



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-2031/2020-21/3060

Karachi, dated the 1st March, 2021

To,

Executive Engineer,
Rice Canal Division,
LARKANO.

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 Abra Construction Company v/s Executive Engineer Rice Canal Division Larkano**, held on 13.01.2021, 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, Irrigation & Power Department.
2. The Superintendent Engineer, Western Sindh Circle Larkano.
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- 2031/2020-21

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. Abra Construction Company

v.s

Executive Engineer, Rice Canal Division Irrigation Department, Larkana
NIT ID Number T00912-20-0003 Dated: 15-11-2020

Facts and background

The appellant, M/s. Abra Construction Company, Government Contractor, lodged a complaint (vide letter dated 10.12.2020) addressed to the Superintendent Engineer, Western Sindh Circle Larkana – copy endorsed to this Authority and others for necessary action – against the NIT No.T00912-20-0003 dated 15.11.2020 floated by the Executive Engineer, Rice Canal Division Irrigation & Power Department Larkana '*the procuring agency*' for procurement of five (5) works relating to the '*construction, retaining, extension, and repair etc.*'.

2. The appellant therein claimed for his intention to participate in the bidding process and in this regard he approached the procuring agency on 07.12.2020 at 10.00 a.m. to submit the bids, along with requisite documents as per the criteria against the NIT's works listed at: #2. *Construction of Retaining wall along Mirwah Distry RD 20,27,28 & Extension Repair of Modules along Mirwah Distry RD 0 to 70 IP & NIP sides (55 Nos) (P-02)* .#05. *Construction of Retaining wall along Duabo Minor RD 0 to 09,13,&14 Right & Left/Side (P-05)* He downloaded bidding documents from the Authority's website in terms of Rule-24(2) *ibid*¹. However the procuring agency did not receive his bids on the scheduled date and time without issuing any corrigendum to extend the schedule for submission and opening of the 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)² read with Rule 32(5) *ibid*³.

¹the bidder may submit bids on the bidding documents issued by the procuring agency or download from the Authority's website along with tender fee if any by mail or by hand.

4. Accordingly the appellant's case was taken up by the Review Committee for hearing in its meeting scheduled on 13.01.2021 at 11.00 a.m., and in this regard the Authority (vide letter dated 05.01.2021) issued notice to the parties concerned to appear in person or depute authorized representative well conversant with the procurement in question along with the relevant 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*⁴.

5. In compliance, Mr. Ahmed Nawaz Chandio, Executive Engineer, Rice Canal Division Larkana '*the procuring agency's representative*', and Mr. Rehmatullah Abro, Proprietor, M/s Abra Construction Company '*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.

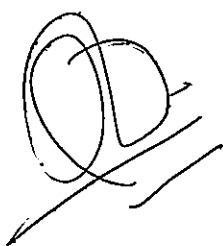
Appellant's Version

7. Mr. Rehmatullah Abro, '*the appellant*', while presenting the case apprised the Committee that his representative was present there in the procuring agency's office on 07.12.2020 from 10.00 a.m. to 12.00 noon for submission and witnessing the opening of the bids which did not occur without any further corrigendum relating to the extension in bids submission/ opening schedule. He further explained that the procuring agency refused to take his bids from his representative and the Executive Engineer further advised the firm's representative not to participate in the tenders and take back their sealed bidding documents whereas the quorum of the procuring committee was incomplete therefore the Executive Engineer had to issue corrigendum for next date of opening of bids and same had to post/hoist on website/public through newspapers as well as the bidders, but the same was opened on 16.12.2020 without issuing any corrigendum/information. Further he submitted his application to Superintendent Engineer, Western Sindh Circle Larkana for CRC but CRC meeting was not held. The rates quoted by his firm for works No.2 & 5 in the NIT are lesser/ below than contractors mentioned lowest in the BER.

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;

³ 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.

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.



Procuring Agency's Version

8. Mr. Ahmed Nawaz Chandio, Executive Engineer, Rice Canal Division Larkana *'the procuring agency's representative'*, while responding stated that he had neither refused any one to take part in the bidding nor asked to take bids back. The corrigendum was issued to postpone the date of opening which was posted on the website later on. The committee had recommended for award of works to the lowest bidders being most responsive as per Bid Evaluation Reports available on the website.

9. Syed Adil Gilani asked the procuring agency the reason and date of issuance of corrigendum as well as the date of posting on the website /newspapers. The procuring agency stated that due to non-presence of the members of the procurement committee⁵ the date was extended and corrigendum was issued on 7.12.2020 and posted on the website, but when the corrigendum was checked on the website, it was neither posted on the Authority website and even nor published in the newspaper.

