



GOVERNMENT OF SINDH  
SINDH PUBLIC PROCUREMENT REGULATORY  
AUTHORITY



No.AD(L-II) SPPRA/CMS- 2264/2020-21

Karachi, dated 03 May,2021

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

**REVIEW APPEAL**

*M/s. Asif Ali & M/s Sukkur Construction Company*

VS

The XEN Highway Division Matiari  
NIT ID Number T00615-20-0002 Dated: 31.01.2021  
NIT ID Number T00615-20-0003 Dated: 1-02-2021

**Facts and background**

The appellant M/S Asif Ali & M/s Sukkur Construction Company lodged complaints to the Chairman Complaint Redressal Committee against NIT ID Number T00615-20-0002 Dated: 31.01.2021 & T00615-20-0002 Dated: 1-02-2021 floated by the Executive Engineer Highway Division Matiari for the procurement of various works.

2. The appellant therein complained that the procuring agency did not open the bid sent by the courier service. The complainant further submitted that the procuring agency did not follow the transparency in the bidding process.

3. Subsequently, the appellants 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)<sup>1</sup> read with Rule 32(5) *ibid*<sup>2</sup>.

4. Accordingly, the appellants' case was taken up by the Review Committee for hearing in its meeting scheduled on 31.03.2021 & 15.04.2021 at 11.00 a.m., and in this regard, the Authority issued notices to the parties concerned to appear in person, or depute authorized representative, well conversant with the procurement in question, along with the relevant

<sup>2</sup> 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;

<sup>3</sup> 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*<sup>3</sup>.

5. In compliance, the appellant appeared before the Review Committee whereas the procuring agency failed to appear before the Review Committee twice. Consequently, the Review Committee decided to hear the complaint *ex-parte*.

### **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

#### **The appellant's Version: M/S Asif Ali**

7. The bidder submitted that he sent his bid via M & P courier service for work # 4 in NIT:Ref No:TC/G-55/80 of 2021 PPMS IDT00615-20-0003 Dated: 1-02-2021 and for work #7,8,9 in NIT NO:XEN(H) TC/G-55/75 of 2021PPMS IDT00615-20-0003 Dated: 31-12-2020 and the same were received at the procuring agency's office. The bidder complained that when Bid Evaluation Report was published, the bidder's bids were not shown illegally.

8. The bidder also submitted that the procuring agency failed to manage open competitive bidding in the bidding process and violated the SPPRA rules & procedures in the bidding.

9. The bidder further submitted that as the procuring agency hoisted Bid Evaluation Report wherein his bids have not been shown by the procuring agency. The bidder claims that his bid was below than the bidder whose bid has been declared as lowest.

10. The bidder also submitted that the procuring agency has illegally managed the tender and has given the tenders to their favored person which is against the rules.

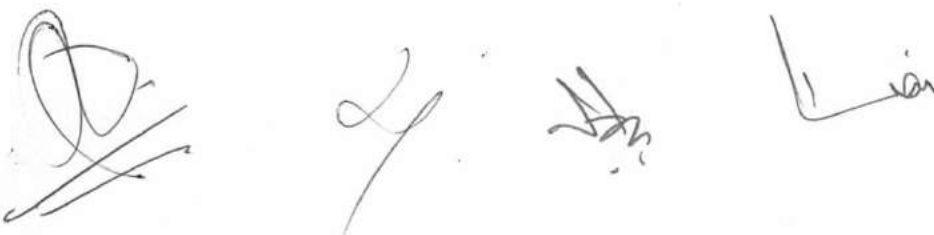
11. The bidder also submitted that the procuring agency has failed to follow transparency in the opening of bids.

12. The bidder also submitted that he had complained but his complaint has not been resolved accordingly. Therefore, he approached the Review Committee to get relief.

#### **The appellant's Version: M/S Construction Company**

13. The bidder submitted that he sent his bids via courier service for work # 1 & 5 in in in NIT NO:XEN(H) TC/G-55/75 of 2021 PPMS IDT00615-20-0003 Dated: 31-12-2020 and the

<sup>4</sup> On receipt of appeal, along with all requisite information and documents, the Chairperson shall convene 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 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.



same were received at the procuring agency's office. The bidder complained that when Bid Evaluation Report was published, the bidder's bid was not shown illegally.

14. The bidder also submitted that the procuring agency failed to manage open competitive bidding in the bidding process and violated the SPPRA Rules & procedures in the bidding.

15. The bidder further submitted that as the procuring agency hoisted Bid Evaluation Report wherein his bid has been not shown by the procuring agency. The bidder claims that his bid was below than the bidder whose bid has been declared as lowest.

16. The bidder also submitted that the procuring agency has illegally managed the tender and has given the tenders to their favored person which is against the rules.

17. The bidder also submitted that the procuring agency has failed to follow transparency in the opening of bids.

18. The bidder also submitted that he had complained but his complaint has not been resolved accordingly. Therefore, he approached the Review Committee to get relief.

#### **The procuring agency's version**

19. The procuring agency twice failed to appear before the Review Committee. The Committee decided to take ex-parte decision.

