



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-2053/2020-21/3058

Karachi, dated the 1st March, 2021

To,

Executive Engineer,
Public Health Engineering Division,
SUKKUR.

Subject: DECISION OF REVIEW COMMITTEE OF SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY.

The undersigned is directed to refer to the subject cited above and to enclose herewith a copy of the Authority's Review Committee decision M/s Reliant Trade Link v/s Executive Engineer Public Health Engineering Division Sukkur, held on 03.02.2021, for taking further necessary action in compliance of referred decision, under intimation to this Authority, at the earliest.


ASSISTANT DIRECTOR (LEGAL-II)

A copy is forwarded for information and necessary action to:

1. The P.S to Secretary to Government of Sindh, Public Health Engineering Department.
2. The Chief Engineer (Concerned) Public Health Engineering Department Sukkur.
3. Assistant director (I.T), SPPRA (with advice to post the decision on the Authority's website in terms of Rule-32(11) of SPP Rules, 2010)
4. The Staff Officer to the Chairman / Members Review Committee.
5. The Appellant.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY
AUTHORITY



No.AD (L-II)SPPRA/CMS- 2053/2020-21

Karachi, dated the , February,2021

**BEFORE REVIEW COMMITTEE OF SINDH PUBLIC PROCUREMENT
REGULATORY AUTHORITY UNDER RULE-32 OF SPP RULES 2010.**

REVIEW APPEAL

M/s. Reliant Trade Link

VS

Executive Engineer, Public Health Engineering (Division), Sukkur

NIT ID Number T00869-20-000 Dated: 19-09-2020

Facts and background

The appellant, M/s. Reliant Trade Link, lodged a complaint (vide letter dated 9.12.2020) addressed to the Chief Engineer, Public Health Engineering Sukkur – copy endorsed to this Authority and others for necessary action – against the NIT No. T00869-20-0003 Dated 19-09-2020 floated by the Executive Engineer, Public Health Engineering ‘*the procuring agency*’ for procurement of four (4) works relating to the ‘*Supplying and installing Pumping Machinery & Solar System for Drainage*’.

2. The appellant therein complained that the procuring agency opened financial bids without informing the appellant and did not follow the transparency in the opening of bids.

3. Subsequently, the appellant (vide letter dated 23.12.2020) preferred an appeal, along with the supporting documents and review appeal fee before this Authority whereby the appellant stated that the CRC failed to decide the grievances within the stipulated time hence, the appellant requested to place the case before the Review Committee in terms of Rule-31(5)¹ read with Rule 32(5) *ibid*².

4. Accordingly, the appellant’s case was taken up by the Review Committee for hearing in its meeting scheduled on 03.02.2021 at 11.00 a.m. and in this regard, the Authority (vide letter dated 05.01.2021) issued notices to the parties concerned to appear in person, or depute authorized representative well conversant with the procurement issue along with the relevant

² The committee shall announce its decision within seven days. The decision shall be intimated to the bidder and the Authority within three working days by procuring agency. In case of failure of the committee to decide the complaint, the Procuring Agency shall not award the contract;

¹ The bidder shall submit [following documents] to the Review Committee:- (a) a letter stating his wish to appeal to the Review Committee and the nature of the complaint; (b) a copy of the complaint earlier submitted to the complaint redressal committee of the Department and all supporting documents; (c) copy of the decision of procuring agency/ redressal committee, if any.

documents and evidence, if any, before the Committee on the scheduled date, time and venue to present and/ or defend the case in terms of Rules-32(6), (8) & (10) *ibid*³.

5. In compliance, Mr. Hafeezullah Memon, Assistant Executive Engineer, Public Health Engineering Division Sukkur *'the procuring agency's representative'* and Mr. Muhammad Ali, Proprietor, M/s Reliance Trade Link *'the appellant'* appeared before the Committee.

