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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **DECIDED ON: 10.01.2018**

\+ W.P. (C) 252/2018, CM APPL.1062-1063/2018

ORION SECURITY SOLUTIONS PVT. LTD. ..... Petitioner
Through: Mr. Jayant K. Mehta with Mr. Sukant Vikram and Mr. Anshumaan Sahni, Advocates.

versus

UNIVERSITY OF DELHI ..... Respondent
Through: Mr. Amit Bansal with Mr. Akhil Kulshrestha, Advocates for DU.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A.K. CHAWLA

S.RAVINDRA BHAT, J. (ORAL)

1. Issue notice. Mr. Amit Bansal, Advocate accepts notice on behalf of Delhi University (hereafter mentioned as “University”). It is agreed by the counsel for the parties that the matter can be heard finally.

2. The petitioner is aggrieved by the rejection of its tender offering security services to the respondent/University. The tender was issued on 14.09.2017 inviting bids from interesting parties through the e-procurement system to provide round the clock security services in the University’s North Campus. The petitioner, a security agency, lodged its bid. It argues that the tenders were compliant with the conditions

stipulated in the notice inviting tender ("NIT"). On 01.12.2017, the University informed the petitioner that it did not fulfill the eligibility criteria and, therefore, disqualified the tender. The University relied upon Rule 151 (i) of the General Financial Rules, 2017 which according to it barred the petitioner from bidding or offering to work in the University. It is stated that the petitioner represented twice - on 09.12.2017 and 18.12.2017 against the move to reject its bid but to no avail, since these representations were rejected on 27.12.2017. The University's position in all these representations consistently were that the petitioner was named as an accused for offences in a First Information Report ("FIR") lodged on 24.10.2017 alleging that it had committed offences punishable under Section 409/420 of the Indian Penal Code read with provisions of the Employees Provident Fund (and Miscellaneous Provisions) Act, 1951.

3. Mr. Jayant K. Mehta, learned counsel for the petitioner argues that the University's orders rejecting the tender are untenable and contrary to the tender's stipulations. He relies particularly on clause 3 (which spelt out the mandatory eligibility conditions) and clause 6 (which outlines the procedure to be followed for opening of financial bid and its evaluation). It is contended that the disqualifying criteria relied upon by the University, i.e., GFR-151 reads as follows: -

> *"151 (i) A bidder shall be debarred if he has been convicted of an offence-*
>
> *(a) Under the Prevention of Corruption Act, 1988;*
> (b) *The Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a*

threat to public health as part of execution of a public procurement contract."

4. It is contended that mere registration of FIR, cannot automatically result in disqualification of the petitioner's bid, especially since the offences alleged are of a general nature and there is no definitive finding. It is also contended that the NIT itself does not refer to or incorporate the GFR conditions. In the absence of these, it is submitted that the petitioner's bid should be entertained and duly evaluated before passing any order.

5. Mr. Amit Bansal, learned counsel appearing on behalf of the University highlights that Clauses 6.02 and Instructions to Bidders, especially Clause-7, armed the University with sufficient discretion to either entertain and proceed to evaluate at the financial bid opening stage or reject at the prior stage, any bid. The said condition - Clause-7 reads as follows: -

> *"7. The University of Delhi in public interest reserves right to accept or reject any or all tenders without assigning any reason and also to impose/relax any of the terms and conditions of the tender."*

6. Counsel also relies upon the University's letter rejecting the petitioner's representations which reads as follows: -

> *"Dear Sir,*
>
> *Kindly refer to your representation dated 09.12.2017 w.r.t. Technical Disqualification for hiring of Security Services in University of Delhi.*
>
> *In this regard, I am to inform you that the Committee considered your representation and accordingly it has been*

decided that the submissions made as such are mere circumventing and same do not establish the credibility beyond doubt, which is a necessity, considering the University deals with education of young students, including female students, besides the employees of University and any such allegations, convicted or not, creates doubtfulness towards the credibility of the bidder, against the public interest, which forms the genesis of the GFR Rules (based on which bidder was qualified) which have been referred earlier and specific reference to our Clause 7 of the Instruction to the Bidders and Clause 6.2 of the Tender Conditions.

Accordingly, it has been decided that the bid of M/s Orion Security Solutions Pvt. Ltd. has been rightly disqualified by the University."

7. To appreciate the controversy in the context of the petitioner's grievance of wrongful rejection of its tender, it would be essential to extract the relevant tender conditions discussed by the rival submissions. Clause-3 which contains mandatory conditions that are to be fulfilled by every bidder reads as follows: -

*"**3. Mandatory requirements:***

The security agency should submit the following mandatory requirements: -

1. *Certificates of statutory Registrations:*
   - *i) Registration under Employee Provident Fund and Miscellaneous Provisions Act, 1952*
   - *ii) Registration under Employees State Insurance Act, 1948.*
   - *iii) Registration under the Contract Labour (Regulation & Abolition) Act, 1970*
2. *Registration under the Private Security Agencies Regulation Act, 2005*
3. *Registration under GST, TIN/TAN/PAN.*

