

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 06.09.2013

+ **W.P.(C) 5615/2013 & CM No.12434/2013**

M/S WELL PROTECT MANPOWER SERVICES Petitioner

versus

LAL BAHADUR SHASTRI HOSPITAL & ANR Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Tarkeshwar Nath with Mr Saurabh Kumar Tuteja.

For the Respondents : Ms Zubeda Begum, Standing Counsel
& Ms Sana Ansari.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. By way of this writ petition, the petitioner initially sought the following prayers:-

- (i) “Direct the respondent to open the technical bid of the petitioner.
- (ii) Declare that the petitioner is technically qualified.
- (iii) Direct the respondents to open the financial bid of the petitioner if it is found technically qualified.
- (iv) Declare the tendering process arising out of the subject NIT as null and void.
- (v) Call for the records arising of the subject NIT.
- (vi) Pass any other order that is deemed fit and proper under the facts and circumstances of the case.”

2. Subsequently, during the course of arguments, the learned counsel for the petitioner has withdrawn the prayer No.(iv) inasmuch as he cannot, at the same time, ask for the opening of the technical bid of the petitioner and also ask for the tendering process to be declared as null and void.
3. The present writ petition pertains to a notice inviting tender for providing security services. The said NIT is as under:-

“LAL BAHADUR SHASTRI HOSPITAL
GOVT. OF NCT OF DELHI
KHICHRIPUR, DELHI-91

**NOTICE INVITING TENDER FOR PROVIDING
SECURITY SERVICES**

E-Tenders are invited under Three-Bid system from reputed agencies, having capacity to deploy the adequate number of uniformed Security staffs and wherewithal, for providing Security services for a period of two years to the different hospitals of the GNCTD namely (1) Lal Bahadur Shastri Hospital, Khichripur, Delhi-91, (2) Chacha Nehru Bal Chikitsalaya, Geeta colony, Delhi-31 (3) Jag Parvesh Chandra Hospital, Shastri Park, Delhi-53, under clustered bidding system in which the Lal Bahadur Shastri Hospital, Khichripur, Delhi-91 will be the lead hospital entrusted to invite the bids on behalf of all the hospitals mentioned hereinbefore. **The Bid documents along with terms and conditions etc. are available on the website <https://govtprocurement.delhi.gov.in> and can be downloaded therefrom.**

SCHEDULE OF TENDER

Tender Enquiry No.	F65(74)/2013-14/LBSH/PUR
Date of release of tender through e-procurement solution.	17/06/2013

Date of pre-bid meeting	03/07/2013 at 2.00pm
Last date/time for downloading of Bid documents	19.07.2013 at 1.00pm
Last date/time for submission of Bid	19.07.2013 at 1.00pm
Last date/time for submission of EMD	19.07.2013 at 1.00pm
Date/Time of opening of Prequalification Bids/Technical Bids	19.07.2013 at 2.30pm
Date/Time of opening of Financial Bids	Will be informed on website

The above dates, if necessitated, may be changed and any notification for the changed dates will be available on the above said website and the bidders, therefore, are advised to follow up with the website about the revised schedule.

In case, the day of bid opening happens to be a holiday, the Bids will be opened on the next working day at the same time.

Medical Superintendent
LAL BAHADUR SHASTRI HOSPITAL
GOVT. OF NCT OF DELHI
KHICHRI PUR, DELHI-91”

4. The petitioner alongwith others submitted their bids. The technical bids were opened on 06.08.2012 and the price bids were opened on 08.08.2013. The petitioner’s case was rejected at the stage of evaluation of the technical bids. The technical bid evaluation was done by the Committee on 06.08.2013 and the evaluation of the petitioner’s technical bid was as under:-

“1. M/S WELLPROTECT MANPOWER SERVICES PVT. LTD.(1/6)- Clarification submitted by the firm is placed opposite in the file at page no.176/c to 184/c. The additional client i.e. ISBT Kashmiri Gate was not uploaded at the time of

e-tendering hence not considered for technical evaluation. The firm has submitted performance certificate from GTB Hospital w.e.f. 1/3/2008 to 31/1/2012 and total expenditure as Rs.6,99,16,323/- so 15 points are awarded taking into consideration the approx. contract value during last Three years. Completion certificate from Indraprastha Gas Limited has been submitted with final execution value Rs.37022213.82 so 10 points are awarded. Performance certificate from DHS with sanction amount Rs.2,45,68,883/- w.e.f. 20.06.2006 to 30.06.2010, which is not a valid period, as per tender documents we are considering last three years of work from the last date of bid submission, so no points are awarded. So the points in Technical evaluation comes out to be = 15+10 = 25 hence not qualified technically.”

5. The above extract is from the photocopy of the technical bid evaluation handed over by Ms Zubeda Begum, learned counsel appearing on behalf of the respondent. The said documents have been taken on record.

6. The grievance of the petitioner is that proper marks have not been awarded to the petitioner at the time of evaluation of the technical bid. As per Section 6 (Eligibility Conditions) of the NIT, the stipulations with regard to technical evaluation are as under:-

“Technical evaluation:-

Subject to fulfilling the technical capabilities criteria, as mentioned above, the technical capabilities evaluation of the bidders will be made on the basis of number of clients that the bidder has served at any time in last three years reckoned backward with reference to the last date of bid submission. The evaluation matrix will be as under:-

- (i) In case of all those clients where the contract value is not less than 80% of the estimated contract value:
 - (a) For each client : 15 marks.
 - (b) Total marks under this category cannot exceed 45 marks.
- (ii) In case of all those clients where the contract value is not less than 50% of the estimated contract value:
 - (a) For each client : 12 marks.
 - (b) Total marks under this category cannot exceed 36 marks.
- (iii) In case of all those clients where the contract value is not less than 40% of the estimated contract value:
 - (c) For each client : 10 marks.
 - (d) Total marks under this category cannot exceed 30 marks.

