

SC to proceed with fundamental rights case against Defence Ministry by Sierra Technology

The Supreme Court this week granted Leave to proceed in a fundamental rights application relating to a tender called for by the Ministry of Defence (MoD) for setting up a communication system for the proposed university hospital of the Kotelawala Defence University, which was not implemented after the award was made.

The petitioner Sierra Technology Holdings (Pvt) Ltd of Colombo 5 claims that some of the respondents they have cited including the General Sir John Kotelawala Defence University Hospital, the Ministry of Defence, Chairman, Standing Cabinet Appointed Procurement Committee and ATSL International (Pvt) Ltd, are trying to manipulate the tender post-award of the tender.

The petition states that the Ministry of Defence called for bids for the procurement of designing, implementing (customisation and configuration), commissioning, operation with training and Maintenance of Hospital Information System (HIS) and Picture Archiving and Communication System (PACS) of the proposed university hospital of the KDU.

The invitation for bids no. MOD/KDU/07/2015 was by the chairman of the Standing Cabinet Appointed Procurement

Committee (SCAPC) on behalf of the secretary to Ministry of Defence.

Six bidders had participated and three bidders were short-listed by the Technical Evaluation Committee (TEC) and after an extensive evaluation of the bidders the petitioner was selected as the successful bidder and was awarded the tender by a letter dated May 16, 2017.

Sierra Technology Holdings (Pvt) Ltd won the bid at Rs. 238,158,000 while the fourth respondent ATSL International (Pvt) Ltd. bid at US\$2,357,710.95 (Rs. 378,690,150.95) there being a difference of Rs. 140,000,000.

The petitioner states that the bids were invited originally on February 27, 2016 through International Competitive Bidding procedure and upon evaluation of the bids, the proposal submitted by Sierra Technology Holdings (Pvt) Ltd. was considered as the best proposal due to several reasons, which included being the only bidder who had experience in implementing an integrated HIS in Sri Lankan hospitals.

However later it transpired that the unsuccessful bidder ATSL International (Pvt) Ltd had sent an appeal to the Procurement Appeal Board (PAB) objecting to the granting of the tender award to

Sierra Technology Holdings (Pvt) Ltd. The petitioner pleads that the said appeal process of the PAB, submissions were made by the unsuccessful party before the board.

The petitioner said they believe that several respondents have taken steps to conduct price negotiations with the unsuccessful ATSL International (Pvt) Ltd to determine the award price and thereafter for the award to be made to ATSL International (Pvt) Ltd and that steps are being taken to manipulate and/or impede the open competitive bidding process and/or to act in violation of the bids, the tender guidelines and the bidding procedures.

The petitioner states that any attempt by the respondents and/or any party to conduct price negotiations to determine the award price after the opening of bids jeopardises and/or is in violation of the entire tender procurement process and "such process is patently unlawful and illegal and in violation of the Invitation for Bids and Instructions to Bidders."

Such a process is also "illegal, ultra vires and/or in violation of the right of equality before the law," the petitioner states.

Hiran de Alwis, Kalpa Virajith and Heshan Thambimuttu appeared for the petitioner.