REVIEW COMMITTEE'S PROCEEDINGS

6. The Chairperson of the Committee commenced the meeting by welcoming all the participants of the meeting. Then, the chair asked the appellant to present the case/version over the instant procurement before the committee.

Appellant's Version

7. Mr. Mr. Muhammad Ali, 'the appellant', while presenting the case, apprised the Committee that the procuring agency called the bids vide advertisement of and the date for opening of technical proposal was scheduled on 28.9. 2020. The bidder submitted that technical proposal was opened on 28.9.2020 and the committee announced that the financial opening of bids will be communicated to the all-qualified bidders.

8. The appellant further submitted that the procurement committee illegally opened bids in the absence of the appellant and have changed rates. The appellant further submitted that the procurement committee is involved in Corrupt Coercive obstructive and Fraudulent practices.

9. The appellant also claimed that the tenders are "managed tenders" and the procuring agency has failed to complete the procurement process in a transparent manner as described under rules. The appellant also conceives that the procuring agency was bound required to comply with the SPP Rules that make clear that "financial proposals of technically qualified bids shall be opened publicly at a time, date and venue announced and communicated to the bidders in advance."

The appellant also claimed that the procuring agency did not hold the meeting of CRC and did not resolve the matter accordingly as required under rules. The complainant claimed that the complaint redressal committee shall have announced its decision within seven days and intimate the same to the appellant and the Authority within three working days whereas the Complaint Redressal Committee failed to arrive at the decision within seven days. The complaint also submitted that as the CRC did not decide the matter and it stood transferred to the Review Committee. Therefore, the bidder claimed to have approached the Review Committee.

The bidder also submits that the Procuring Agency shall have awarded the contract after the decision of the Complaint Redressal Committee. However, the procuring agency awarded the contract without resolving the complaint and did not wait for the final adjudication by Review Committee but awarded contract which is against the rules.

⁴ On receipt of appeal, along with all requisite information and documents, the Chairperson shall convene a meeting of the Review Committee within seven working days. It shall be mandatory for the appellant and the head of procuring agency or his nominee not below the rank of BS-19 to appear before the Review Committee and when called and produce documents, if required. The Review Committee shall hear the parties and announce its decision within ten working days of submission of appeal. However, in case of delay, reasons thereof shall be recorded in writing.




The appellant also claimed that the procuring agency issued bid evaluation report which is illegally signed by the Assistant Engineer Public Health Engineering Sub-Division I Sukkur because the AEN was on authorized leave. As the AEN was on leave AEN was not allowed the sign the managed documents of the bidding process.

Mr. Manzoor Ahmed Memon, member of the Review Committee asked the appellant whether he received the letter for bid opening. He vehemently denied that the procuring agency did not inform to the appellant and opened the bid unilaterally.

Procuring Agency's Version

1. Mr. Hafeezullah Memon, Assistant Executive Engineer, Public Health Engineering Division Sukkur '*the procuring agency's representative*', that the procuring agency sent letters to the qualified bidders and asked them to attend the bid opening on 7.12.2020 and argued bid opening was carried out in a transparent manner as per rules. The bids were opened within time. The procuring agency submitted that all bids were opened publicly in the presence of all the bidders, or their representatives at the time and place announced in the letters.
2. The procuring agency further submitted that the procurement committee read aloud the name of the bidder and total amount of each bid. All bidders signed an attendance sheet which may be perused by the record and the same is available at PPMS website. The official chairing of the procurement committee encircled the rates and all the members of procurement committee signed each and every page of financial proposal of bidders. The procuring agency submitted that the procurement committee issued the minutes of the opening of the tenders and the same are available at PPMS website.
3. The procuring agency submitted that the procuring agency issued a letter NO.TC/G-148/1387 dated 03-12-2020 to M/s Reliant Trade Link Government contractor to the attend financial bid opening. The Executive Engineer further claims that they were present in the office during the process of financial bid opening. The procuring agency further claims that the appellant was present at the time of Financial Bid opening and the same may be perused at the attendance sheet which has been signed by the appellant and as well as by all bidders present at the time of bid opening.
4. The procuring agency denied the allegations levelled by the appellant and stated that the allegations made in the complaint regarding non-participation in the process of opening of financial bids is totally false, fabricated & abysmal.
5. The procuring agency submits that the procuring agency completed the complete procurement process in a transparent manner and issued the work orders after completing all codal formalities. The Executive Engineer further submitted that work has been started at the site by the successful contractors.
6. Mr. Manzoor Ahmed Memon asked the representative of the procuring agency whether the letter dated 03.12.2020 was received by the bidder. The representative of the