(Note:- The Department can seek clarifications on the documents uploaded by the bidder in order to correctly do technical evaluation. It can also accept additional documents in support of clarifications but in no circumstances can accept additional documents which are going to add to the number of clients already submitted with the bid for the purpose of clause (D) above.)

2. Only those bidders who qualify in Technical Capabilities by scoring at least 30 marks as mentioned above will be declared successful for opening of their financial bids.”

7. Based on that criteria, the marks awarded to all the tenderers were as tabulated in the technical bid evaluation referred above. The said tabulation of marks awarded to each of the tenderers is as under:-

S. No.	Name of Firm	Annexure-I and II	Copy of work order	Certificate of satisfactory service	Remarks
1	2	3	4	5	6
1	M/S	109-111	12-15	14	10+15=25

	WELLPROTECT MANPOWER SERVICES PVT. LTD.(1/6)	102, 104, 106			NOT QUALIFIED
2	M/S SARVESH SECURITY SERVICES PVT. LTD.(2/6)	115-118 112-114	126-183 185, 186, 188- 190, 192-220, 223- 224, 230, 233, 234	119- 125, 184, 187, 191, 221, 222, 225- 228, 231, 232, 235, 237	12+12+12=36 BUT NOT QUALIFIED AS FIRM IS DEBARRED
3	M/S GAURAV ENTERPRISES(3/ 6)	391-393 389	319- 320, 322, 323, 325- 331	318, 321, 324, 332	12=12 NOT QUALIFIED
4	M/S KUSHAL SURAKSHA AND ALLIED SERVICES PVT. LTD.(4/6)	447-449 445-446	394-403	407-410	00 NOT QUALIFIED
5	M/S GOODYEAR SECURITY SERVICE(5/6)	576-578 568-575	450-483	497-499	10+10+12=32 QUALIFIED
6	M/S ADVANCE SERVICE PVT. LTD. (6/6)	636-638 581	605-613	628-630	12+12+10=34 QUALIFIED

8. It is seen from the above table that the petitioner has been awarded 25 marks and since the petitioner did not score atleast 30 marks, it has been

declared as “not qualified”. According to the learned counsel for the petitioner, the petitioner should have been awarded 37 marks. He makes this submission on the ground that the petitioner undertook contracts with GTB Hospital of the value of ₹6.99 crores, Indraprastha Gas Limited for ₹3.70 crores and the Directorate of Health Services, Government of NCT of Delhi for ₹2.45 crores, and, therefore, the petitioner should have been awarded 15 marks, 12 marks and 10 marks respectively. If that were to be taken, the petitioner would have been awarded 37 marks, and, therefore, the petitioner could not have been disqualified as the total marks would be in excess of minimum requirement of 30 marks.

9. Insofar as, 15 marks for GTB Hospital and 12 marks for Indraprastha Gas Limited are concerned there is no issue except that according to the respondents the petitioner would be entitled to 10 marks for Indraprastha Gas Limited instead of 12 marks claimed by the petitioner. However, that dispute would not make any difference to the controversy at hand. The entire focus of both the petitioner and the respondents was on the marks awarded in respect of the client – Directorate of Health Services, Government of NCT of Delhi. It is claimed by the petitioner that 10 marks should have been awarded in respect of this client. However, the learned counsel for the respondents pointed out that the period for which work was done for this client was from 20.06.2006 to 30.06.2010, which was beyond the period of 3 years prior to the date of release of the tender, which was 17.06.2013.

10. The learned counsel for the petitioner pointed out that the work had been extended by further period upto 31.12.2010 and, therefore, the period fell within the stipulated 3 years period.

11. However, the learned counsel for the respondent pointed out that even if that were to be taken into consideration, the overall contract value during the last 3 years in respect of Directorate of Health Services would have to be worked out. The entire contract period even if it was assumed from 20.06.2006 to 31.12.2010 would indicate that only a period of 6 months would fall within the stipulated period of 3 years prior to 17.06.2013. Therefore, if the overall contract value computed on that basis for the period of 6 months which fell within the stipulated period of three years were to be computed it would definitely be less than ₹2.45 crores, which is the threshold value required for obtaining 10 marks. Since that minimum contract value was not achieved by the petitioner during the period of three years prior to release of the tender with respect to Directorate of Health Services, the petitioner would not be entitled to any marks insofar as the Directorate of Health Services Government of NCT of Delhi was concerned. We have seen that the same criteria has been applied by the respondents with respect to other tenderers also where the period of the contract has spanned beyond the period of three years prior to the date of release of tender. We do not find any arbitrariness or discrimination in the criteria adopted by the respondent and, therefore, the petitioner could have no grievance with regard to the award of 25 marks and at best 27 marks by the respondent. That would clearly be below the minimum

requirement of 30 marks and, therefore, the petitioner has been correctly shown as having “not qualified” the technical bid.

12. The writ petition and the pending application are dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SEPTEMBER 06, 2013
MK

VIBHU BAKHRU, J

