



COMPETITION COMMISSION OF INDIA

Reference Case No. 03/2019

In Re:

CP Cell, Directorate General Ordnance Service,
Master General of Ordnance Service, CP Cell/OS Dte,
Room No. 101, D-II Wing 1st Floor, Sena Bhawan,
New Delhi-110001

Informant

And

M/s HP State Handicraft & Handloom Corporation
SDA Commercial Complex, Kasumpti, Shimla-171009

Opposite Party No. 1

M/s Standard Gram Udyog Sansthan
D-21, Panki Industry Estate, Site No. 1, Kanpur- 20802

Opposite Party No. 2

M/s Integrated Defence Product Pvt Ltd
D-21, Panki Industry Estate, Site No. 1, Kanpur- 208022

Opposite Party No. 3

CORAM:

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

Order under Section 26(2) of the Competition Act, 2002

1. The present reference dated 06.09.2019, has been filed by CP Cell, Directorate General Ordnance Service, Master General of Ordnance Service (“**Informant**”) under Section 19(1)(b) of the Competition Act, 2002 (the “**Act**”) against M/s HP State Handicraft & Handloom Corporation (“**OP-1**”/ “**HP Handicraft**”), M/s Standard Gram Udyog Sansthan (“**OP-2**”/ “**Standard Gram**”) and M/s Integrated Defence



- Product Pvt Ltd., (“OP-3”/ “**Integrated Defence**”) alleging contravention of the provisions of Section 3 of the Act, in the tender for procurement of Durries IT OG, issued by it.
2. The Informant in the present case had floated a Request for Proposal (“**RFP**”) No. A/59876/Durries/ Clo-1/DGOS/OS-PII/Proc Sec dated 15.12.2015 for procurement of 8,18,009 Durries IT OG (“**Item**”).
 3. The Informant averred that 09 firms participated in the said tender including Standard Gram/OP-2 and out of the said 09 firms, only 06 qualified for opening of commercial bids. As stated by the Informant, Standard Gram/OP-2 could not qualify in technical evaluation as the firm was not registered with Association of Corporations and Apex Societies of Handlooms/Khadi Village Industries Commission (“**ACASH/KVIC**”) which was a pre-requisite. It is further stated that while the contract was under progress, Standard Gram/OP-2 merged with Integrated Defence/OP-3. Subsequently, the L1 firm (HP Handicraft/OP-1) sublet the manufacture of the Item to Integrated Defence/OP-3 *vide* Letter No. HPSHHC:173/10(EM)/Durries/838081 dated 23.03.2018.
 4. As per information available in public domain, HP Handicraft/OP-1 is a Himachal Pradesh State Government Undertaking which came into being in the year 1974 with the objective to assist and promote the interests of weavers and artisans of the state. Whereas, Integrated Defence/OP-3 is a Non-Government company, based in Kanpur, involved in manufacture of textiles.
 5. It is further stated that being participants in the Tender, Standard Gram/OP-2 and Integrated Defence/ OP-3 were fully aware of clauses of RFP whereby subcontracting of contract is prohibited, yet they entered into the collaboration with HP Handicraft to supply the Item.



6. On the basis of the above information, the Informant has alleged that all the three OPs *i.e.*, HP Handicraft, Integrated Defence and Standard Gram formed a cartel to help and support each other to win the order.
7. The Informant has prayed that the Commission may direct the Director General to conduct an investigation into the matter under Section 26(1) of the Act and to examine if there is any contravention of the provisions of Section 3 of the Act, so that further action may be taken.
8. The Commission has perused the information forming part of record along with other information available in the public domain.
9. The Commission considered the matter in its ordinary meeting held on 01.10.2019, and observed that the information provided is not sufficient and decided to seek additional information from the Informant. Accordingly, the Commission *vide* its order dated 01.10.2019, sought additional information from the Informant. In response, thereto the Informant *vide* its letter dated 08.11.2019, filed certain information which was received on 14.11.2019.
10. The Commission notes that as per the Informant, the technical bid of the Impugned Tender was opened on 12.01.2016, and commercial bid was opened on 22.11.2016, pursuant to which HP Handicraft / OP-1 won the said tender. The Impugned Tender was issued for the procurement of Durrie which is authorised to Junior Commissioned Officers (“**JCOs**”) and ‘*OR*’ of the Indian Army. The shelf life of the item is 60 months. The Informant also submitted a copy of the terms and conditions of the tender document. After winning this tender, HP Handicraft/ OP-1 sub-contracted the manufacture of the Item to Integrated Defence/ OP-3, which was in violation of clause of RFP, according to the Informant. In the meanwhile, the firm Standard Gram/OP-2 merged with Integrated Defence/OP-3, while the contract was under progress. Further, the Informant has alleged that, the firm ‘Standard Gram/OP-2’ had also participated in the said Tender, but could not qualify as it did not fulfil the pre requisite criterion.



