



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



No.AD (L-II) SPPRA/CMS-2253/2021-22 / 4021 Karachi, dated the, 08th December, 2021

To,

The Secretary to Government of Sindh,
Works & Services Department,
Karachi

Subject: **DECISION OF THE REVIEW COMMITTEE IN APPEAL M/S SAIF ENTERPRISES VS EXECUTIVE ENGINEER, MACHINERY MAINTENANCE DIVISION KHAIRPUR@SHIKARPUR.**

The undersigned is directed to refer to the cited above and to enclose herewith a copy of the Authority's Review Committee decision (M/s Saif Enterprises) V. Executive Engineer, Machinery Maintenance Division Khairpur @ Shikarpur, held on 25th November 2021, for your information and further necessary action, under intimation to this Authority, at the earliest.

✓ ASSISTANT DIRECTOR (LEGAL-II)

A Copy alongwith enclosures/decision is forwarded for information to:

1. Chief Engineer, Highway, Sukkur.
2. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
3. The Superintendent Engineer, Highway Circle Shikarpur.
4. The Executive Engineer, Machinery Maintenance Division, Khairpur @ Shikarpur .
5. Assistant Director (IT), SPPRA (with advice to post the decision on the Authority's website in terms of Rule-32(11) of SPP Rules, 2010).
6. The Staff Officer to the Chairman / Members Review Committee.
7. M/s Saif Enterprises, Teghani Mohalla, Kandhkot Road, Shikarpur. (Cell No. 0302-3697513)



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No.AD (L-II) SPPRA/CMS-2253/2021-22

Karachi, dated the, ~~November 02~~^{December}, 2021

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

REVIEW APPEAL

Preferred by:

M/s Saif Enterprises

VS

The Executive Engineer, Machinery Maintenance Division Khairpur @ Shikarpur
(Works & Services Department)

PPMS ID NIT NO. Number T00138-20-0004 Dated: 19-01-2021

This Review Appeal has been preferred by the *M/s Saif Enterprises* "appellant" against the impugned decision announced by the Complaint Redressal Committee (CRC) of the procuring agency, "The Executive Engineer, Machinery Maintenance Division Khairpur@ Shikarpur" vide letter NO.S.E(PHCWB)/BB/724 Larkana dated 12.04.2021. The appeal has following prayer:

"It is requested that tendering process may kindly be declared as mis-procurement and officers involved i.e Chief Engineer, Syed Ashfaq Shah and the then Executive Engineer on current charge basis, Mr.Abdul Sattar Shah, I/c Tender Clerk Mr.Waheed Qureshi may be recommended for major penalties as per departmental service rules because of their corrupt practices and their cases may be referred to NAB for detailed enquiry and investigation"

Background of the Case.

2. The bids were called by the Procuring Agency the Executive Engineer, Machinery Maintenance Division Khairpur@Shikarpur vide Nit No.TC/G-55/81,dated 21.01.2021 PPMS NIT ID# T00138-20-0004.Subsequently the bid opening was scheduled to be held on 17-02-2021 at 12:20 P.M in the office of the Executive Engineer Machinery Maintenance Division Khairpur @ Shikarpur therein the controversy started between the appellant and the procuring agency over the opening of bids. The appellant claimed that the procurement committee left the office without opening the bids and complained the same to the Chief Engineer Highways Sukkur /Chairman CRC vide letter Ref.NO.531 dated 25.02.2021.Meanwhile,the procuring agency prepared the Bid Evaluation Report and the same was uploaded on the SPPRA's website on 1st March 2021.The bidder once again approached to the Chief Engineer, Highways, Sukkur against the Bid Evaluation Report issued by the procuring agency vide letter No.Ref.532 dated 01.03.2021 with a request to decide the matter with in stipulated time as per rules.

3. As the Complaint Redressal Committee (CRC) failed to decide both complaints within stipulated time, the appellant approached the Review Committee of SPPRA vide letter No.Ref.532 dated

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08.03.2021, wherein it is stated that the Bid Evaluation Report (BER) issued by the procuring agency is fabricated. The appellant thereafter submitted that he sent his bid via courier service but the bids were not opened nor his bid was shown in the challenged Bid Evaluation Report that was uploaded on 1st March 2021.

4. The appellant alleged that the minutes of the meeting issued by the procuring agency are dubious and fake. He pointed out that the challenged BER was self-contradictory in nature because the minutes of the bid opening mentioned that only 6 bidders purchased the bidding documents and the same number of bids i.e 6 were received back. On the other hand, the attendance sheet had been signed by 36 persons. The appellant also informed that the procuring agency had incurred loss to the government exchequer by not adopting the open competitive bidding, violating rules, disregarding transparency, issuing fake Bid Evaluation Report.

