(2014) 05 DEL CK 0045

In the Delhi High Court

Case No : W.P. (C) 1642/2014 and CM No. 3424/2014

GPT Infraprojects Limited and Another APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 27-05-2014

Acts Referred:

Citation : (2014) 211 DLT 59

Hon'ble Judges : Siddharth Mridul, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Partha Sil, Advocate for the Appellant; Amit Yadav, Proxy Counsel for Mr. Ravinder Agarwal, Advocate for Respondent Nos. 1, 2 and Mr. Saurabh Mishra, Advocate for Respondent Nos. 3, 4, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Badar Durrez Ahmed, J.—In this writ petition, the petitioners seek a direction to the respondents to recall the purported decision taken by them to disqualify the bid submitted by the petitioners.

2. The respondents had issued a notice inviting e-Tender on 17.01.2014 in respect of construction of a Super Specialty Block at the Kolkata Medical College, Kolkata under PMSSY. The last date for filling up/uploading the tender through the e-Tendering process was indicated to be 10.02.2014 upto 1500 hours and the opening of the tender was to take place at 1530 hours on the same date. Subsequently, this date was extended to 17.02.2014. The said notice inviting tender required the submission of a bid security in the sum of Rs. 79.5 lakhs which was either to be submitted in the form of a demand draft of a scheduled bank or in the form of a bank guarantee in favour of Ministry of Health and Family Welfare, Government of India, New Delhi as per Form B of Vol.-I of the tender before the date and time fixed for submission of bids either by registered post or by hand failing which the bid was to be declared as non-responsive.

3. Clause 2.3.6 of the Instructions to Bidders (ITB) stipulated the requirements

with regard to the contents of the technical package. Clause 2.3.6(a)(ii) stipulated that the technical package Part-I should inter alia comprise of "bid security, in original". The bid security was either the EMD (Earnest Money Deposit) in the form of a demand draft of a scheduled bank or a bank guarantee in favour of the Ministry of Health and Family Welfare, New Delhi having a validity for six months or more from the last date of receipt of tenders. The bank guarantee was also to be irrevocable. It was also stipulated in clause 2.3.6(a)(c) that bids not accompanied by the EMD shall be treated as non-responsive and would be summarily rejected.

4. The petitioners submitted their bid along with the bid security in the form of a bank guarantee issued by the Standard Chartered Bank, Trade Services, 10 Sansad Marg, New Delhi bearing No. 852020132375-LX dated 10.02.2014 for the amount of Rs. 79,50,000/- in favour of the Ministry of Health and Family Welfare, Government of India, Nirman Bhawan, New Delhi. The said bank guarantee was also accompanied by the e-stamp paper which bore the Certificate No. IN-BL12609882375976M issued on 23.01.2014 and purchased by the Standard Chartered Bank. The description of the document given in the e-stamp was "Article Bank Guarantee". The e-stamp amount was Rs. 100/-. On the said e-stamp paper, there was an endorsement of the bank to the following effect:-

This stamp paper forms an integral part of the bank guarantee No. 852020132375-LX dated 10-2-14.

5. When the petitioners examined the web portal of the respondents in respect of the subject tender to verify its status, they found that the petitioners'' bid had been disqualified on 17.02.2014 itself and the reason given was-"Revised bid not submitted". According to the petitioners, this could not have been the reason at all and on inquiry they were informed over the telephone that the actual reason for disqualification of their bid was that, according to the respondents, the bank guarantee had not been submitted in original inasmuch as the respondents had taken the view that the e-stamp paper was a copy and not the original.

6. We may point out at this juncture itself that the respondents had actually rejected the EMD of the petitioners for the reason "the bidder has submitted bank guarantee using a copy of the e-stamp paper". While this was the reason given by the respondents, because of a bug in the computer programme, the bidder side of the portal displayed "revised bid not submitted". This fact has been certified by the Karnataka State Electronics Development Corporation Ltd. which was managing the portal of the respondents for the e-tendering services. The said certificate is dated 12.03.2014 wherein it has been inter-alia stated as under:-

2. The reason entered by the user is ''The Bidder has submitted Bank Guarantee using a copy of the e-Stamp paper''. There is no email event configured for this activity in the e-Tender system.

3. The same is recorded in the Tender audit log also (please see attachment)

4. However, the remark available at the Bidder side is displaying as ''Revised Bid not submitted''. This is an incorrect message given by the system, because of an internal bug, which will be fixed immediately.

5. We will take steps to display the correct message to the bidder. However, the Tender Audit Log is proof that HSCC user has entered the correct message.

We regret for the inconvenience caused. We assure you that this will not get repeated in future.

(underlining added)

From the above it is clear that the actual reason for rejection of the petitioners'' bid was not that the revised bid had not been submitted but that the bidder had submitted the bank guarantee using a copy of the e-stamp paper.

7. At our request, the learned counsel appearing on behalf of the respondents has produced the documents as submitted by the petitioner. We have examined the e-stamp paper which has been submitted and we note that the shaded portion bears the word copy as well as the word original and therefore, it cannot be said with certainty that this was not the original e-stamp. In any event it is to be noticed that this very e-stamp paper bears the endorsement of the bank which we have already indicated above. Furthermore, the Standard Chartered Bank has written to the Ministry of Health and Family Welfare, Government of India, Nirman Bhawan, New Delhi on 24.02.2014 confirming that the bank guarantee bearing No. 852020132375 for Rs. 79,50,000/- had been issued by the Standard Chartered Bank under e-stamp as per the standard practice of the bank. It further certified that the bank guarantee had been signed by the authorized signatory of the bank. In other words, authenticity of the bank guarantee is not in doubt.

8. We may also point out that clause 2.3.16 of the ITB makes provision for determination of responsiveness. For the purpose of that clause a responsive bid is one which inter-alia (as per clause 2.3.16(ii)(g)) conforms to all the terms, conditions and specifications of tender without ''material'' deviation or reservation. The said clause further stipulates that a ''material'' deviation or reservation is one which affects, in any "substantial way", the scope, quality, performance or administration of the works to be undertaken by the bidder under the contract, or which limits in any "substantial way", the client''s rights or the bidder''s obligation under the contract as provided for in the bid and/or is of an essential condition, "the rectification of which would affect unfairly the competitive position of the other bidders presenting substantial responsive bids at reasonable price". The purported deviation that has been pointed out on behalf of the respondents, in our view, is not a ''material'' or ''substantive'' deviation. In any event it is not one where the rectification of which would affect unfairly the competitive position of other bidders. Consequently, in our view the petitioners'' bid cannot be regarded as not substantially responsive to the requirements of the bid.

9. As a result, we direct the respondents to process the bid of the petitioner further in accordance with the tender conditions. It is clarified that the disqualification of the petitioners'' bid as indicated in the web portal stands cancelled. We also make it clear that we have not examined the other aspects and have only focused on the question of the disqualification of the petitioners'' bid in connection with the e-stamp paper.

10. The writ petition is allowed to the aforesaid extent. There shall be no order as to costs.

11. Dasti.

