
(2016) 02 DEL CK 0231
In the Delhi High Court
Case No : W.P. (C) 12024/2015

Frontline (NCR) Business Solutions Private Limited	APPELLANT
Vs	
Indian Agricultural Research Institute and Others	RESPONDENT

Date of Decision : 26-02-2016

Acts Referred:

Citation : (2016) 228 DLT 170

Hon'ble Judges : Badar Durrez Ahmed and Sanjeev Sachdeva, JJ.

Bench : Division Bench

Advocate : Saurabh Prakash, Advocate, for the Appellant; Piyush Sharma, for the Respondent

Final Decision : Allowed

Judgement

Sanjeev Sachdeva, J.—1. The petitioner (M/s. Frontline (NCR) Business Solutions Private Limited) has filed the present petition seeking quashing of two orders passed by the respondent No. 1, both dated 11.12.2015. By one of the said orders, respondent No. 1 has awarded the contract for providing watch and ward/ security services at its premises, to Respondent No. 2 (M/s. King Security Guards Services Pvt. Ltd.) and by the other order it has directed the petitioner to hand over the existing charge to respondent No. 2. The Petitioner has further sought the issuance of the contract in its favour.

2. By invitation to tender dated 13.08.2015 Respondent No. 1 invited bids for a job work contract for "PROVIDING SECURITY / WATCH AND WARD SERVICES" at its premises at IARI, Pusa Campus, New Delhi.

3. Annexure A to the Notice stipulated as under:

"The IARI campus is a self-contained complex spread over an area of about 500 hectares (approx. 1250 acres) consisting of research farm/Held; 38 office buildings/ Laboratories; 8 students hostels, 3 Guest houses; One Shopping Complex; and number of glass/net houses and sheds in the farm/field as well as in office premises. The Institute has also three residential zones namely Main

campus, Krishi Kunj and Loha Mandi consisting of 1905 Quarters for officers and staff. The Institute has 8 main gates and 15 small gates for movement. Whole campus is covered with the boundary wall. The check section/points may range 75-80 which will be identified by the Security Officer in order to maintain smooth and efficient functioning of the security system in the whole area. At least 01 four wheeler vehicle and six motor cycles with Driver/Riders are required for patrolling and supervising the whole area of Institute including fields and residential zones. For overall control and management of security services at the Campus, qualified and trained Field Officers and Supervisors are to be provided round the clock besides gunman as per requirement.

? Gunman $3 \times 3 = 9$ (Round the clock)

? Motor Cycle Patrolling - 6 with rider = $6 \times 3 = 18$ (Round the clock)

? Supervisor $4 \times 3 = 12$ (Round the clock)

? 4 wheeler vehicle = 01 with Driver

? Agency should deploy Supervisors (Ex-serviceman not below the rank of JCO) with motor cycle to supervise & control the patrolling party round the clock."

(underlining supplied)

4. The above referred clause shows that the number of security guards is not fixed and the security officer has to identify the check points which may range from 75 to 80.

5. Further the relevant clauses of the NIT stipulate that the agency/contractor shall comply with all the statutory labour laws and regulations inter alia with regard to minimum wages, employee state insurance and employee provident fund etc. The relevant clauses read as under:

"(iv) The agency/ contractor shall be wholly responsible for paying monthly wages/salaries and other admissible allowances to the personnel engaged for security services as applicable laws at the IARI as in Annexure-A of this tender documents and the institute shall in no way be responsible for meeting any kind of expenditure on salaries etc. to these personnel. The contractor shall be wholly responsible for compliance of all statutory labour laws/regulations in force and any contravention of the same or any dispute arising there from shall be the responsibility of the contractor/firm and the Institute shall in no way be responsible for meeting any obligation and liabilities from financial/legal Implications of the contractor or any other arising there from. Periodical inspections will be carried out by the designated officers of the Institute. The institute shall not be responsible for payment of damages/compensations etc. for any injury/disablement suffered by the staff of contractor/Agency during the contract period. "

(x) Scrupulous compliance of Minimum Wages Act to security personnels, EPF Act, ESIC Act. Service tax shall be ensured by the agency. The Institute shall pay these statutory charges to the agency as per the rates stipulated by the GOI/ ICAR from time to time. The agency will be required to disburse wages to the security personnels through Bank/Cheque and deposit statutory charges through electronic mode preferably from the office/Institute to avoid any delays and strictly in compliance of provisions of all applicable laws."

