



HAFED

**THE HARYANA STATE COOPERATIVE SUPPLY
AND MARKETING FEDERATION LIMITED**
CORPORATE OFFICE, SECTOR 5, PANCHKULA HARYANA (INDIA)
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ORDER

In CWP No. 4120 of 2021 (O&M) M/s Bhim Chand & Company Vs. Haryana State Cooperative Supply and Marketing Federation Limited, the Hon'ble High Court passed the following order dated 22.02.2021 which is reproduced as under:-

"This petition has been filed by the petitioner challenging clauses 4, 5(iii) 5(iv) and 5(v) of the tender notice dated 11.02.2021 floated by respondent No. 1 on the ground that the eligibility conditions prescribed in the tender notice have been inserted without application of mind and have been included only to suite certain tenderers by making them tailor-made for them. It is submitted that these clauses do not exist in the previous tenders floated by the respondents whereas they have been included now. It is also alleged that the experience of the tenderers in handling and transportation of food grains with the Food Corporation of India has also been included which has no nexus with the object. It is observed that the petitioners have filed a representation before the respondent authorities particularly Annexure P-4 dated 11.02.2021 which has been filed before the Managing Director, HAFED and the same has not been decided as yet.

Learned counsel appearing for the HAFED submits that the said representation of the petitioner shall be considered and the objections including all the grounds raised therein by the petitioners will be considered and decision thereon will be taken by the respondent-authorities latest by 24.02.2021 as the last date for submission of bids is 26.02.2021.

We find that the statement made by learned counsel appearing for the respondent-HAFED is reasonable as that would also give sufficient time to the petitioners in case the representation is allowed to submit their bids.

In view of the aforesaid statement made by learned counsel appearing for respondent-HAFED, the petition stands disposed of. However, it is made clear that this Court has not expressed any opinion on the merits of the case and therefore, the authorities would be at liberty to examine the matter keeping all facts and facets into consideration and thereafter accept or reject the same in accordance with law."

As per the Memo No. 10403 dated 22.02.2021 received from Sh.Lokesh Sinhal, Sr. Additional Advocate General, Haryana, the other CWPs filed in this matter are CWP No. 4103, 4191 and 4109 of 2021. In addition, the CWPs No. 4120 and 4156 of 20201 have also been filed by others in the same matter.

In compliance of the above directions of the Hon'ble High Court, the representations of all the contractors have been addressed as under:

1. That HAFED floated an e-tender dated 11.02.2021 for engagement of experienced labour contractor firms/companies/ cooperative societies for loading/unloading and handling of food grains belonging to Food Corporation of India (FCI) and storage articles, etc. in godowns and CAP storage.
2. The petitioner has challenged the clauses 4, 5(iii), 5(iv) and 5(v) of the of the said tender notice on the ground that the eligibility conditions prescribed in the tender notice have been inserted without application of mind and have been included to suit certain tenderers by making them tailor-made for them. These clauses do not exist in the previous tenders floated by HAFED whereas they have been included now. The petitioner has also alleged that the experience of tenderers in handling and transportation of food grains of FCI has also been included which has no nexus with the object.

Now, the existing provisions/clauses 4, 5(iii), 5(iv) and 5(v) of the said tender notice under challenge are reproduced as under:

Clause-4 - AREA OF OPERATION:

The district-wise list of guarantee godowns and guarantee CAP storage is at **Appendix-I**. For the purpose of this tender, the State has been divided into following zones:-

Zone	Districts	EMD (Rs. in Lakh)	Minimum Turnover from handling operations in any of the last 4 years (Rs. in Crore)	Performance Security Deposit (Rs. in Lakh)
A	Sirsa	10	10	100
B	Hisar	10	10	100
	Fatehabad			
C	Jind	5	5	50
D	Karnal	5	5	50
	Kurukshetra			
	Yamuna Nagar			
E	Kaithal	5	5	50
	Ambala			
F	Panipat	5	5	50
	Sonapat			
	Faridabad, Palwal			
G	Rohtak, Jhajjar	3	3	30
	Bhiwani			
	Total	43	43	430

Any bidder shall be eligible to apply/bid for any zone subject to fulfilment of eligibility criteria. At the same time, a bidder can apply for more than one zone or all the zones.