5. Subsequently, the matter was heard by the Review Committee in its meeting held on 16.03.2021 wherein the representative of the procuring agency denied the claims and blames of the appellant and submitted that bids were opened publicly, evaluated as per evaluation criteria and submitted that the procurement process was completed competitively in the instant NIT but the contract had not been awarded. The procuring agency also informed that the appellant's bid was received by courier but on the day of opening, he got his bid back/snatched for checking/verification and did not return.

6. The Review Committee heard both the parties and announced its decision vide Decision No.DD (L-II)/ dated 31st March, 2021. The Review Committee stopped the procuring agency from awarding the contract and ordered to place the matter of the appellant before the Complaint Redressal Committee (CRC) under Rule 31 (7) of SPP Rules. The operative Para of decision is reproduced as under:

"Given the proceedings findings and observations and after due deliberation the Review Committee unanimously decided that since the procuring agency has not awarded any contract (as confirmed by the Procuring agency's representative) therefore, Procuring Agency shall not award the contract under Rule-31(7) of SPP Rules, 2010 against the instant NIT i.e. W/R of Road from N-55 Jail Chowrangi to Mari Chowk via Shahi Bagh and approach to court at city Shikar-pur(7.00) (Km)ADP NO;2512 (2019-20)" and directed to the Procuring Agency to place the matter before the Complaint Redressal Committee (CRC) within seven days to decide the matter and intimate the decision to the aggrieved bidders and the Authority within three working days under Rule-31(4) of SPP Rules, 2010".

7. Then after, the procuring agency placed the matter before the Complaint Redressal Committee and the Complaint Redressal Committee announced its decision vide letter NO.S.E (PHCWB)/BB/724

Larkana dated 12.04.2021. The complaint Redressal Committee prohibited the procuring agency from the violation of SPP Rules and directed the procuring agency to complete the procurement process in a transparent manner by following the SPP Rules. The operative Para of the decision of the Complaint Redressal Committee is reproduced as under:

In the light of above deliberations of the committee concluded/ decided that CRC under rule 31(4) a Prohibits the procurement committee (PC) procuring agency from acting or deciding in the manner inconsistent with rules and regulations. PC procuring agency is to conduct Procurement proceeding in the transparent manner recording minutes in actual and comply with other statutory obligations categorically with the sole responsibility at their (PC) end Since the work has not been awarded uttered by the Executive Engineer confirmed by me Executive Engineer i.e similar version during review committee proceedings therefore the Executive Engineer Machinery Maintenance Division Khairpur@ Shikarpur "the procuring agency" is required forthwith to follow SPPRA rules and regulation strictly against the instant NIT.

8. The appellant was not satisfied with decision of the procuring agency's complaints redressal committee and lodged an appeal to the Review Committee within ten (10) days of announcement of the decision i.e on 21.04.2021 and stated that he had not withdrawn the bid security that was deposited by him. The appellant challenged the composition of CRC, competency of Superintendent Engineer, content of the decision of the Complaint Redressal committee and requested for the declaration of mis-procurement thereof.

9. Meanwhile the bidder filed a C.P in the Honorable High Court of Sindh @ Karachi and requested the court to issue the direction to the Review Committee to decide the matter of the appellant. The Honorable High Court of Sindh @ Karachi in C.P NO.3107/2021 dated 5th May, 2021 directed the Review Committee of SPPRA to decide the matter of the appellant within ten days as per rules.

10. Accordingly, the appellant's case was taken up by the Review Committee for hearing in its meeting scheduled on **25.11.2021** and in this regard, the Authority (vide letter dated 22.11.2021) issued notices to the parties concerned to appear before the Review Committee along with the relevant documents and evidence, if any, on the scheduled date, time and venue to present and/ or defend the case in terms of Rules-32(6), (8) & (10) *ibid*¹

11. In compliance, the representative of the appellant appeared before the Review Committee whereas the procuring agency was represented by the Executive Engineer Machinery Maintenance Division Khairpur @ Shikarpur.

¹ 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 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.



REVIEW COMMITTEE'S PROCEEDINGS

12. The meeting was started by the Recitation from the Holy Quran and welcoming all the members and participants.

The appellant's version

13. The appellant submitted that he sent his bid via courier and bids were not opened on the scheduled date and time and BER was issued illegally. He had approached the Review Committee because the CRC was failed to decide his both complaints. On the direction of the Review Committee he had approached CRC wherein he again filed a Review appeal because he was not satisfied with the decision of CRC.

