

(2018) 11 DEL CK 0183

In the Delhi High Court

Case No : Civil Writ Petitions No. 3309 Of 2018 & CM Appl. Nos. 12989-12990
Of 2018

M/S Stallion Security

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 26-11-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 11 DEL CK 0183

Hon'ble Judges : S. Ravindra Bhat, J; Prateek Jalan, J

Bench : Division Bench

Advocate : Sudhanshu Tomar, Vinod Diwakar, Kashish Bajaj

Final Decision : Dismissed

Judgement

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Prateek Jalan, J"////////

1. This writ petition concerns a tender (No. NIC/PTS/2017/07) issued by the National Informatics Centre, New Delhi (â??NICâ?) on May 08,"////////

2017 for provision of housekeeping and pest control services at its headquarters in New Delhi (hereafter, â??the subject tenderâ?)."////////

2. The petitioner and the fourth respondent no. 4 herein (viz., R. K. Jain & Sons Hospitality Services Pvt. Ltd- hereafter â??RKJâ?) participated in"////////

the subject tender and were found technically qualified. In fact, the petitioner was providing these services to NIC under a rate contract dated June"////////

23, 2016, initially for the period July 01, 2016 to June 30, 2017, which was thereafter extended until March 31, 2018."////////

The subject tender, however, culminated in the award of a contract (Rate Contract No. NIC/TPS/2017/07/RC/01) dated March 07, 2018 in favour of"////////

Respondent No. 4 for the period April 01, 2018 to March 31, 2019. This has led to the institution of these proceedings." ,,,,,,,

3. The petitioner has agitated two grievances before this Court: ,,,,,,,

(a) That RKJ's bid was accepted without following the process of opening and uploading the financial bids of the bidders on the designated ,,,,,,,

website, as required for an e-tender." ,,,,,,,

(b) The petitioner has produced the bid submitted by it and the bid submitted by RKJ to say that the latter did not provide for payment of ,,,,,,,

Employees' Provident Fund (EPF) in respect of two categories of employees, which led to an artificial lowering of its bid. It is the" ,,,,,,,

contention of the petitioner that, if the amounts provided by it for EPF in respect of those two categories are ignored, then its bid would be lower than" ,,,,,,,

that of the Respondent no. 4. ,,,,,,,

4. NIC filed a counter affidavit dated May 09, 2018 to the writ petition, and also filed an additional affidavit dated October 31, 2018 dealing specifically" ,,,,,,,

with the question regarding non-opening of the financial bids. ,,,,,,,

Re: non-opening of financial bids ,,,,,,,

5. In support of its contention that the financial bids had to be opened and uploaded prior to the acceptance of the tender, the petitioner relies upon an" ,,,,,,,

Office Memorandum dated November 30, 2011 issued by the Public Procurement Cell, Department of Expenditure, Ministry of Finance, which states" ,,,,,,,

inter alia as follows: ,,,,,,,

"e. Ministries/ Departments, CPSEs and autonomous/ statutory bodies that are already publishing their tender enquiries on www.tendersgov.in" ,,,,,,,

and/or on their respective websites, shall ensure that their tender enquiries are simultaneously published / mirrored on the CPP Portal also. They may" ,,,,,,,

also ensure that all corrigenda and details of the contract awarded as a result of the tender enquiry, are also published on the CPP Portal." ,,,,,,,

6. NIC, denies the petitioner's argument, and contends that the financial bids were opened on September 01, 2017 and all technically qualified" ,,,,,,,

bidders were invited to participate in that meeting. In fact, the representative of the petitioner was present. At the meeting, and in terms of the tender" ,,,,,,,

documents, NIC declared the "Grand Total Value" (or "GTV") of each bidder, and identified the RKJ as the lowest bidder based on this" ,,,,,,,

value. As the GTV represented the amount that NIC would be liable to pay for the services deployed, there was no requirement for further analysis" ,,,,,,,

of the detailed financial bids. It is also contended by NIC, in the additional affidavit filed by it, that the GTV was shown to all bidders on the Central" ,,,,,,,

Public Procurement Portal. NIC has further stated that the petitioner was also empanelled on the same selection criterion and process in the last ,,,,,,,

tender ,,,,,,,

7. NIC has also placed the tender documents before the Court as part of the counter-affidavit filed by it. The tender being for a rate contract, it was" ,,,,,,,

provided that the bidders were required to quote rates for various items specified in Annexure 12 thereof, including manpower, materials, pest control" ,,,,,,,

services and monthly agency charges. Several details were also required to be provided under each of these broad heads. Based on these rates for ,,,,,,,

each of the line items, the bidder was required to calculate the GTV of its bid. The GTV so calculated was to be declared in Annexure 11 of the bid." ,,,,,,,

The process for financial evaluation of the bids was laid out in Annexure 9, as follows:" ,,,,,,,

â??Financial Evaluationâ?? ,,,,,,,

A,"Selection Criteria for deciding L1

Vendor and lowest unit rate for

each item","The lowest quoting vendor (LQ1)

will be determined as mentioned

below:

1) First Annexure -11 will be opened for all the technically qualified bidders on a specified date.