Clause - 5 (iii)

The bidder must possess satisfactory work experience of handling of food grains, coarse grains, oil seeds & pulses as Mandi Labour Contractor (MLC) of Haryana State Procuring Agencies or of handling of food grains in Hafed's PEG godowns and plinths in the last four years (2017-18 to 2020-21). Out of these four years, at least one-year experience in terms of volume of work done by the bidder must not be less than 5 LMT in case of Zone-A or B, one LMT in case of Zone-G and 2 LMT in case of any other zone.

(Certificate issued from the concerned District/Area Head of the Haryana State procuring agencies only clearly stating the quantity of grains handled to be attached)


Clause - 5(iv)

In case of partnership firm, the experience of the individual partners will not be considered and experience of only the partnership firm will be counted.

Clause 5(v)

Must have a minimum turnover (from the handling operations of food grains, coarse grains, oil seeds & pulses) as mentioned against each zone in the above table at Clause No. 4 in any of the last 4 years i.e. 2017-18 to 2020-21. In case, a bidder applies for more than one zone, the turnover of the bidder shall be evaluated against sum of the minimum turnover criteria as specified above as applicable for the zone being applied for. In order to qualify for multiple zones, the turnover of the bidder should be at least equal to the sum of the minimum turnover requirement for each of the zone applied for as specified in the table.

(The balance-sheets for the years 2017-18 to 2019-20 duly audited by a Chartered Accountant to be attached. For the year 2020-21, a certificate from the Chartered Accountant clearly mentioning the turnover for the year 2020-21 along with Form-26AS should be attached)

 After going through the above objections of all the contractors the tender documents/clauses under challenge were re-examined by HAFED and corresponding reply/views are reproduced as under:

1. That it is pertinent to mention that the previous tender policy for the said labour contract was continuing since 2012 wherein the tenders were being invited at the godown level in various districts and there was large scale variation of rates

quoted by various contractors for Godowns within the same district which has resulted in revenue loss to HAFED/FCI. The prevalent system lacked transparency and led to significant higher expenditure of funds for the said purpose. The wide variation and higher rates quoted by small contractors at Godown level is unsustainable in the long run and therefore HAFED decided to bring uniformity of rates as fixed for various operations in the godowns and to curtail higher expenditure by creating 7 uniform zones of PEG Godowns/Plinths for labour and other operations at the godown level. Since the price discovery can only be made after opening of the tender on 26.02.2021 it is premature to say that the creation of zones as per the new tender policy of HAFED will lead to revenue loss as alleged by the petitioner.

2. As per Clause-4 of NIT The 7 zones with minimum turnover criteria has been formed keeping in mind the capacity and volume of work pertaining to that zone and the previous year volume of work/expenditure amount (outflow) in that zone.

Zone	Districts Covered	Capacity	Volume of Work/ Expenditure during 2020-21	Turnover Criteria
A	Sirsa	10.58 LMT	Rs. 6.48 Cr	Rs. 10 Cr
B	Hisar & Fatehabad	8.33 LMT.	Rs. 10.15 Cr	Rs. 10 Cr
C	Jind	4.28 LMT	Rs. 1.46 Cr	Rs. 5 Cr
D	Karnal, Kurukshetra and Yamuna Nagar	4.33 LMT	Rs. 3.45 Cr	Rs. 5 Cr
E	Kaithal & Ambala	3.91 LMT	Rs. 1.60 Cr	Rs. 5 Cr
F	Panipat, Sonapat, Faridabad & Palwal	4.54 LMT	Rs. 2.67 Cr	Rs. 5 Cr
G	Rohtak, Jhajjar & Bhiwani	1.83 LMT	Rs. 2.60 Cr	Rs. 3 Cr

Turnover of Rs. 20 lakh was fixed way back in the year 2012 for participation at godown level and was not changed since then.