(underlining supplied)

6. With regards to the price bid, the notice stipulated as under:

"14. After physical inspection of the site, a detailed assessment/requirement of personnels for providing security services at the IARI shall have to be furnished alongwith the Tender. However, the Tenders should indicate only the lump-sum amount in respect of all the services covered under this contract. No request for alteration in the rates once quoted will be permitted within one year.

15. The rates to be quoted should include cost of each and every item including transportation cost, manpower cost and taxes etc. IARI shall not bear any extra charge on any account whatsoever i.e. EPF contribution, ESI contribution, Uniform, Liveries, OTA etc.

16. The contractor will discharge all his legal obligations in respect of the workers/supervisors to be employed/ deployed by him for the execution of the work in respect of their wages and service conditions and shall also comply with all the rules and regulations and provisions of law in force that may be applicable to them from time to time. The contractor shall indemnify and keep indemnified the IARI from any claims, loss or damages that may be caused to it on account of any failure to comply with the obligations under various laws. In case of any dispute, the decision of Director, IARI shall be final and binding on the contractor.

21. The contract is subject to the condition that the tenderer will comply with all the laws and acts of Central Govt., State Govt. relating to this contract made applicable from time to time. All laws and enactments including concerned minimum wages for security personnels, EPF, ESIC, Service Tax etc. should be scrupulously complied by the contractor. Vague, deficient and such rates as-do not meet the statutory requirements will not be accepted.

7. For submission of the price bid, the bidder had to furnish detailed assessment/ requirement of personnels for providing security services. The Tender however, is to indicate only the lump-sum amount in respect of all the services covered under the contract. The rates to be quoted are to include cost of each and every item including transportation cost, manpower cost and taxes etc. including EPF contribution, ESI contribution, Uniform, Liveries, OTA etc. Further the contractor is to discharge all its legal obligations in respect of the workers/supervisors to be employed/ deployed by him for the execution of the work in respect of their

wages and service conditions and also has to comply with all the rules and regulations and provisions of law in force that may be applicable to them from time to time including concerned minimum wages for security personnels, EPF, ESIC, Service Tax etc. Vague, deficient and such rates that do not meet the statutory requirements are not to be accepted.

8. Schedule - II, for submission of Financial Bid reads as under:

"

SCHEDULE - II FINANCIAL BID

To,

Joint Director (Admn.) IARI, New Delhi - 110012

Sir/Madam,

I/We wish to submit our Tender for providing SECURITY/WATCH & WARD SERVICES AT IARI, PUSA, NEW DELHI on the following rates.

I/We agree to forfeit of the earnest money if I/we fail to comply any of the terms and conditions in whole or in part laid down in the Tender Form.

We have carefully read the terms and conditions of the Tender and agree to abide by these in letter and spirit.

Signature_____

Name &Address of the Firm_____

Telephone No. _____

Mobile No. _____

E-mail._____ "

9. A reading of Schedule II shows that the bidders have to submit the financial bid by separately quoting monthly charges for each Security Guard, Security Supervisor and Security Gunman and also to provide breakup of the monthly charges which is to include all material, transportation, all acts, minimum wages, EPF, ESIC & taxes etc.