11. On the basis of above conduct of said three firms, the Informant has alleged that all the above mentioned firms had formed a cartel to help and support each other to win the tender dated 15.12.2015.
12. As per the information, the Commission notes that 09 firms participated in the above mentioned tender, of which 06 qualified for commercial bid opening, the rest were not found to be compliant with the prequalification criteria. The commercial bid of these 06 RFP firms were opened on 22.11.2016. HP Handicraft/OP-1 was the lowest bidder at Rs. 428.00. The benchmark price was fixed at Rs. 450.00 per piece in the Commercial Negotiation Committee (CNC) meeting held on 02.02.2017. Out of 06 bidders one firm did not technically qualify for the ranking as the bid form was not properly filled. Based on the rates quoted by remaining 05 RFP compliant firms, CNC ranked these firms as under in the meeting held on 02.02.2017:

Table 1: RFP Compliant firm in the tender for procurement of Durries

S. No.	Firm Name	Basic	Excise Duty (%)	VAT (%)	Total Rate (Rs)	Qty Offered	Ranking
(a)	M/s HP State Handicraft & Handloom Corporation Ltd., Shimla	428.00	Nil	Nil	428.00	8,18,009	L1
(b)	M/s UP State Handloom Corporation Ltd., Kanpur	646.00	Nil	Nil	646.00	4,15,000	L2
(c)	M/s Jammu and Kashmir State Handloom Development	648.00	Nil	Nil	648.00	1,35,000	L3
(d)	M/s Women's Development Organisation, New Delhi	649.00	Nil	Nil	649.00	2,68,009	L4
(e)	M/s UP Industrial Co-operative Association Ltd., Kanpur	655.00	Nil	Nil	655.00	8,18,009	L5



13. Further, minutes of CNC meeting mentioned that the basic rate quoted by L1 firm was lower than benchmark rate and in such a case there was no requirement of calling L1 firm for negotiation of price and therefore, recommended L1 firm be '*loaded with full quantity*'.
14. Further, the Informant submitted that HP Handicraft/OP-1 acted in contravention of Para 11 of Part III of the supply order wherein it was clearly stated that the seller has no right to give, bargain, sell, assign or sublet or otherwise dispose of the supply order or any part thereof, as well as to give or to let a third party take benefit or advantage of the present supply order or any part thereof. The Informant has further averred that HP Handicraft / OP-1 stated that they had tied-up with Integrated Defence / OP-3 for supply against the order as intimated *vide* letter dated 23.03.2018. The Informant has annexed letter dated 23.03.2018, wherein HP Handicraft/OP-1 wrote to JDOS (P-II) GOI, Ministry of Defence that it has tied up with Integrated Defence / OP-3 for making the supplies against the supply order.
15. The Commission observes that as per the Informant, Standard Gram/OP-2 had merged with Integrated Defence/ OP-3, while the contract was under progress. However, no details have been provided with regard to merger between the said two companies. Even otherwise, the allegation is related to breach of tender contract/RFP conditions wherein HP Handicraft/OP-1 has allegedly violated the clause of RFP by subletting the contract to Integrated Defence/OP-3. However, this alleged conduct of the said firms may not raise a competition concern under the present case as there is no evidence of collusion at *prima facie* stage between HP Handicraft/OP-1 and Integrated Defence/OP-3 to win the tender.
16. In light of the above observations and analysis, the Commission notes that the impugned conduct of the said three firms does not seem to be in contravention of any of the provisions of the Act. Breach of supply order (contract), if any, does not amount to violation of the Competition Act. Thus, the Commission is of the opinion that no



anti-competitive conduct can be said to have arisen in the present case, warranting an investigation. If there is some breach of contract on the part of OPs, it is for the Informant to initiate due proceedings.

17. In view of the foregoing, the Commission is of the opinion that there exists no *prima facie* case, and the information filed is closed forthwith against the OPs under Section 26(2) of the Act.

18. The Secretary is directed to communicate to the Informant, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 21.02.2020