

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.21261 of 2017

ORDER:

Heard Sri Amancharla V Gopala Rao, learned counsel for the petitioner, Sri Y.Rama Rao, learned counsel for Hyderabad Metropolitan Development Authority (respondent Nos.4 and 5), Sri Durga Bose Gandham, learned counsel for 7th respondent and Sri V.R.N.Prasanth, for M/s.Indus Law Firm, appearing for respondent Nos.8 and 9.

2. The petitioner in this Writ Petition assails the action of the Hyderabad Metropolitan Development Authority (respondent Nos.4 and 5) in awarding the contract for providing Integrated Security Services with Manpower and Security Equipment at Budhapurnima Project Area, Hyderabad vide e-procurement notice No.HMDA/BPP/OSD/20/2016-17 dt.24-03-2017 to the respondent No.7 Agency vide letter No.17/BPP/HMDA/2017 dt.24-06-2017, for a period of three years.

3. The 4th respondent issued e-procurement tender notification No.HMDA/BPP/OSD/20/2016-17 dt.24-03-2017 for providing Integrated Security Services with Manpower and Security Equipment at Budhapurnima Project Area, Hyderabad, for a period of three years.

4. Clause 7 of the said notification prescribed the minimum eligibility criteria which the bidders were required to possess. It stated:

S.No.	Key Information	Details
7	Minimum Eligibility Criteria	i. Should have successfully completed at least one similar work (Security & Allied works) of value not less than Rs.490.00 lakhs (Rupees Four Hundred and Ninety Lakhs only) with a maximum contract period of three (03) years. (OR) ii. Should have successfully completed at least two similar works (Security & Allied works) of value not less than Rs.370.00 lakhs (Rupees Three Hundred and Seventy Lakhs only) each with a maximum contract period of three (03) years. (OR) iii. Should have successfully completed at least three similar works (Security & Allied works) of value not less than Rs.250.00 lakhs (Rupees Two Hundred and Fifty Lakhs only) each with a maximum contract period of three (03) years. (Proof of experience from the client is a must for the above criteria)

Note:- *Similar experience is defined as experience in deploying security guard along with all other security equipments such as CC TV cameras, DFMDs. HHMDs in any Public Gardens, office of Government Authorities/Airports/Railway/Large PSUs/Govt. research or Govt. Educational institutes.*

Note:- Supplying labors for construction activities or drivers or Housekeeping are not considered for evaluations.

5. Thus, bidders were expected to have experience as prescribed in sub clauses (i) or (ii) or (iii) or ‘similar experience’ which was defined in the foot note as experience in deploying security guards along with all other security equipments such as C.C.T.V. cameras, DFMDs, HHMDs in any public gardens, office of the Government Authorities/Airports/Railway/Large PSUs/Government Research or Government Educational Institutes.

6. Petitioner, respondent No.7 and another tenderer M/s.BVG India Limited participated in the tender and all of them quoted +2% of service charge on ECV value. As per tender condition No.4.6.4 which permitted the HMDA, in such circumstances to identify the lowest bidder by draw of lots, the 4th respondent gave notice on 22-06-2017 to attend and witness the draw of lots to be conducted on 23-06-2017 at its office to finalize the successful bidder for awarding of the contract. The three of them attended, and in the draw of lots held on 23-06-2017, the 7th respondent became the successful bidder.

7. The acceptance of the tender was communicated to 7th respondent by 4th respondent on 24-06-2017.

8. Though several contentions were advanced in the pleadings by the petitioner, the learned counsel for the petitioner contended that the 4th respondent had treated the 7th respondent as being eligible to bid on the basis of an experience certificate dt.17-04-2017 issued by the Security Officer of the University of Hyderabad mentioning that it had provided trained, professional and efficient security-cum-fire safety services including security equipment like C.C.T.V., DFMB, HHMD, under vehicle search mirrors, walkie talkies and one Jeep Equipped with Video Recording Facilities (for surveillance) and flood lights for night surveillance and two motorbikes pursuant to work order No.UH/SEC/CONT/2015 dt.26-11-2014 from 01-12-2014 to 31-03-2017 of contract value

Rs.860.00 lakhs; but the said certificate is not a genuine certificate. He contended that petitioner had confirmed from reliable sources that the 7th respondent did not provide C.C.T.Vs. and DFMDs facility as quoted in the said experience certificate and therefore the 4th respondent, without verifying the genuineness of the certificate of experience dt.17-04-2017 produced by 7th respondent, blindly believed it and acted upon it and considered the bid of 7th respondent and accepted it.

