GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY

NO.AD (L-II)/SPPRA/CMS-2154/2020-21/4074 Karachi, dated the 31st March, 2021

To,

Executive Engineer,
Highway Division,
Works & Services Department,
Government of Sindh,
KHAIRPUR

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 Abdul Hafeez Kolachi V/s Executive Engineer Highway Division Khairpur,** held on 10.03.2021 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, Works & Services Department.
2. The Superintendent Engineer, Highway Circle (Works & Services) 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 Appellants.

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

NO.AD (L-II)/SPPRA/CMS-2154/2020-21/4074 Karachi, dated the 31st March, 2021

(Appeal)

M/s Abdul Hafeez Kolachi (**Appellant**)

Versus

The Executive Engineer, High Way Division, Khairpur (**Procuring Agency**)

NIT ID # T00672-20-0005 dated 13.12.2020

Facts and Background

1. The appellant M/s Abdul Hafeez Kolachi Sukkur town ship Sukkur, lodged a complaint (vide letter dated 11.01.2021) addressed to the Superintendent Engineer, Works & Services Khairpur, Chairman Complaints Redressal Committee (CRC) against the above-mentioned NIT floated by the Executive Engineer Highways Division Khairpur. The procuring agency for the procurement of works whereby the appellant raised concerns regarding the bidding procedure, non-resolution of matter by CRC.
2. Subsequently, the appellant (vide letter dated 25.01.2021) preferred an appeal before the Review committee and submitted review appeal fees and stated that CRC was failed to resolve the matter. Therefore, the Authority listed the matter in a meeting of the Review Committee of SPPRA that was scheduled to be held on Wednesday,3rd March 2021 & 10th March 2021 at 11.00 a.m. under the Chairmanship of Managing Director, SPPRA in Committee Room of Sindh Public Procurement Regulatory Authority, Barrack No.8, Sindh Secretariat Block-4-A, Court Road, Karachi, for hearing of the appeal of the appellant in terms of Rule-3 1(5) read with 32 SPP Rules, 2010(amended up-to-date).
3. Accordingly, the appellant's case was taken up by the Review Committee for hearing in its meeting scheduled on 3rd March 2021 & 10th March 2021 at 11.00 a.m. and notices, in this regard, were already issued to the parties concerned as mentioned above. The meeting was attended by the Chairman and members of the Review Committee. Besides, The **Executive Engineer,Highways Division Khairpur,** head of the Procuring Agency committee and head of the procuring agency could not appear before the Review Committee and submitted that he was suffering from flu. Mr.Abdul Hafeez Kolachi attended the meeting being the representative of the appellant of the matter. As the procuring agency was absent for twice, the Review Committee decided to hear the appeal ex-parte.

The appellant's view

4. The appellant submitted that the procuring agency called bids on Single Stage single envelope procedure and bid opening date was scheduled on 5.1.2021.
5. The appellant also submitted that bid process started and they dropped the bids. The bids were opened by the procuring agency but did no reveal the rates. He also submitted that during that process of bid opening Mr.Ismail Rajper was totally harsh because the bidder wanted to record the situation.

6. The bidder claimed that he was restrained to record the situation and then police was called by the procuring agency. He also claimed that XEN was threatening to the bidder and XEN told them that he would distribute the works evenly. Then they left the office.

7. Furthermore, the firm argued that the firm requested to Chairman CRC to redress their complaint against the complaint and to redress it accordingly. However, CRC did not respond to their complaint. The complainant also claimed that the procuring agency has also failed to convene meeting of CRC and work orders should not be issued without disposing of the complaint which is violation of Rule-31(6).

8. The appellant's representative was asked that whether he had applied for the procurement in question. The appellant submitted that his firm had applied for the all the works of NIT in question.

9. The appellant's representative was asked whether he had submitted the bid security for the works and whether he had paid tender fess for all the works. The appellant replied in affirmative and said that he had paid bid security for all works and paid tender fees for all works.

10. The appellant's representative was asked to produce the documentary evidence for the submission of bid security for all works and tender fees accordingly. The appellant failed to provide the documentary evidence for the submission of bid security for all works of NIT.

The Procuring Agency's Version

11. As the procuring agency did not appear before the Review Committee twice, the committee decided the hear the appeal Ex-parte.

Observations of the Review Committee

12. The Review Committee observed that the bidder failed to produce documentary proof for the submission of bid security for all works. The complainant filed a complaint against the procuring agency, and subsequently appeal, knowing that the material statements in the complaint or the information provided was not true. The appellant submitted a false statement that he had applied for all works whereas, the appellant was not successful to prove the same.

13. The Review Committee also observed that the complaint made by the complainant was frivolous because the appeal lacks a legal basis nor it has any basis on the merits. The appeal seems to be irrational, meritless and out of reason.

14. The Review Committee observed that SPP Rules 2010(amended Up-To-Date) has provided the remedy to prevent such frivolous complaints. The Rule 32(7) states:

Unless the Review Committee recommends dismissal of an appeal being frivolous, in which case the bidder may lose the bid security deposited with the procuring agency

15. The Rule 32(7) is likely to ensure that only genuine complaints are entertained, and non-genuine complaints are taken up at different levels. Besides, the appeals would be

entertained with a warning that grievances found to be "frivolous " could lead to a stiff penalty of loosing the bid security of any bidder.

16. Mr. Riaz Hussain Soomro, Chairman of the Review Committee opined that the problem of frivolous Review appeals has plagued. Frivolous review appeals cause appreciable harm to many entities, and in many ways. The procuring agency against whom the groundless complaint is brought is subjected to serious harassment and inconvenience, pecuniary loss through necessary appearance, deprival of time from their work, and, in some cases, harm to reputation. The Review Committee itself becomes more clogged, disrupted, and delayed, thus affecting the appellants in general, and other persons who have their appeals delayed. The situation cries out for remedies to avert these harms.

Decision of the Review Committee

17. Given the proceedings findings/observations and after due deliberation, the review committee, in exercise of statutory powers conferred upon it under Rule 32(7)(a) ibid read with Sub-Section (1) Section-2 of SPP act 2009 declares the instant review appeal frivolous and declares the bid security submitted by the bidder as forfeited.

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

(Member)
Chief Engineer ® Haji Parpio Sahito
Independent Professional

(Member)
Manzoor Ahmed Memon
Member SPPRA Board

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