10. There is a clear contradiction between Clause 14 and Schedule - II. On the one hand, clause 14 requires the bidders to indicate only the lump-sum amount in respect of all the services covered under the contract. On the other hand the schedule - II i.e. Financial Bid does not have any column for a lump sum amount but requires bidders to quote monthly charges for each Security Guard, Security Supervisor and Security Gunman and also to provide breakup of each component for the monthly charge. Another ambiguity that is noticed is that the number of checkpoints are variable between 75 to 80 and the number of security guards is

not fixed but are variable depending upon the detailed assessment/requirement of personnel for providing security services to be furnished by the bidder in terms of clause 14. Further, the bidders have to comply with the minimum wage as laid down by the competent government. However, which would be the competent government, the Delhi government or the Central Government is not stipulated. Clause 21 requires the bidders to comply with all laws and enactments of both Central Government and State Government. This becomes relevant in view of the fact that the minimum wage notified by both is different.

11. The respondent No. 1 produced the original "note sheet" containing the details of the various bids received and the evaluation of the bids by the said respondent.

12. The technical committee comprised of five officials including the Comptroller's nominee. Total 11 bids were received. On evaluation of the technical bids, the committee opined that 5 out of 11 bidders did not qualify and as such only six remaining firms were to participate in the financial bids.

13. On opening of the financial bids, the technical committee noted the financial bids of the six bidders as under:

"Following particulars/information is put up as per financial bid.

14. On evaluation of the bids, the committee observed/recommended as under:

"Observations/Recommendations:-

1. The firm (sr. No. 1) M/s. King Security Guards Services Pvt. Ltd. quoted their rates on consolidated basis of job contract instead of quoting monthly rates as required in the tender. As mentioned in our tender 75-80 check points need to be covered round the clock, it means more than 200 guards are required for these points in a day. While dividing the quoted amount i.e. Rs. 19,35,796.83 by 200, it comes to Rs. 9679/- per month per guard, which is far below the minimum wages & statutory obligations (Rs. 15,551.54). Hence, the rates offered by the firm cannot be considered and rejected.

2. The firm (sr. no. 2) M/s. Frontline (NCR) Business Solutions Pvt. Ltd. has quotes their rates on monthly basis for a guard, gunman and supervisor (Rs. 12,205/-, 13,503/- and 13,503/- respectively) but the same are lower than the prescribed wages & statutory obligations i.e. Rs. 15,551.54, 17,126.89 and 17,512.11 respectively for guard, gunman and supervisor. Hence, the rates offered by the firm cannot be considered and rejected.

3. The firm (sr. No. 3) M/s. National Protective Security Services quoted their rates on monthly basis for a guard, gunman and supervisor. Quoted rates (Rs. 15,768.10 for guard, 17,365.89 for gunman and 17,756.46 for supervisor) are in accordance with minimum wages, EPF, ESIC and Service tax, hence the offer of the firm is considered.

4. The firm (sr. no. 4) M/s. Everest Human Resource Consultants quoted their

rates on monthly basis for a guard, gunman and supervisor (Rs. 14,314.47, 15,836.41 & 15,836.41 respectively) but the same are lower than the prescribed wages & statutory obligations i.e. Rs. 15,551.54, 17,126.89 & 17,512.11 respectively for guard, gunman and supervisor, hence the rates offered by the firm cannot be considered and rejected.

5. The firm (sr. no. 5) M/s. Kore Security services quoted their rates on monthly basis for a guard, gunman and supervisor (Rs. 11,078.79, 13,466.46 & 13,466.46 respectively). They have also mentioned that Service Charge @ 14% will be applicable on the bill. It is seen that even excluding the component of Service Tax/charges, their rates fall short against Rs. 13,641.70, 15023.59 and 15361.50. Hence the quoted rates are not in accordance with minimum wages & statutory obligations, the firm's offer cannot be considered and rejected.

6. The firm (sr. no. 6) M/s. Good Year Security Services (Regd.) quoted their rates on monthly basis for a guard, gunman and supervisor. Quoted rates (Rs. 16115.32 for guard, Rs. 17705.92 for gunman and Rs. 21431.28 for supervisor) are in accordance with minimum wages, EPF, ESIC & statutory obligations. Hence the offer of the firm is considered.