9. The petitioner filed W.P.M.P.No.32095 of 2017 to implead the Registrar of the University of Hyderabad and the Security Officer of the said University who issued the said experience certificate. The said application was allowed on 27-02-2018 and notices were issued to the said parties, who were impleaded as respondent No.8 and 9.

10. The learned counsel for the HMDA contended that the 4th respondent, relied on the said experience certificate dt.17-04-2017 issued by the Security Officer of the University of Hyderabad (respondent No.9) and believed it and they did not act in any *mala fide* manner to favour respondent No.7.

11. Respondent No.7 filed counter affidavit stated that it had provided security services at the University of Hyderabad and had provided DFMD vide letter dt.28-09-2015 of the Security Officer of the said University for holding convocation programme of the said University at Shilpakala Vedika on 01-10-2015. It is also stated that

C.C.T.V. footage was provided by it at the University of Hyderabad pursuant to a letter dt.04-04-2016 of its Security Officer from its patrolling jeep. He contended that the certificate dt.17-04-2017 was issued by 9th respondent rightly and the allegation of the petitioner that the 7th respondent did not fulfill the technical criteria is not correct.

12. A rejoinder affidavit was also filed by 7th respondent giving details of the tender dt.23-05-2014 issued by the University of Hyderabad for Security –cum- Fire Safety Services on contract basis pointing out that as per the terms of the said contract awarded to it by the University, it was required to provide Jeep/Gypsy equipped with video recording (for surveillance) and flood lights for night surveillance apart from security equipment etc. He also pointed out that as per the terms of the said tender, the 7th respondent also had to carry out ‘any other work assigned by the authorities of the University’ and that was why it provided DFMDs and CCTV as mentioned above. It therefore denied that it produced any false certificate of experience as alleged by the petitioner.

13. The respondent Nos.8 and 9 filed a counter affidavit stating that though 7th respondent was awarded the tender for providing security services in 2014, the scope of the work under the said contract included only security and fire fighting services, but did not include providing equipment like CCTVs and related activities. It is stated that by mistake in the experience certificate dt.17-04-2017

issued by 9th respondent, the scope of work done by 7th respondent was wrongly mentioned to include providing equipment like CCTV/DFMD/HHMD. It was mentioned in the counter affidavit that once the anomaly was noticed, a Revised experience certificate dt.01-08-2017 was issued by the 8th respondent indicating therein the scope of the work under the 2014 tender notification. Copy of the said experience certificate is annexed to their counter affidavit.

14. Learned counsel for the petitioner contended that providing CCTV footage or DFMD on a mere one occasion at the instance of the 9th respondent does not make the 7th respondent an eligible bidder since the terms of the tender required providing such services for the previous five years, and in the light of the counter affidavit filed by respondent Nos.8 and 9 admitting that the experience certificate dt.17-04-2017 issued by 9th respondent did not correctly reflect the experience of the 7th respondent, the award of contract by 4th respondent to 7th respondent on 24-06-2017 is required to be set aside.

15. I find considerable force in this contention.

16. By merely providing DFMD facility or video recording of surveillance by its surveillance vehicle on one occasion, the 7th respondent cannot claim that it had five years experience in providing CCTV/DFMD facility as prescribed under the e-tender notice dt.24-03-2017. Once the respondent Nos.8 and 9 have asserted that the experience certificate dt.17-04-2017 was issued to

7th respondent under a mistake as to the scope of the work done by it, and that they subsequently issued another experience certificate dt.01-08-2017 correctly reflecting the scope of work performed by respondent No.7, even if the 4th respondent did not act *mala fide*, the award of contract of the subject work to 7th respondent by 4th respondent under the said e-tender notice, cannot be sustained.

17. Having issued the tender notice dt.24-03-2017 prescribing eligibility criteria for award of the contract pursuant thereto, the respondent Nos.4 and 5, after being shown that 7th respondent did not fulfill the said eligibility criteria, cannot insist on continuing 7th respondent for executing the said contract.

18. Accordingly, the Writ Petition is allowed; the award of contract vide letter No.17/BPP/HMDA/2017 dt.24-06-2017 for providing Integrated Security Services with Manpower and Security Equipment at Budhapurnima Project Area, Hyderabad vide e-procurement notice No.HMDA/BPP/OSD/20/2016-17 dt.24-03-2017 is set aside; and the respondent Nos.4 and 5 are directed to call for fresh tenders for award of the said work to eligible persons within four weeks from the date of receipt of a copy of this order. No costs.

19. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 30-04-2018
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