(2015) 03 DEL CK 0064

In the Delhi High Court

Case No : Writ Petition (C) 1428/2015 and CM 2499/2015

Opaque Infrastructure Pvt. Limited APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 17-03-2015

Acts Referred:

Citation : (2015) 219 DLT 117

Hon'ble Judges : Sanjeev Sachdeva, J.;Badar Durrez Ahmed, J.

Bench : Division Bench

Advocate : C. Mukund, Abhilash Attri and Yaamini Sharma, for the Appellant

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—This writ petition has been filed seeking, inter alia, the following prayers:-

(a) issue a writ of certiorari or a writ in the nature of certiorari or any other writ, order or direction, calling for the records of the case, perusal whereof, quash the impugned NIT No: 40034009 dated 04.02.2015, issued by Respondent No. 2.

(b) issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction, directing Respondent No. 2 to award the contract in favour of the Petitioner, pursuant to NIT No: 4515-392-3514 (40030595) dated 08.12.2014.

2. Earlier, the NIT dated 08.12.2014 had been floated in respect of construction of 125 Toilet Blocks for Boys/ Girls in various Government Schools in Singrauli District (M.P.) under the Swachh Bharat Abhiyan and maintenance for two years (Package No. 2). The petitioner had participated in the said tender and was found to be L-2. The L-1 bidder could not be awarded the package inasmuch as there was a condition that in case a bidder has already been awarded one package, he would not be awarded another package. Therefore, L-2 (the petitioner herein) was asked to match the bid of the L-1 bidder. Incidentally, the petitioner''s bid

was for Rs. 3,94,18,678.13/-, whereas that of the L-1 bidder was far lower, that is, Rs. 2,52,21,803.13/-. The petitioner was called by the respondent for a pre-award discussion by a letter dated 27.01.2015. The petitioner was required to make a suitable offer of a rebate on the overall quoted amount. It appears that the petitioner submitted an offer of Rs. 2,52,21,803.00/-, which was more or less the same as the initial bid submitted by the L-1 bidder. As mentioned above, the L-1 bidder, M/s. A.K. Gupta and Company, was being considered for another package and that is why the pre-award discussion was taking place with the petitioner. Since the respondents submitted that a further rebate ought to be granted, they requested the petitioner to reduce their offer in view of the fact that the estimated cost was approximately Rs. 1.80 crores and they had recently awarded similar works ranging from Rs. 1.66 crores to Rs. 2.04 crores, which was far less than the offer of approximately Rs. 2.52 crores made by the petitioner. As a final reduction, the petitioner reduced the offer to Rs. 2.45 crores and stated that no further reduction would be possible.

3. Faced with this circumstance, a meeting of the Tender Committee took place on 03.02.2015 on the said subject. The minutes of the meeting are extracted herein below:-

SUB :- Construction of blocks for Girls/Boys in various Government Schools in Singrauli Distt. (M.P.) under the Swachh Bharat Abhiyan and Maintenance for Two years - Package -2

As per the approval of the competent Authority at NP-28, L-2 bidder, M/s. OPAQUE NFRASTRUCTURE PVT. LTD. has been called for pre-award discussion vide letter Ref no 06CC/4515-392/2017, dtd. 27.01.2015. Telephonic discussion held with agency, during the discussion, the agency has been intimated that their quoted amount Rs. 39418678.13 is (+) 118.346% higher than the vetted estimate Rs. 18053304.38 and asked the agency to review their quoted amount by offering suitable rebate on their overall quoted amount. Initially the agency was denying to offer any rebate stating that the work is to be carried out at various villages and they have to provide separate set up for each locations. The agency has been further intimated that package No. 3, 4, 5 and 8 have been recently awarded to different agency (award value ranging from 1.66 crores to 2.04 crores) and requested the agency to offer suitable rebate. After prolonged discussion, the agency agreed to review their offer. Vide their letter dated 31.01.2015 received vide e-mail dtd. 31.01.2015,the agency has reduced their original quoted amount to Rs. 25221803.00 stating the various reasons in their letter. The agency has further stated that "This is the maximum discount agency can offer", The revised amount offered by the agency is appx. at par with the quoted amount of L-I bidder Mis A.K. Gupta and Co. for the subject package which is Rs.2,52,21,803.13. M/s. A.K. Gupta has been considered for Package No.-6 which is under process for award approval for work value Rs. 202.86 lacs appx.