? In view of above perusal evaluation and facts, it is quite evident that only two firms i.e. M/s. National Protective Security Services and M/s. Good Year Security Services (Regd.) only stand eligible for comparison and consideration.

? Based on the requirement given in the tender document, the consolidated amount for a month for the Watch and ward/Security work may be calculated as below, in respect of above eligible/qualified firms.

1. Security Guard = 75 points (225 Guards round the clock)
2. Security Gunman = 3 points (9 Gunmen round the clock)
3. Security Supervisor = 4 points (12 Supervisors round the clock)

? In view of above facts, it is clear that M/s. National Protective Security Services have quoted the lowest (L-1) rates per guard, per gunman, per supervisor/ per month inclusive of all statutory obligations. Accordingly the contract of providing Watch and Ward/Security services at IARI, Pusa, New Delhi may be awarded to the eligible and lowest quoted firm (L-1) i.e. M/s. National Protective Security Services on standard term and conditions.

15. When the observations/recommendations of the technical committee were put up to the Comptroller, he directed the Finance & Accounts Officer to examine the bids to determine L - 1 on a common platform as per GFR.

16. The Finance & Accounts Officer in response observed that comparison on common platform is difficult as out of 6 technically responsive tenders, one bidder has quoted lump sum rates, two bidders have quoted per guard as well as total monthly rate while remaining three bidders have quoted only per guard rates as called for in the tender. He reported as under:

"Subject: Proposal for Security/watch & Ward job at IARI

With reference to the remarks on the Page-3/N the comparison on common platform is difficult as out of 6 technically responsive tenders one bidder has quoted lump sum rates, two bidders have quoted per guard as well as total monthly rates while the remaining three bidders have quoted only per guard rates as called for in the tender.

However, as per tender notification the scope of work was 75-80 security points to be manned round the clock and if we take the minimum No. of points (i.e. 75) into consideration a minimum of 225 Security guards may be required apart from 9 Gunmen and 12 Supervisors. While working out the minimum wages of a guard for 30 days admissible as on the date of opening of tender (i/c EPF/ESCIC/S.Tax) the minimum payable to a guard for one shift of 8 hrs comes to Rs. 15540/-.

On the basis of total points/scope of work given in the tender document and rates per guard quoted by the bidders following amount of quote by different bidders may be worked out.

Amount in Blue Ink is worked out for work scope as per unit rate quoted in the bid. Figures in Black Ink are the total rates quoted in the bid by the respective bidders.

Submitted for perusal please."

17. The Comptroller on perusal of the report submitted by the Finance & Accounts Officer directed as under:

"The proposal for Job Contract in r/o Security Services/Watch & Ward for IARI Campus has been examined in the light of following facts:-

- (1) Documents submitted by 6 nos. of Technically qualified firms;
- (2) Recommendations of Committee and Evaluation of Financial bids at prepage
- (3) Working out the L-1 Bid out of 6 technically qualified bids on the basis of scope of work as per Annexure - A of Bidding Document ("X" above)
- (4) Outstanding Audit para No. 2 (FY 2012-14) in r/o excess payment for outsourced Security Services (M/s. Frontline Business Solutions, Delhi)

The undersigned after going through the above parameters recommends the following:-

The invitation of Tender has been specifically advertised for Job Contract. The same was not based on manpower or mandays. Hence the L-1 bid evaluation amongst the technically qualified bids had to be made in that light.

The nature of outstanding Audit para as referred at (4) above was in the nature of non supply of Attendance Register of Security personnel of outsourced agency, non compliance of EPF & ESI act & proof of payment to the security personnel of

outsourced agency was also not provided by the Office of IARI/Outsourced Agency. In its reply to Audit para, the Admin. of Institute always maintained that the Job Contract was given to Outsourced Agency as per Committee's instructions.

In view of above, it is amply clear that till any revised guidelines are issued by MOF/ ICAR, the Institute has to abide by the Job Contract instructions issued by ICAR. Hence, it is recommended that IARI's Admn. can enforce the tight control & monitoring of Job Contract without resorting to the Manpower contract which will be against the extent guidelines.

