary to the Principal Secretary to Government, Finance Department, Chennai-600 009.
The Law Department, Chennai-600 009.
All Officers in Municipal Administration and Water Supply Department, Chennai-9.
All Sections in Municipal Administration and Water Supply Department, Chennai-9.
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