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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 02.08.2017

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W.P.(C) 6177/2017, C.M. APPL.25680/2017 & 25681/2017

M/S VISHAKHA FACILITY MANAGEMENT PVT. LTD.

..... Petitioner

Through : Sh. Anil Sapra, Sr. Advocate with Sh. R.K. Sahni, Sh. Jaideep Singh, Sh. Kartik Bhardwaj, Ms. Piyusha Singh and Sh. Sarthak Katyal, Advocates.

versus

INSTITUTE OF HUMAN BEHAVIOR AND ALLIED SCIENCES & ANR

..... Respondents

Through : Sh. S.D. Singh, Sh. Rahul Kumar Singh, Ms. Surabhi Shukla, Ms. Shweta Sinha, Ms. Vaishali Sharma, Advocates.

Sh. Rajat Malhotra and Sh. Sunil Malhotra, Advocates, for Respondent No.2.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE S.P. GARG

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The petitioner is aggrieved by the respondents' inaction in proceeding to consider its tender/bid for housekeeping and facility management services in the first respondent institution – Institute of Human Behaviour and Allied Sciences [hereafter referred to as “the IHBAS”].

2. The IHBAS is an autonomous institution and a society incorporated under the *Societies Registration Act, 1860*. The petitioner which is engaged in the business of housekeeping, sanitation and facility management since the year 2008 responded to a three section bid Notice Inviting Tender

[hereafter “NIT”] issued on 02.03.2017. The NIT indicated 31.03.2017 as the last date for submitting online bids. Clause 1 of the NIT provided as follows:

“1. Procedure for submission of Bids:-

1.1 A single bid will be submitted by every bidder. Bids will comprise of following three sections:-

1.1.1 Pre-qualification Bid (As per the Annexure-I)

1.1.2 Technical Bid (As per the Annexure-II)

1.1.3 Financial Bid (As per the Annexure-III)”

3. The petitioner contends that it had furnished the bid on the last date, i.e. on 31.03.2017. Its grievance is that without intimation or information to it about acceptance, the price bid was opened and eventually the award of tender was finalized in favor of the third party sometime in June 2017. The petitioner submits that on 05.07.2017 it learnt about the rejection of bid at the pre-qualification stage. It is argued by Sh. Anil Sapra, learned senior counsel that the rejection at that stage (which was communicated by IHBAS), on the ground that Form Annexure I had not been uploaded, is an arbitrary ground. It is submitted that 16 bidders participated in the e-tender process of which 9 were declared successful. Learned senior counsel highlights with respect to the different parts of the bid that though the three-stage bid is clear as to what documents are to be furnished, the precise location or place in the tender is not indicated as clearly. He relies upon the e-tender system adopted by the IHBAS which was put in place by the Delhi Government and that the tender form refers to cover details with specific reference to three heads, i.e. pre-qualification, technical and finance bid. It is emphasized that the last column of the form requires the bidder to furnish

various documents in scanned form. Since there was a specific mention about the pre-qualification/technical part of the bid, the petitioner uploaded Annexure-I along with the tender form. Learned senior counsel submitted that the rejection of the petitioner's bid on the ground that the tender form as per Annexure-I was missing, is a wholly erroneous and misleading statement and ground urged by the IHBAS. Learned senior counsel urged that it was always open to the agency, i.e. IHBAS to issue clarification; he relies upon a note which is part of the tender enquiry/NIT. The note reads as follows:

“Note:- The institute can seek clarifications within 07 days of issue of letter of clarification, on the documents uploaded by the bidder in order to correctly do prequalification/technical evaluation. It can also accept additional documents (authentic historical documents as existing in the record or in public domain before bid due date; certificates from statutory auditors or any other valid document, in support of submission/claim or for purpose of verification of submissions/claim) in support of clarifications but in no circumstances can accept additional documents which are going to add to the number of clients or any technical evaluation criteria already submitted with the bid for the purpose of clause (D) above. If the bidder does not provide any information sought by the institute, within the time provided, the Institute shall proceed to construe from the information already submitted and evaluate the bid accordingly. The clarification letter will be issued by email so the Bidder is encouraged to provide correct and valid email ID in the application.”