procuring agency submitted that the letter was sent through dispatch Rider and the same was refused by the appellant.

7. The representative of the procuring agency while responding to a question regarding the CRC meeting told that the CRC was not convened because the Chairman was engaged due to accident issue.
8. It was also enquired from the representative of the procuring agency whether the AEN, for which the appellant claims that AEN was on leave, signed the documents during leave period. The representative of the procuring agency did not give any clear reply for that..
9. The Chair asked the procuring agency about the status of the works the representative informed that the work orders have been issued/awarded.
10. Mr. Munir Ahmed Shaikh, member of the Review Committee, asked the representative of the procuring agency if work is awarded then contract agreement should have also been posted which is not available on the website. The representative remained silent and could not reply properly.

Findings of the Review Committee

From the perusal of record, statements of the procuring agency and appellant, scrutiny of documents and facts, the Review Committee finds that there are four major contentions among the parties.

14. The appellant claims that the procuring agency did not inform the appellant regarding financial bid opening whereas the Executive Engineer submits that the appellant was informed regarding the financial bid opening vide letter dated 3.12.2020.

15. The appellant claims that he lodged a complaint before the CRC. However CRC was failed to decide the matter within 7 days. The procuring agency contends that the Chairman of CRC was met with an accident. Therefore, he was rightly unable to convene the meeting of CRC due to the accident issue.

16. The appellant also contends that the procuring agency was bound to not sign the contract until the final adjudication by Review Committee whereas the procuring agency claims to have signed the contract after completing all codal formalities but not a website.

17. The Appellant also submits that the procuring agency was bound to complete the process transparent way but it failed to do so.

Review Committee Observations

18. After hearing the parties at length and perusal of record, the Review Committee observed that: -

Opening of financial bids without informing to the bidder



19. The procuring agency claims to have sent the letter to the bidder but the procuring agency was not successful to prove that the letter was received by the appellant's Rules 2010 (amended UpToDate) describe the way of Single stage Two envelope procedure.

Single Stage - Two Envelope Procedure

- (a) bid shall comprise a single package containing two separate envelopes. Each envelope shall contain separately the financial proposal and the technical proposal;
- (b) envelopes shall be marked as "FINANCIAL PROPOSAL" and "TECHNICAL PROPOSAL" in bold and legible letters to avoid confusion;
- (c) initially, only the envelope marked "TECHNICAL PROPOSAL" shall be opened;
- (d) envelope marked as "FINANCIAL PROPOSAL" shall be retained in the custody of the procuring agency without being opened;
- (e) procuring agency shall evaluate the technical proposal in a manner prescribed in advance, without reference to the price and reject any proposal which does not conform to the specified requirements;
- (f) no amendments in the technical proposal shall be permitted during the technical evaluation;
- (g) financial proposals of technically qualified bids shall be opened publicly at a time, date and venue announced and communicated to the bidders in advance;
- (h) financial proposal of bids found technically non-responsive shall be returned unopened to the respective bidders; and
- (i) bid found to be the lowest evaluated or best evaluated bid shall be accepted.