4. *Registration with Labour Department of the; State/Central Govt. or any other regulations time to time required as per guidelines of Govt., if any.*
5. *The agency's should have annual turn-over of Rs.5,00,000,00 (Five Crore) per year in the last three years in the security business (substantiated by Audited statements of accounts details of security assignments be given with documentary evidence).*
6. *Clientele list with the performance certificate from the agencies mentioned in Clause-6 should be furnished in the* ***Annexure-D.***
7. *The agency has to attach an undertaking* ***(Annexure-F)*** *stating that the agency has carefully read the complete tender document and has agreed to all the terms and conditions, scope of work, Agency's & University's obligation, Penalty clause and all other conditions as mentioned in the tender document.*
8. *The agency should have at least 200 numbers of Security Guards on its roll and it should be substantiated by producing their Employee Provident Fund (EPF) numbers and other details of the Security Guards in the prescribed* ***Annexure-E.***
9. *A declaration has to be given that the agency/contractor has not been blacklisted by the Central/State Govt./Autonomous body/Company during the last three years.*
10. *The tenderer must give the job profile of the security agency detailing amount other, the following:*
    - *(i) Infrastructure*
    - *(ii) Technical Expertise*
    - *(iii) Trained manpower*
    - (iv) *Availability of all necessary security-related gadgets, equipments etc."*

8. Clause 6 which is relied upon by the petitioner as well as the University reads as follows: -

"6. Criterion for Evaluation of Tenders

6.01 The evaluation of the tenders will be made by a Tender Evaluation Committee first on the basis of technical information furnished in form given in Annexure-B, which is an eliminatory round, then only financial bid will be opened. The financial bids shall be evaluated on the basis of commercial information furnished in form given in Annexure-C, for each item.

6.02 Technical evaluation will be conducted, keeping in view the requirements/expectations in respect of security services in the University of Delhi. Further, prior to the opening of the Financial Bid, antecedents of the agencies/tenderer may be verified by a Technical Committee of the University of Delhi, which may also decide to visit/inspect the offices and as well as the sites of the eligible agencies.

6.03 The financial bids shall be evaluated on the following criteria:

6.03.1 A notional value of engaging Security personnel shall be calculated and taken into account as per the rates quoted in Annexure-C.

6.03.2 Combined value of the grand totals shall be taken into account from the rates quoted in Annexure-C.

6.04 The University of Delhi will award the contract to the tenderer whose tender has been determined to be substantially responsive and has been determined as the lowest evaluated bid, computed on the overall value of all men and material, provided further that the tenderer is determined to be competent to perform the contract satisfactorily. The University of Delhi shall however not bind itself to accept the lowest or any tender bid, wholly or in part."

9. The University's reliance upon Clause 6.02 has to be understood, in the opinion of the Court, in its proper context. Undoubtedly, Clause 6.02 is at the stage of technical evaluation of the tender. However, this necessarily has to be confined to the mandatory

requirements spelt out in Clause-3. That condition stipulates that the security agency must be registered with the Employees Provident Fund, Employees State Insurance and the Contract Labour Regulation and Abolition Act, 1970. In addition, it must possess the registration under the Private Security Agencies Regulation Act, 2005 and must also be registered with the local taxation authorities and possess the Income Tax PAN Number. Other registrations/accreditations are also to be fulfilled. The agency's minimum stipulations of employing at least 200 security guards on its rolls should be proved and is to be furnished to the University in terms of prior experience as stipulated.

10. In the opinion of this Court, the tender conditions should be interpreted such that the technical evaluation would be in the context of "requirements and expectations in respect of security services in the University of Delhi" and that verification process would be in the context of verifying whether the documents furnished are true and correct.

11. In certain situations, not infrequently, the public agency receives complaints from rival bidders stating that the certificates or documents furnished by one or the other parties are inaccurate. It is for the purpose of verifying these that Clause 6.2 has been factored in.

12. The reference to Rule 151 of the GFR in the opinion of the Court, at least in the circumstances, is entirely inapt. That rule is not referred to in the tender. Furthermore, the rule is premised upon conviction of a bidder under the Prevention of Corruption Act or any other provision of the Penal Code in causing loss of life or property or

causing threat to public health. In this case, clearly, there is no such conviction recorded by a competent Court. All that happened is a registration of a FIR against the petitioner. Its outcome is unknown - even the allegation registered against it is at best inchoate; the University could not have determined at this stage itself that the petitioner did not fulfill the eligibility conditions and that it was to be barred from participation. So far as the stipulation in the instructions for bidders, i.e., Clause-7 is concerned, the Court is of the opinion that the stage of considering whether to accept or reject the bid, having regard to the overall needs of the University, at which stage better interest is to be looked into, would be later, i.e., after technical bids are opened and the financial bids are evaluated. Clause-7 reads as follows: -

> *"7. The University of Delhi in public interest reserves right to accept or reject any or all tenders without assigning any reason and also to impose/relax any of the terms and conditions of the tender."*

This stage concededly has not arisen in the present case. As to whether having regard to the allegations, the University can or should, or should not, accept the petitioner's bid, therefore, should not have been gone into at the stage of technical evaluation. This, however, does not mean that the University cannot take this as a factor. Pendency of the FIR is a factor while evaluating the petitioner's bid along with other factors.

13. In view of the foregoing conclusions, the rejection of the petitioner's bid is held to be arbitrary and beyond the scope of the

tender stipulations. The University is directed to evaluate the technical bids and proceed to evaluate the financial bids of the petitioner, proceed to award the tender, and pass appropriate orders in accordance with law.

14. The writ petition is allowed in the above terms.

15. A copy of this order be given ***dasti*** under the signatures of Court Master.

S. RAVINDRA BHAT
(JUDGE)

A.K. CHAWLA
(JUDGE)

JANUARY 10, 2018
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