10. Syed Adil Gilani further asked the procuring agency that when PPMS of SPPRA had sent you the serious observations on 24.12.2020 with the advice not to proceed further if the corrigendum was not published in newspapers in time. The procuring agency's representative replied that they had sent reply of the observations made by SPPRA but when it was checked which was not available/sent.

11. Mr. Manzoor Ahmed Memon asked the procuring agency why CRC meeting was not called/held to redress the grievances of the bidder/appellant? The representative replied that the appellant has addressed to the Superintendent Engineer, Western Sindh Circle Larkana whereas the Chairman of the CRC⁶ is D.G, Monitoring & Evaluation Cell, Irrigation Department Government of Sindh and the same is also available on the website and no any new CRC has been constituted.

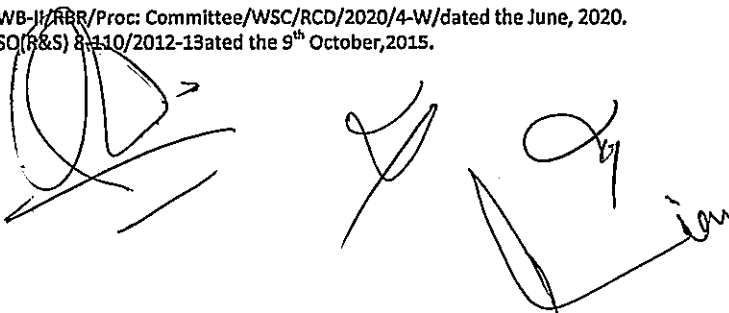
12. The Chair asked the procuring agency about the status of the works the representative informed that the work orders have been issued/awarded.

13. Mr. Munir Ahmed Shaikh, member of the Review Committee asked the representative of the procuring agency if work is awarded then contract agreement should also be posted which was not available on the website the representative remained silent and could not reply properly.

Findings of the Review Committee

⁵ Notification No. WB-J/RRR/Proc: Committee/WSC/RCD/2020/4-W/dated the June, 2020.

⁶ Notification No. SO(R&S) 8/10/2012-13 dated the 9th October, 2015.



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

14. The appellant claims that the procuring agency did not hold bid submission and bid opening on the date mentioned in NIT whereas the Executive Engineer submits that corrigendum was issued and later on bid submission and bid opening was held.

15. The appellants also alleges that the procuring agency did not follow the rules in the extension of time in bid submission and bid opening whereas the procuring agency claims that the bidders were informed about the extension of time in bid submission, bid opening and corrigendum was affixed on board and the same was uploaded on PPMS website later on.

16. 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 appellant did not approach the forum rightly and timey.

17. The appellant also contends that the procuring agency was bound to not sign the contract until the final adjudication by Review Committee, besides that, the appellant submitted that the procuring agency did not comply with the observations raised by the SPPRA.

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

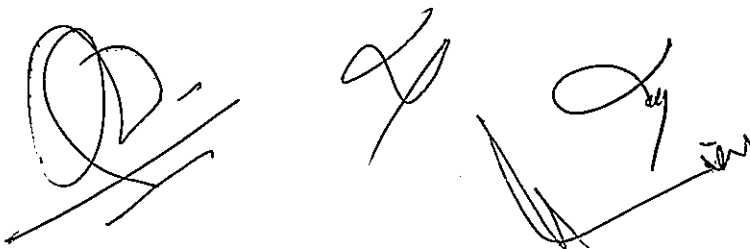
Review Committee Observations

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

20. The procuring agency did not open the bids on the date and time mentioned in the NIT. The procuring agency replied that as the Executive Engineer was busy in Anti-Encroachment drive, the bid opening could not be held on time. The committee is of the view that the procuring agency was required under rules of SPP Rules to open the bid on the time mentioned in the bidding documents and NIT. However, in case any issue or unforeseen matter the same rules provide the proper mechanism. The SPP Rule 41 describes the way of bid opening.

▪ **41. Opening of Bids**

- **The date for opening of bids and the last date for the submission of bids shall be the same, as given in the bidding documents and in the Notice Inviting Tender;**

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- Subject to provisions of Rule 18, in case, the two dates are different, the date and time, given in the bidding documents shall apply;
- The bids shall be opened within one hour of the deadline for submission of bids;
- All bids shall be opened publicly in the presence of all the bidders, or their representatives, who may choose to be present in person, at the time and place announced in the invitation to bid;
- The procuring agency shall read aloud the name of the bidder and total amount of each bid, and of any alternative bids if they have been permitted, shall be read aloud and recorded when opened;
- All bidders in attendance shall sign an attendance sheet;
- All bids submitted after the time prescribed as well as those not opened and read out at bid opening, due to any procedural flaw, shall not be considered, and shall be returned without being opened;
- The official chairing procurement committee shall encircle the rates and all the members of procurement committee shall sign each and every page of financial proposal;
- The procurement committee shall issue the minutes of the opening of the tenders and shall also mention over writing or cutting, if any.

