

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-COM No.17 of 2016
Date of Decision:-08.11.2016

M/s Gill Contractors

..... Petitioner

Vs.

U.T., Chandigarh and others

..... Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.Arvind Kashyap, Advocate,
for the petitioner.

RAKESH KUMAR JAIN, J.

The petitioner is a registered partnership firm, working as contractor with the Municipal Corporation, Fatehgarh Sahib, taking contracts of manual sweeping, supply of skilled/unskilled labour, providing maintenance and house keeping services and sanitation services etc. The respondent floated e-tender on the internet in September 2016 for the following work: -

“GIS-based mechanical and manual sweeping of selected roads (including service roads, footpaths, road berms, central verge, curb channels, curb stones, and road gully).

Part-A: Mechanical sweeping of selected roads with compact heavy duty mechanical sweepers” (with minimum 4 cubic meter hopper capacity) on Bye Own Operate Basis (Boo)”, on a 3 (three) days a week basis, for a period of 7 (seven) years. Also, washing of footpaths of selected roads falling under mechanical

sweeping, on a 1 (once) a week basis, for a period of 7 (seven) years.

Part-B: Manual sweeping of selected roads, on a 6 (six) days a week basis, for a period of 7 (seven) years.”

Earnest Money Deposit (EMD) was ₹10 lakh, starting date of bid was 16.9.2016, closing date was 7.10.2016 and the date of opening the tender was 8.10.2016. E-tender was opened on 17.10.2016 in which only two agencies participated in the bid, namely, Antony Waste Handling Cell Pvt. Ltd. and M/s Lion Services Limited. The financial bid was opened on 21.10.2016. On 28.10.2016 Supplementary Agenda-I for 236th meeting of Municipal Corporation, Chandigarh was released and the bid of M/s Lion Services Limited was accepted.

Chapter 3 of Section 1 of the Request for Proposal contains general terms and conditions of the bid. Para 3.2 deals with the technical qualification conditions whereas para 3.2.7 deals with the tender/RFP documents deals with technical capability of bidder. Para 3.2.7 is reproduced as under: -

“3.2.7 Only those bidders meeting both the following minimum eligibility criteria and other relevant documents as per other provisions of Section-1 of the RFP document will be deemed to be technically qualified for the project.

a) Technical Capability of Bidder

The prospective bidder shall be considered technically eligible if the following criteria are fulfilled:

= Only a duly registered firm can submit bid. The firm shall provide the certificate of Registration, alongwith certificates of sales tax/VAT/excise duty/service tax etc.

= The bidder should have completed 3 similar work amounting to Rs.5 crores or two similar work amounting to 8 crores or one similar work amounting to ₹10 crores for a Government, State Government, local body (i.e. Municipal Corporation, PSU, airport, or port in India in support of experience during last 7 (seven) years. “Similar work” is taken to mean work of cleaning/sweeping of roads of public places by mechanical road sweepers.

= Experience in mechanical sweeping on India roads during the last 5 (five) successive financial years ending as on March 31, 2016. The bidder must own at least 5 (five) mechanical sweepers, as specified in the “Technical Specification” detailed out in RFP document and being proposed by them in the proposal used on highways and roads in their name which is operating for a Government, State Government, local body (i.e. Municipal Corporation, PSU, airport, or port in India.)

X x x xxx

b) Financial Capability of Bidder

The prospective bidder shall be considered “financially eligible” if the following criteria are fulfilled:

= Bidding firm shall have a minimum annual turnover of ₹25 crores for each year during each of the last three financial years ending March 31, 2016.

= Bidding firm should have a net worth of at least of ₹10 crores during the last

financial year, i.e. FY ending March 31, 2016.”

Petitioner has offered to work at the prevailing rate of ₹3.14 crores but the tender was allotted to respondent No.3, hence, the present petition has been filed for issuance of a writ in the nature of certiorari for declining the acceptance of bid of respondent No.3 vide Supplementary Agenda-I dated 28.10.2016 in pursuance to tender/request for proposal with closing date 16.9.2016 as illegal and also to quash the conditions laid down in para No.3.2.7 of one of the requests of proposal form with closing date as 16.9.2016.

I have heard learned counsel for the petitioner and perused the record.

The tender has been accepted in the 236th meeting of the respondent No.2-Municipal Corporation held on 28.10.2016 with the following transactions: -

“The RFP was floated in e-tender website/newspapers and opened on 17.10.2016. The area covered in the RFP taken as all sectors beyond Dakshin Marg including all colonies & villages. The sectors are sector 31 to 56, 61, 63, Industrial Area-2, Halomajra, Ramdarbar, Burail, Attawa, Badheri, Maloya, Kajheri, Reh Dhanas and other colonies etc. The following two agencies participated in the bid-

- 1. Antony Waste Handling Cell Pvt. Ltd.*
- 2. Lion Serviecs Ltd. Delhi*

The technical bids were examined by the committee and found both of participants technically eligible.