The rule quoted supra clearly describes the way of Single Stage two envelope procedure. The rule makes clear that financial proposal shall be retained by the procuring agency till the technical evaluation of bids. Sub-rule (g) of 46 maintains that "financial proposals of technically qualified bids shall be opened publicly at a time, date and venue announced and communicated to the bidders in advance;". On the contrary to that the procuring agency opened financial bid of the appellant without communicating to the bidder. The representative of the procuring agency admitted that the letter was returned back and none received the letter. It is evident from the statement of the procuring agency that the letter was not received at the bidder's side. Therefore, there is no reason to deny the reality that the procuring agency failed to follow the proper procedure as laid down in rule 46 of SPP rules for financial bid opening and clearly violated the rule.

1. The Issue of not convening CRC meeting

21. Another contention between the parties relates to CRC meeting. The bidder contended that the CRC was required to decide the matter within seven days and was bound to

communicate the decision within 3 working days. Rule 31 describes the working of CRC and other matters relating to therein:

Mechanism for Redressal of Grievances:

[The complaint redressal committee shall announce its decision within seven days and intimate the same to the bidder and the Authority within three working days. If the committee fails to arrive at the decision within seven days, the complaint shall stand transferred to the Review Committee which shall dispose of the complaint in accordance with the procedure laid down in rule 32,]2 [if the aggrieved bidder files the review appeal within ten (10) days of such transfer;]3

The Procuring Agency shall award the contract after the decision of the complaint redressal committee;

Mere fact of lodging of a complaint shall not warrant suspension of the procurement proceedings;

Provided that in case of failure of the Complaint Redressal Committee to decide the complaint; the procuring agency shall not award the contract, [until the expiry of appeal period or the final adjudication by the Review Committee.]

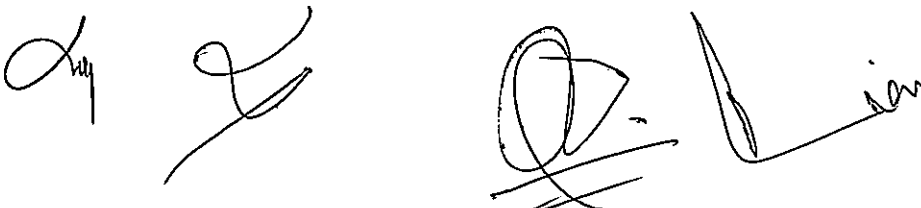
The Rule makes mandatory upon the CRC to announce the decision within 7 days. Contrarily, the CRC meeting was not convened due to the accident of the Chairman of CRC. The committee is of the view that there is no official documentary evidence that may prove that the Chief Engineer was allowed by the Competent Authority to not perform the duties assigned to him. Besides, if it is assumed that the Chief Engineer was barred to work due to accident, then the factual position would have been shared with the complainant. In addition to this, CRC should have restrained the procuring to not proceed further till the resolution of the matter. However, CRC remained inactive on mere excuse of the accident of the Chairman CRC.

2. Signing of Contract without Decision of CRC and during appeal period

23. The complainant also contended against the signing of contract and issuing of work orders by the procuring agency without decision of CRC and during appeal period. The committee of the view that the rule 31 describes the way of signing the contract if the complaint has been lodged.

(7) **The Procuring Agency shall award the contract after the decision of the complaint redressal committee;**

(8) Mere fact of lodging of a complaint shall not warrant suspension of the procurement proceedings;



Provided that in case of failure of the Complaint Redressal Committee to decide the complaint, the procuring agency shall not award the contract, [until the expiry of appeal period or the final adjudication by the Review Committee.]

The sub rule 7 of 31 describes the condition for the signing of contract in case of lodging of complaint. It is necessary that condition of CRC decision must be fulfilled before the signing of Contract. It was mandatory upon the procuring agency to not sign the contract until the final adjudication by SPPRA review committee. However, the procuring agency signed the contract which is clear violation of SPP rule 32(8).

4. Issue of Transparency

24. Similarly, the complainant submitted that it was incumbent upon the procuring agency to maintain the transparency in the complete process of bidding. However, the procuring agency failed to carry out the process in a transparent manner.