#### **Findings of the Review Committee**

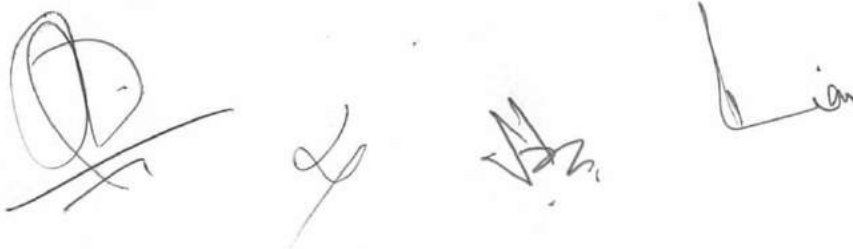
20. From the perusal of record, statement of the bidder and scrutiny of documents, the committee finds that there is contention regarding the non-opening of bids by the procuring agency that were sent by the bidders.

#### **Observations of the Review Committee**

1. Not opening of bid received through courier service.

21. The committee observed that the bidders sent his bids via courier service and the same were received at the office of the Executive Engineer. However their bids were not opened nor were returned back. The action of the procuring agency violates the SPP Rules and Regulation of works by SPPRA. The SPP Rules state:

#### **24. Submission of Bids:**



- (1) **Bids shall be submitted on the place, date and time and in the manner specified in the tender notice and bidding documents and any bid submitted late due to any reason whatsoever, shall not be considered by the procurement committee;**
- (2) **[The Bidders may submit bids on the bidding documents issued by the procuring agency or downloaded from the Authority's website along with tender fee if any by mail or by hand.]'**

22. The Rule 24 makes clear that the procuring agency shall open all the bids received by hand or by mail. Nevertheless, in the instant matter the procuring agency received the bids by courier service but did not open the bids of the bidders which is clear violation of SPP Rules 2010(amended up-to-date).

## 2. Issuing work orders without Decision of CRC

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.

- (3) **The Procuring Agency shall award the contract after the decision of the complaint redressal committee;**
- (4) **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.]**

24. 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.** Hence, 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 without CRC decision and final adjudication by SPPRA** which is clear violation of SPP rule 32(8).

25. The Procuring agency was also intimated by SPPRA that the procuring shall not proceed until the complaints are redressed. The observation of SPPRA is as under:

**The Procuring Agency is required to upload certificate duly signed by the Procurement Committee and head of the Procuring Agency certifying therein that complaints received have been resolved and uploaded on the**

website of the Authority or the Procuring Agency /complaint redressal committee has not received any complaint related to the instant procurement process , as the case maybe.

26. However, the procuring agency did not stop the procurement process and continued and signed the contract which is against the rules.

27. Furthermore, the Review Committee observes that it is the duty of the procuring agency to ensure that the Sindh Public Procurement Regulatory Authority Act, 2009 read with Sindh Public Procurement Rules, 2010, are adhered to strictly to exhibit transparency. Hence, 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 opening the bid of the bidder.

28. It may be noted 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 Authority to ensure openness of the transaction without withholding any information.

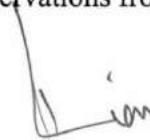
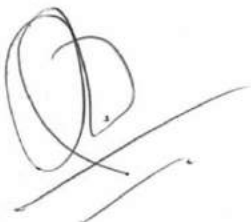
29. The committee also observed that not only SPPRA act 2009 but also SPP Rules 2010 also clearly define that the complete process of the procurement shall be carried out in a transparent manner. Rule 4 of SPP Rules states the principles of the procurement;

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.

30. 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;*

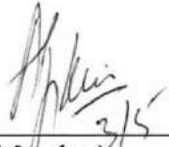
30. The procuring neither followed transparency nor adopted proper procedure. The bids received by the courier service were not procuring agency not the procuring agency redressed the complaints before the signing of contract. Above all, the procuring agency neglected the guidelines of the Authority which are issued in the shape of observations from time to time.



### Decision of the Review Committee

31. Given the proceedings, findings/observations and after due deliberation, the review committee, in the exercise of statutory powers conferred upon it under Rule 37(7)(g) *ibid* read with Sub-Section (1) Section-2 of SPP act 2009 takes the following decision:

- i. Declares the instant Procurement as **Mis-procurement of works for work # 1,5, 7,8,9 in in NIT NO:XEN(H) TC/G-55/75 of 2021 PPMS IDT00615-20-0002. and for work # 4 in NIT: No: TC/G-55/80 of 2021 PPMS ID T00615-20-0003** Rules 2(aa), 4, 24& 31(7) of SPPR Rules 2010(amended-uptodate).
- ii. The matter shall be referred to the Secretary Irrigation & Power Department for the initiation of disciplinary action against the officials of the procuring agency.
- iii. The contractor and procuring agency have incurred loss to the exchequer by violating the rules therefore according to the commitments of Integrity Pact ten times amount of loss shall be recovered from the contractor.
- iv. The matter shall be referred to the Sindh Enquiries and Anti-Corruption Establishment for initiating action against such officials in terms of-Rule 32A (2) *ibid*.



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



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(Member)  
Chief Engr®. Haji Parpio Sahito  
Independent Professional



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(Member)  
Manzoor Ahmed Memon  
Member SPPRA Board



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(Chairman)  
Riaz Hussain Soomro  
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Sindh Public Procurement Regulatory  
Authority