Both agencies were called in the office for submission of their presentation on working of their machines. The companies had given their

*presentation in the committee room on 18.10.2016
in the presence of the following: -*

- 1. Sh. Arun Sood Mayor*
- 2. Sh. Satish Kumar Kaith, Chairman Sanitation Committee.*
- 3. Mrs. Harjinder Kaur Counciloor*
- 4. Sh. Surinder Bahga Councillor*
- 5. Sh. P.K. Aggarwal, E.E. R-1*
- 6. Sh. Uma Shankar Sharma, CAO*
- 7. Sh. Vijay Kumar Premi, SDE*

*All the members praised the presentation given by
the agencies and recommended for the
implementation,.*

*The financial bids were opened on 21.10.2016.
The rate quoted by the both the firms are as
under:-*

<i>Sr. No.</i>	<i>Name of firm</i>	<i>Rate of mechanical sweeping per K.M. per month</i>	<i>Rate for Manual Sweeping per beat per month</i>
<i>1.</i>	<i>Antony Waste Handling Cell Pvt. Ltd.</i>	<i>117600.00</i>	<i>54535.00</i>
<i>2.</i>	<i>Lion Services Ltd.</i>	<i>110430.00</i>	<i>49050.00</i>

*The M/s Lion Services, Ltd. was found L-1 and was
called on 26.10.2016 for submission of justification
of rates. Agency has submitted the justification of
rates. The agency had ensured in meeting that they
will give best quality of work and try to give no
change of any complaint.*

*The tentative road length for mechanical sweeping
area is about 179.14 KM*

- 1) The tentative road length with central
verge along with carriage way cycle
track = 39.270 Km*

- 2) *The tentative road length with central verge without carriage way = 23.72 km*
- 3) *The tentative road length without central verge = 116.05 km*

The payment shall be released per month per Km in case of Mechanical sweeping using following Multiplication factor.

<i>Multiplication Factor</i>			
<i>Multiple Lane Carriageway without Centre Verge</i>	<i>0.75</i>	<i>X Contract Fee for 2 way with centre verge</i>	
<i>Multiple Lane Carraigeway with Centre Verge along with Service lane</i>	<i>1.25</i>	<i>X Contract Fee for 2 way with centre verge</i>	

1. *For mechanized area 39.270 K.M. x 1.25 x Rs.110430 per K.M. per month = Rs.5420733 (Centre verge with carriage ways)*
2. *For mechanized area 23.72 K.M. x 1 x Rs.110430 per K.M. per month = Rs.2619400 (with centre verge only)*
3. *For mechanized area 116.05 K.M. x 0.75 x Rs.110430 per K.M. per month = Rs.9611551 (without centre verge only)*
4. *For manual sweeping area 510 beats x Rs.49050.00 Per beats = Rs.25015500/-*

The total tentative expenditure comes out to be Rs.42667184/- (Rs.4.26 cr.) per month with increase 5% every year except on labour component and the increase in labour wages at par with increase in wages of DC Rates. The payment shall be made to the agency as per actual measurement made

jointly by authorized staff of agency and Municipal Corporation, Chandigarh.

It is also informed that presently in the proposed area around 1369 Safai karamcharies (Regular - 288, Daily wagers-54, Contractual-333, Outsourced-694) are deployed to sweep the roads. The agency will deploy about 670 safai karamcharies on their roll on manual sweeping only. The regular employees and daily wages employees and remaining outsourced/contractual will be deployed in other area as per requirement by MOH.

The total expenditure being incurred by the MC is approximately Rs.37.72 crore per annum i.e. Rs.3.14 crore per month in spite of spending such a huge amount the sanitation level of the area is not up to the mark and regular complaints were being received from the residents and public representations of various sectors.

Now with the new mechanism sweeping of system the tentative expenditure about Rs.4.26 crore per month in comparison to existing Rs.3.14 crore per month. However, there would be remarkable improvement in sanitation level of city which not only provide clean and hygienic environment to public at large but also help the Chandigarh to come true to its name i.e. "The City Beautiful".

There will be saving of Rs.1.10 cr. on a/c of transferring about 670 safaikaramcharies to agency M/s Lion Services Limited and on account of material, transportation etc. The rest of expenditure Rs.3.16 cr. Will met from the budget head Sanitation cum Mechanical Transportation and Garbage for which provision has been made in the revised estimate keeping in view of Mechanized Road Sweeping Requirement.

Therefore House is required to approve the implementation of Mechanical Road Sweeping in

areas South to Dakshin Marg and ward of contract to M/s Lion Service Limited which is L1 in the bid.”

There is no error found by this Court in the approach of respondent No.2-Municipal Corporation in awarding of contract to respondent No.3. Moreover, the petitioner was not even eligible for the tender.

Consequently, the present petition is found to be without any merit and the same is hereby dismissed.

08.11.2016

Vivek

**(RAKESH KUMAR JAIN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No