The committee is of the view that, it was necessary upon the procuring agency to maintain the transparency in the complete process of bidding. However, the procuring agency failed to carry out the process in a transparent manner by not informing the bidder to participate in the financial Bid opening. it was necessary upon the procuring agency to maintain the transparency in the complete process of bidding. Furthermore, the procuring agency did not hoist the contract documents.

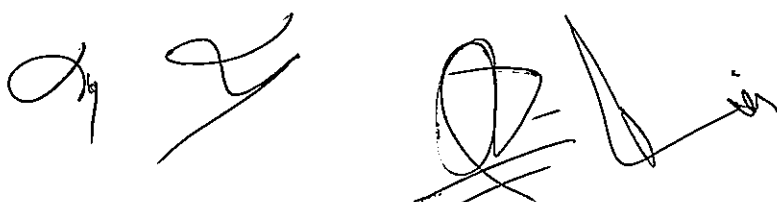
The committee ,in this regard, was of the view that in section 5 of the Sindh Public Procurement Regulatory Authority Act, 2009 the functions and the powers of the Authority have been defined, according to which the Authority may take such measures and exercise such powers as may be necessary for improving governance, management, transparency, accountability and quality of public procurement of goods, services and works in the public sector, as well as in collaboration with the private sector. Therefore, the words „transparency“ and accountability are of high importance and cast a duty upon the procuring agency who had invited the bids to ensure openness of the transaction without withholding any information.

The committee also observed that not only SPPRA act 2009 but also SPP Rules 2010 also clearly define that the complete process of the procurement will be carried out in a transparent manner. Rule 4 of SPP Rules states the principles of the procurement;

Principles of Procurements - While procuring goods, works or services, procuring agencies shall ensure that procurements are conducted in a fair and transparent manner and the object of procurement brings value for money to the agency and the procurement process is efficient and economical.

The committee also observed that the procuring agency did not follow the” Open Competitive Bidding” in the procurement of works. The SPP Rules 2010 defines the “Open Competitive Bidding”

Open Competitive Bidding" means a fair and transparent specified procedure defined under these Rules, advertised in the prescribed manner, leading to the award of a contract whereby all

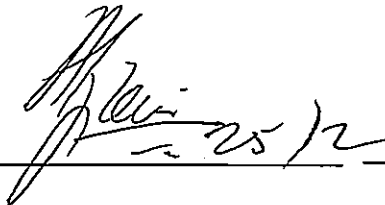


interested persons, firms, companies or organizations may bid for the contract and includes both National and International Competitive Biddings;

- The procuring agency neither followed transparency nor adopted proper procedure provided and Rules, the procuring agency neither informed to the bidder for financial opening nor before signing of contract waited till the final adjudication by the Review Committee. Therefore, it is evident from the discussion that the procuring agency violated the rules and failed to conduct an open competitive Bidding which is only possible in a transparent manner.

Review Committee Decision

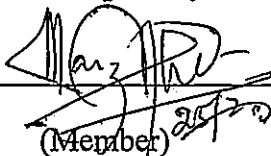
25. After due deliberations, the Review Committee unanimously declares the instant tender as mis-procurement and refers the matter to the head of department for initiating disciplinary action against the officials responsible for the act mis-procurement as per SPP Rules 2010(Amended Up to date). The loss to the Government be recovered under integrity pact. Compliance of this decision shall be submitted before the Review Committee within 15 days of issuance of this decision.



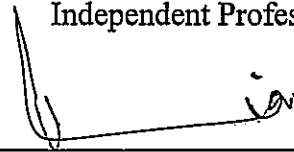
(Member)
Syed Adil Gilani
Private Member SPPRA Board
Representative Transparency International



(Member)
Engr. Munir Ahmed Shaikh
Independent Professional



(Member)
Manzoor Ahmed Memon
Member SPPRA Board



(Chairman)
Riaz Hussain Soomro
Managing Director Sindh Public Procurement
Regulatory Authority