2) LQ1, LQ2, LQ3â?¦.. bidders will be decided on the Gross Total Value (GTV) of the Annexure - 11.

3) After the LQ1 vendor is

decided on the Gross Total Value (GTV), Annexure-12 submitted by LQ1 Vendor will be opened for deciding the lowest individual unit rates for all the items of this tender.

4) In case LQ1 bidder has failed to quote for all the items in Annexure12, his bid will be rejected, his EMD will be forfeited and the tender re-floated.

5) In the event of any mismatch in the GTV value mentioned at Annexure-11 and total of Annexure-12 of the LQ1 Vendor, the following criteria will be adopted to remove the discrepancy between these two values:

a) When Grand Total Value given in Annexure -11 is greater than the Grand Total Value given in Annexure-12:

The value given in Annexure-12 will be taken as the value of Annexure11.

b) When Grand Total Value given in Annexure-11 is less than the Grand Total Value given in Annexure-12:

The value given in Annexure-12

will be replaced with the value
given in Annexure-11 and the item
wise value for each item in
Annexure-12 will be reduced on
Pro-Rata basis and consequently
unit values will be worked out.

6) Thus the LQ1 vendor and the
lowest unit rates (for individual
items/services) shall be decided as
per the procedure mentioned
above." ,,,,,,

B, Vendor Selection, "Only 1 (One) Vendor will be
selected." ,,,,,,

STALLION

SECURITY", "R K Jain & SONS HOSPITALITY
SERVICES (P) Ltd." ,,,,,,

,,,,,,

SI.

NO", Particulars, "Cleaning
Personnel

[a]", "Supervisor

[b]", "Manager

[c]", Particulars, "Cleaning

Personnel

[a]", "Supervisor

[b]", ManagerÂ©

1, "Basic Pay

+

DA*", "13,584.00", "16,468.00", "17,916.00", "Basic Pay

+

DA*","13,584.00","16,468.00","17,916.00

2,"EPF

13.15% on

15,000","1786.29,1972.50,1972.50,"EPF

13.15%","1,786.30",NIL,NIL

3,ESI 4.75%,645.24,782.23,851.01,ESI 4.75%,645.24,782.23,851.01

4,"Bonus

8.33% on

7,000/-","583.10,583.10,583.10,"Bonus

8.33%","1,131.55","1,371.78","1,492.40

5,"Cost per

employee [

1 to 4]","16,598.63","19,805.83","21,322.61","Cost per

employee [

1 to 10]","17,147.09","18,622.01","20,259.41

6,"No. of

employee",39,3,1,"No. of

employee",39,3,1

7,"Total Cost

[S. No. 5

X

Sl. No. 6]","6,47,346.57","59,417.49","21,322.61","Total Cost

[S. No. 5

X

Sl. No. 6]","6,68,736.51","55,866.03","20,259.41

8,"Total of S. No. 7 of column

a+b+c",,,,"7,28,086.67/-","Total of S. No. 7 of column

a+b+c",,,,"7,44,861.95/-

9,"Material

Charges",,,,"1,26,583/-","Material

Charges",,,,"1,06,215/-

10,Pest Control Services,,,"8,500/-",Pest Control Services,,,"7,000/-

11,"M o n t h l y Agency

Charges",,,,"15,000/-","M o n t h l y Agency

Charges",,,,"17,800/-

12,"M a c h i n e s &

Consumables",,,,"8,000/-","M a c h i n e s &

Consumables",,,,"7,000/-

Grand Total Value,,,,,"8,86,169.67/-","Grand Total

Value",,,,"8,82,876.95/-

G r a n d total after

deducting EPF of for

Supervisor and Manager.

8,86,169.67 - 7890 =

8,78,279.67 8,78,279.67/-",,,,,,,,,

Conclusion,,,,,,,,,

18. For the reasons aforesaid, we do not find the tender process to be arbitrary or malafide on either of the grounds urged on behalf of the petitioner.",,,,,,,,

The writ petition is dismissed, but without any order as to costs.",,,,,,,,