Nevertheless, the procuring agency failed to follow the proper procedure as laid down in rule 41 of SPP rules and clearly violated the rule.

21. Regarding the issuance of corrigendum for **Extension of Time Period for Submission of Bids**, the procuring agency was required to follow the proper procedure as laid down in SPP rules. Rule 22 of SPP Rules clearly mentions the proper procedure for the extension of Time Period for Submission:

22. Extension of Time Period for Submission of Bids - The procuring agency may extend the deadline for submission of bids only, if one or all of the following conditions exist;

- Fewer than three bids have been submitted and procurement committee is unanimous in its view that wider competition can be ensured by extending the deadline. In such case, the bids submitted shall be returned to the bidders un-opened;

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- *If the procuring agency is convinced that such extraordinary circumstances have arisen owing to law-and-order situation or a natural calamity that the deadline should be extended;*
Provided that the advertisement of such extension in time shall be made in a manner similar to the original advertisement

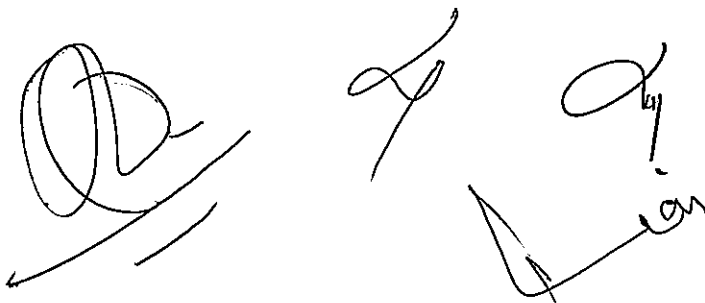
However, the procuring agency violated the Rule 22 and neither published the corrigendum in News Papers nor hoisted on PPMS website whereas the procuring agency affixed the corrigendum on Notice Board which shows the irresponsible, careless attitude and adopted the procedure which is against the rules.

22. Regarding the CRC contention, the procuring agency denied that the bidder did not approach the agency for the CRC. However, from the perusal of record it is obvious that the CRC application was received in the quarters concerned and they were well aware of the complaint of the bidder. It was necessary for the procuring agency to hold the CRC meeting to hear the complainant and decide the matter within specified time which is clear violation of SPP Rule 31(5) of SPP Rules 2010 (amended upto date):

[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 32,12 | if the aggrieved bidder files the review appeal within ten (10) days of such transfer;13

23. 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(9).

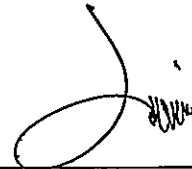

24. Regarding non-compliance of PPMS observations, the Review Committee observes that the procuring agency was intimated by the Authority that the corrigendum was not advertised in newspapers and was not uploaded on PPMS which is against the rules. It was advised to the procuring agency to cancel the NIT by invoking rule 25 of SPP rules and the procuring agency was restrained to proceed further. However, the procuring agency issued work orders by violating the rule 22 of SPP rules and 4.10 clause of SPPRA Guidelines for works.

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Review Committee Decision

25. After due deliberations, the Review Committee unanimously declares the instant tender as mis-procurement against the NIT's works listed below **No. 1. Construction of Retaining wall along Mirwah Distry RD 20,27,28 & Extension Repair of Modules along Mirwah Distry RD 0 to 70 IP & NIP sides (55 Nos) (P-02) No. 2. Construction of Retaining wall along Duabo Minor RD 0 to 09,13,&14 Right & Left/Side (P-05)** and refers the matter to the head of department for initiating disciplinary action against the Executive Engineer, Rice Canal Division Irrigation Department, Larkana under Rule-32(A) of SPP Rules, 2010 (Amended Up to date). In addition to this 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.

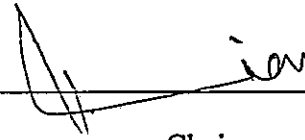
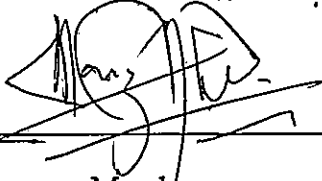
*Ask loss ten times
the added cost
Department is to be
recovered.*



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

Member
(Engr. Munir Ahmed Shaikh)
Independent Professional

Agree with - S.A. Gilani.



Member
(Manzoor Ahmed Memon)
Member SPPRA Board

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