However, for the clarification of turnover criteria the necessary amendment is proposed as under:

Clause No.	Existing Provision	Amended Provision
4	Minimum Turnover from handling operations in any of the last 4 years	Minimum Turnover in any One year out of the last 4 years

3. Regarding Clause - 5(iii). The experience of volume of work done by the bidder must not be less than 5 LMT in Zone A or B, 1 LMT in case of Zone G and 2 LMT in case of other Zones has been incorporated keeping in view the volume/capacity of the zone respectively which is nearly 50% (Approx.) and the same is justified. The experience is required for any one year out of the last 4 years which is also reasonable. However, to ensure wider participation and to give more opportunities to everyone Clause 5(iii) is proposed to be amended as under:

Clause No.	Existing Provision	Amended Provision
5 (iii)	<p>The bidder must possess satisfactory work experience of handling of food grains, coarse grains, oil seeds & pulses as Mandi Labour Contractor (MLC) of Haryana State Procuring Agencies or of handling of food grains in Hafed's PEG godowns and plinths in the last four years (2017-18 to 2020-21). Out of these four years, at least one-year experience in terms of volume of work done by the bidder must not be less than 5 LMT in case of Zone-A or B, one LMT in case of Zone-G and 2 LMT in case of any other zone.</p> <p>(Certificate issued from the concerned District/Area Head of the Haryana State procuring agencies only clearly stating the quantity of grains handled to be attached)</p>	<p>The bidder must possess satisfactory work experience of handling of food grains, coarse grains, oil seeds & pulses in Haryana as Mandi Labour Contractor (MLC) of Haryana State Procuring Agencies or in the godowns and plinths of Haryana State procuring agencies (excluding transportation work) in Haryana only in the last four years (2017-18 to 2020-21). Out of these four years, at least one-year experience in terms of volume of work (only handling of food grains excluding transportation) done by the bidder must not be less than 5 LMT in case of Zone-A or B, one LMT in case of Zone-G and 2 LMT in case of other zones.</p> <p>(Certificate issued from the concerned District/Area Head of the Haryana State procuring agencies clearly stating the quantity of grains (in LMT) handled by the bidder excluding transportation to be attached)</p> <p>Note:- For the purpose of experience of handling of grains as mentioned above, handling operation in godown/plinth/mandi only will be considered and handling operation at any other location shall not be considered.</p>

4. Regarding Clause 5(iv), it is clarified, that partnership firm duly Constituted under the Indian Partnership Act is eligible to apply in the said tender as per the eligibility condition i.e. Clause 5(i) and therefore, experience of the partnership firm shall only be considered for the eligibility rather than experience of individual partners. Therefore, the contention of the petitioner that experience of the individual partner should be considered cannot be treated as valid.

5. Regarding Clause 5(v), the clarification regarding turnover and proposed amendment after considering the contention of the petitioner has already been proposed at Sr. No. 2 as mentioned in the respective table. The minimum turnover (from handling operations of food grains, coarse grains, oil seeds and pulses) as mentioned in the table of Clause- 4 of tender document has been amended to simple minimum turnover of the firm/company/cooperative societies in any One year out of the last 4 years.

6. The solvency certificate of relevant amount corresponding to each zone is required to be submitted by the firm keeping in view the turnover criteria of each zone which is nearly 20% of the turnover amount. The same is fully justified.

It is also clarified that terms and conditions of the new tender cannot be the same as those of the old tender because the area of operations/volume of work has completely changed. Also the amount of likely payment proposed to be paid in each zones is significantly higher than the amount being paid at the Godown level. Therefore, the terms and conditions of the old tender which was used to be floated at Godown level cannot be compared and made basis for the new tender as contended by the petitioners in their representations. However, few amendments as proposed above and mentioned in tables shall be made by HAFED after due consideration and examination of the representations of the petitioners in the light of the order of Hon'ble High Court.