Committee examined the above and opined that the agency''s revised offer Rs.

25221803.00 is still (+) 39.707 high than the vetted estimate, hence the agency may be asked for further discussion to explore the possibility of reduction in their quoted amount by offering suitable rebate by the agency, if any. Telephonic discussion held with the agency. Accordingly, vide letter ref. no. OIPL/NTPC/ VSTPP/2014-15/143 dt. 03.02.2015, the agency has revised their quoted amount as Rs.2,45,00,000/- stating various reasons in their letter and also enclosing copy of CVC Circulars related to tendering process with L 1. The agency further stated that this may be treated as their final offer for executing the above mentioned tender.

Considering the above rebate, the agency''s revised quoted amount Rs.2,45,00,000/- is (+)35.71 % above of the vetted estimate Rs.l,80,53,304.38, which is still very high and it may not be considered be as reasonable and justified with respect to the final offers received/awarded for Package No. 1,3,4,5,6 and 8.

RECOMMENDATIONS:

In view of the above, tender committee proposes to close the above tendering process and retender the case, if required.

APPPROVING AUTHORITY;

As per the cl. No. 4.l (a). Sect -I of DOP -2011, the proposal requires approval of AGM -E7A level and above.

Post facto approval for nomination as alternate member Shri Anil Palwal, DGM(FIN), may also be accorded in place of Sh. Sunil Jaiswal, Sr. M(Fin).

Submitted for kind perusal and approval of the Competent Authority please.

L.T.E to the venders as proposed in file No. 7, will be proposed to award the package before 15.02.2015 as given in record notes placed R.H.S.

4. It would be evident from the above that after considering the circumstances and the fact that the petitioner''s final quote was Rs. 2.45 crores, which was 35.71% above the estimate of approximately Rs. 1.80 crores, the Tender Committee proposed to close the tendering process and re-tender the same, if required. The said proposal was submitted to the Competent Authority and the AGM (CandM) proposed that a limited tender enquiry (LTE) of the vendors, as proposed in file No. 7, be floated so as to award the package before 15.02.2015. This was ultimately approved by the Competent Authority (Executive Director, Vindhyachal).

5. Thereafter, the NIT dated 04.02.2015 was issued. It may be pointed out that the petitioner did not participate in the tender dated 04.02.2015, even though he was given an opportunity to participate and was short listed, being part of the vendors who had participated in the tender dated 08.12.2014. We are now told by the learned counsel for the respondent that the tender has already been awarded to SKV Enterprises, who was the L-1 bidder at the price of Rs.

1,98,00,682.80/-, which was further reduced, on post bid negotiations, to Rs. 1,96,50,338.95/-. It will be seen that this bid is approximately Rs. 50 lacs less than the final offer that the petitioner had made under the earlier tender of Rs. 2.45 crores.

6. The petitioner has not participated in the second tender. Apart from this, the public interest also demands that the second tender be not disturbed inasmuch as there has been a saving of Rs. 50 lacs of the money of the public exchequer in a contract of estimated value of Rs. 1.80 crores. Furthermore, we find that the petitioner had been given full opportunity to participate even in the second tender and the petitioner did not choose to do so. Consequently, the petitioner can have no grievance with the second tender nor can he have grievance with the first tender. We may also reiterate that the petitioner''s initial bid under the first tender was Rs. 3.94 crores and the contract has been awarded for Rs. 1.96 crores. The writ petition is liable to be dismissed. It is ordered accordingly. The parties shall bear their own costs.