Hence from the foregoing analysis, it is recommended that the award of Job Contract for providing security & watch and ward may be given to the L-1 Bid as worked out at prepage ("X") to M/s. King Security Guards Services (Pvt.) Ltd., New Delhi at the monthly rate of 22,80,000/-. This will also reduce the expected annual liability to the amount of Rs. 1.96 cr per annum as the L-1 firm recommended by the Committee at p7/N has been worked out for monthly quote of Rs. 39.17 lakhs.

Submitted for approval."

18. In view of the recommendations of the Comptroller, the Director, directed as under:

"In view of the above recommendations of the Finance for the L1 firms (M/s. King Security Guards Services Ltd., ND), it is essential that the L1 firm gives undertaking to meet all the terms and conditions of the tender. Hence the 4 firms has to submit the undertaking to the following Committee - Dr. K.V. Prabhu, JD (R) as Chairman, Comptroller as member, CAO I as member and Security Officer as Member, as early as possible. Immediate necessary action be taken."

19. The note sheet further shows that the respondent No. 2 (M/s. King Security Guards Services Pvt. Ltd.) completed the various formalities of giving an undertaking and bank guarantee and was approved as L - 1 for being awarded the work order.

20. The ambiguity in the invitation to tender is further exposed from the note sheet. There is no clarity as to the number of security guards required. The tender document states that there are 75 - 80 checkpoints. Which would translate into 225 to 240 security guards i.e. 75 x 3 or 80 x 3 considering an 8-hour shift with security required round the clock. The evaluation committee found that four out of six bidders (including both the petitioner and the respondent No. 2) had quoted rates below the minimum wage and were thus disqualified.

21. The Finance & Accounts Officer has also stated that comparison on common platform is difficult as out of six technically responsive tenders, one bidder has quoted lump sum rates, two bidders have quoted per guard as well as total monthly rate while remaining three bidders have quoted only per guard rates as

called for in the tender. He however tried to bring the bids of all the six onto a common platform by converting the rates quoted by the bidders to lump sum rate as quoted by respondent No. 2. He assumed the guards required to be 225 and then multiplied it with the monthly rate quoted per guard. The rate quoted by the respondent No. 2 was not converted, as the same was already a lump sum rate. Even though he noted that, the minimum wage payable to a security guard was Rs. 15540/- he did not consider it while submitting his report. He also did not take into account the report of the technical committee that had rejected the bid of the respondent No. 2 on the ground that if the lump sum rate was divided by the number of security guards required, it fell way below the minimum wage. The technical committee had assumed the number of guards required to be 200 instead of 225 as assumed by the Finance & Accounts Officer. Calculated based on 200 workers, the monthly wage had worked out to Rs. 9679/- per month as against the minimum wage of Rs. 15540/- per month. If the figure of 225 workers were to be taken, the monthly wage would be still lower.

22. Clearly, the Respondent No. 1 could not have held the bid of the respondent No. 2 to be compliant and declared the bid of Respondent No. 2 as L - 1.

23. Not only is the Invitation to Tender ambiguous on various aspects as noted hereinabove and liable to be set aside, we find that the evaluation of bids and comparison of rates have also been done in an illegal manner. The acceptance of the bid of Respondent No. 2 and its declaration as L - 1 and further the award of contract to it is held to be illegal.

24. In view of the above, the entire tender process is quashed. The respondent No. 1 is directed to re-initiate the tender process after removing the ambiguities in the Notice Inviting Tender. Consequently, the order dated 11.12.2015 issued by Respondent No. 1 directing Respondent No. 2 to take charge of the Watch and ward security services from the petitioner is quashed. The order dated 11.12.2015 directing the petitioner to hand over the charge of Watch and ward security services to Respondent No. 2 is also set aside on the ground of quashing of the entire tender process. This, however, would not preclude the respondent No. 1 from taking over charge from the petitioner in accordance with law. The Writ Petition is allowed in the above terms. There shall be no orders as to costs.