The consolidated amended provisions of the new tender document are reproduced as under:

Sr. No.	Clause No.	Existing Provision	Amended Provision
1	4	Minimum Turnover from handling operations in any of the last 4 years	Minimum Turnover in any one year out of the last 4 years
2.	5 (iii)	The bidder must possess satisfactory work experience of handling of food grains, coarse grains, oil seeds & pulses as Mandi Labour Contractor (MLC) of Haryana State Procuring Agencies or of handling of food grains in Hafed's PEG godowns and plinths in the last four years (2017-18 to 2020-21). Out of these four years, at least one-year experience in terms of volume of work done by the	The bidder must possess satisfactory work experience of handling of food grains, coarse grains, oil seeds & pulses in Haryana as Mandi Labour Contractor (MLC) of Haryana State Procuring Agencies or in the godowns and plinths of Haryana State procuring agencies (excluding transportation work) in Haryana only in the last four years (2017-18 to 2020-21). Out of these four years, at least one-year experience in terms of volume of work (only handling of food grains excluding transportation)

Sr. No.	Clause No.	Existing Provision	Amended Provision
		bidder must not be less than 5 LMT in case of Zone-A or B, one LMT in case of Zone-G and 2 LMT in case of any other zone. (Certificate issued from the concerned District/Area Head of the Haryana State procuring agencies only clearly stating the quantity of grains handled to be attached)	done by the bidder must not be less than 5 LMT in case of Zone-A or B, one LMT in case of Zone-G and 2 LMT in case of other zones. (Certificate issued from the concerned District/Area Head of the Haryana State procuring agencies clearly stating the quantity of grains (in LMT) handled by the bidder excluding transportation to be attached) Note:- For the purpose of experience of handling of grains as mentioned above, handling operation in godown/ plinth/ mandi only will be considered and handling operation at any other location shall not be considered.
3.	5 (v)	Must have a minimum turnover (from the handling operations of food grains, coarse grains, oil seeds & pulses) as mentioned against each zone in the above table at Clause No. 4 in any of the last 4 years i.e. 2017-18 to 2020-21. In case, a bidder applies for more than one zone, the turnover of the bidder shall be evaluated against sum of the minimum turnover criteria as specified above as applicable for the zone being applied for. In order to qualify for multiple zones, the turnover of the bidder should be at least equal to the sum of the minimum turnover requirement for each of the zone applied for as specified in the table.	Must have a minimum turnover as mentioned against each zone in the above table at Clause No. 4 in any one year out of the last 4 years i.e. 2017-18 to 2020-21. In case, a bidder applies for more than one zone, the turnover of the bidder shall be evaluated against sum of the minimum turnover criteria as specified above as applicable for the zone being applied for. In order to qualify for multiple zones, the turnover of the bidder should be at least equal to the sum of the minimum turnover requirement for each of the zone applied for as specified in the table.

Therefore, in compliance of the order of Hon'ble High Court in CWP No. 4120, 4103, 4191, 4156, 4202 and 4109 of 2021 and having gone through the representations of the petitioners, I order that the proposed amendments as mentioned in the above table shall be incorporated in the tender published on 11.02.2021 and pass the order for issuance of corrigendum accordingly.

24.02.2021
PANCHKULA


(Dusmanta K. Behera, IAS)
MANAGING DIRECTOR, HAFED

No. Hafed/WH/AW-II/8943

Dated: 24/02/2021

A copy of the above is forwarded to the following:-

1. (CWP No. 4120) – M/s Bhim Chand & Co., behind Satish Cotton Factory, Barwala, District Hisar- 125121.
2. (CWP No. 4103) – Kulbir Singh & Co. through its sole proprietor Sh. Kulbir Singh S/o Sh. Darshan Singh, H. No. 89, Sector-3, Urban Estate, Kurukshetra (Haryana).
3. (CWP No. 4191) – Sh. Dinesh Kumar S/o Sh. Mansa Ram, H. No. 5/487, Shastri Nagar, Malerkotla, District Sangrur, Punjab.
4. (CWP No. 4109) – Sh. Ram Murti S/o Sh. Gian Chand, H. No. 1155/6, Circular Road, Ambala City, Haryana.
5. (CWP No. 4156) – Sh. Surinder Kumar S/o Sh. Shishpal, R/o village-Dayalpur, Tehsil, Ballabgarh, District Faridabad, Haryana
6. (CWP No. 4202) – Sh. Puran Singh S/o Sh. Pyare Lal, R/o B-2, Civil Line, Behind SDM Residence, GT Road, Palwal, Haryana.
7. (CWP No. 4202) – Sh. Satpal S/o Sh. Sita Ram, R/o H.No. 534, ward No. 8, Adarsh Colony, Tyagi Mandir, Hodal, Palwal, Haryana.