4. During the course of proceedings, the respondents have produced the original file. IHBAS contends that those bidders whose tenders were in fact considered compliant had all uploaded Annexure-I separately, at the outset. It was argued that the nature of the e-tendering process is such that upon the passing of the technical evaluation process, the uploaded/scanned documents

of the bidders not deemed successful cannot be assessed. It is stated that there was in fact no room for confusion as is urged by the petitioner because out of 16 bidders, as many as 9 had uploaded the tender correctly and in accordance with the NIT. It is stated that a pre-bid meeting was held on 14.03.2017 according to the schedule indicated. If the bidders had any misgivings or confusions, they could well have sought clarifications. The petitioner chose, however, not to attend the meeting and, therefore, deprived itself of the opportunity of correctly uploading the format. Since the controversy in this proceeding pertains to the submission or non-submission by way of uploading, of Annexure-I, it would be useful to notice the said form (Annexure-I). That form contains the essential particulars, such as the name of the agency which issued the NIT (IHBAS); the name of the bidding firm; its constitution; names of its office bearers; its addresses - headquarter as well as the Delhi office, email; the details of the persons authorized to bid; names; designations; telephone number etc. and other commercial details such as tax registrations/PAN particulars. The details sought in this form include previous three years' turnover and the aggregate turnover as well as the number of personnel on its rolls, the training facilities provided etc. This format runs into 14 pages.

5. The technical bid form (Annexure-II), on the other hand, elicits details with respect to the name of clients, the total contract value of the concerned clients; supporting documents and other such particulars. The last part, i.e. Annexure III, which is a component of the price bid – seeks details with respect to the contract in question, i.e. the NIT, such as manpower cost towards 200 personnel to be deployed as well as the cost of 11 supervisors and the total cost of materials etc. Part-B of that annexure seeks disclosure

with respect to minimum wages, PPF, ESI etc.

6. The tender format of the GNCTD, which the petitioner relies upon— as was discussed in the previous part of the judgment, contains three broad categories in the forms - pre-qualification, technical and finance. The tender format seeks documentation in terms of which, answers specific description, such as copies of registration documents and PAN particulars, the power of attorney in respect of bidders etc. are to be provided. Significantly, where a certain form is to be scanned and uploaded, this e-tendering format specifically indicates it (such as for instance, Annexure-II, VI, IX, X and XI). However, there is no mention of Annexure-I.

7. A careful scrutiny of the NIT and the various forms, especially the three annexures to it, would show that each of them elicited specific details. Annexure-I, in a sense, is crucial because that effectively is the covering letter which discloses the particulars of the bidder- it runs into four pages. The supporting documents undoubtedly became part of the tender format which is relied upon by the petitioner. Perhaps the petitioner was sanguine and confident about its compliance with the conditions when it uploaded Annexure –I along with the general e-tender format adopted by the GNCTD tender and which is part of the e-tendering process of the government. However, that *per se* did not mean that the requirement of having to furnish the annexure separately as a pre-qualification condition was fulfilled. The petitioner had adequate notice that it could seek clarifications at the stage it furnished the bid (which in this case was 31.03.2017). The pre-bid meeting took place on 14.03.2017. It also did not seek any clarification with respect to the note it relies upon. No such communication was shown during the course of hearing.

8. In these circumstances, given the limited nature of scrutiny under Article 226 of the Constitution, the Court discerns no illegality, procedural irregularity or arbitrariness in the respondents' position, that the petitioner's bid was rejected for non-compliance with tender conditions and its omission to file a crucial document.

9. For the foregoing reasons, the Court is of the opinion that there is no merit in the petition; it is accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

S.P. GARG
(JUDGE)

AUGUST 02, 2017/ajk

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