14. The bidder submitted that the Composition of Complaint Redressal Committee was not as per the notification of CRC uploaded on PPMS wherein the CRC was headed by the Chief Engineer Highways Sukkur whereas on the contrary to the notification the meeting was headed by the Superintendent Engineer Highways Larkana which the appellant considers against the rules.

15. The appellant further submitted that the superintendent Engineer was not competent to conduct the CRC meeting as the amount of NIT was more than his delegated limit.

16. The appellant also raised his reservations on the para-4 of the decision of the Complaint Redressal Committee and submitted that the Complaint Redressal Committee did not emphasize their version in true spirit.

17. The appellant also denied that para-7 of the decision of the Complaint Redressal Committee and informed the Review Committee that it was mistakenly inserted because he had loudly and vociferously stated that the appellant neither snatched the bids nor any incident happened. It was just a tactic of the procuring agency to deprive him of participating in the bidding process.

18. The appellant also informed the Review Committee that although he had received the decision of the Complaint Redressal Committee on 18.4.2021 after the lapse of 6 days because it was issued on 12.4.2021, yet he was able to file the Review Appeal to the Review Committee within 10 days i.e on 21.4.2021.

19. The appellant also contended that the procuring agency illegally awarded contract as the Complaint Redressal Committee (CRC) had prohibited the procurement committee from acting or deciding in a manner, inconsistent with these rules and regulations. Even then, the Procuring agency did not rectify the mistakes and awarded the contract in contravention of SPP Rules.

20. The appellant also contended that the CRC had directed the procuring agency to ensure that procurements is conducted in a fair and transparent manner and the procurement process is efficient and as per rules but the procuring agency failed to comply with the decision of its own Complaint Redressal Committee (CRC).

21. The appellant was asked by the Review Committee about the silence on the question of snatching of bids during the CRC meeting. The appellant categorically denied such alleged silence and contended that he never remained silent. The appellant also contended that had he been silent, he would not have approached the Honorable Court and the Review Committee for the Resolution of matter.

22. The Appellant has also claimed that he had not withdrawn the amount that he had submitted for the bid security.

The Procuring agency's Version:-

23. The procuring agency reiterated that the bidding process was completed as per rules and no any violation was committed. The procuring agency said that the bidder had snatched the bids during the bid opening process and went away.

24. It was also argued by the procuring agency that CRC did not prevent the procuring agency from awarding of work and the signing of contract and the CRC decision had just prohibited the violation of rules and regulations so the same was complied with.

25. The procuring agency also informed that after the decision of CRC, the work was awarded to the successful bidder as it was allowed to award the contract after the decision of the Complaint Redressal Committee under rule 31(6) of SPP rules 2010 amended up-to-date.

26. The procuring agency also clarified that they were not required to wait until the expiry of appeal period or the final adjudication by the Review Committee for the awarding of work because the said rule was only applicable in case of the failure of CRC. As the CRC announced its decision the procuring agency was allowed to proceed and the same was done in accordance with the rules.

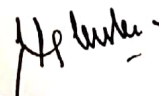
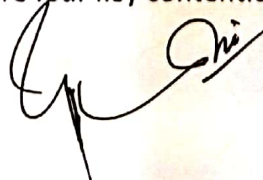
27. The procuring agency also informed that the bidder remained silent on the question of snatching of bids during the CRC meeting and the same had been recorded by the CRC in its meeting minutes/decision.

28. In reply to the question regarding the rectification of minutes of the meeting of the procurement committee, the procuring agency told that there were no clear direction for the reissuance of the meeting minutes, therefore, no any addendum to the minutes of the meeting of procurement committee was issued nor the minutes were redrafted.

29. The Procuring Agency/(Executive Engineer) also informed that no any F.I.R was registered against the bidder and informed that work had been awarded and payment was being done as per the release of amount.

Findings of the Review Committee

From the perusal of record, statements of the bidder and the procuring agency and the scrutiny of documents, the committee finds that there are four key contentions between the parties.



30. Firstly, the bidder contends that the procuring agency did not open his bid illegally whereas the procuring agency claims that the bidder snatched the bid during the bid opening.

31. Secondly, the bidder also contends that the procuring agency failed to comply with decision its own Complaint Redressal Committee on the other hand the procuring agency contends that CRC decision was compiled with.

32. Thirdly, the bidder submitted that the procuring agency has illegally awarded the contract without complying with the decision of CRC. Contrarily, the P.A has argued that the contract was awarded legally.

33. Fourthly, the bidder submitted that the procuring agency has not followed the transparency in the procurement which is against rules and the P.A believes variably.

Observation of the Review Committee.

34. From the perusal of record, statements of the bidder and the procuring agency and the scrutiny of documents, the Review committee observed that:

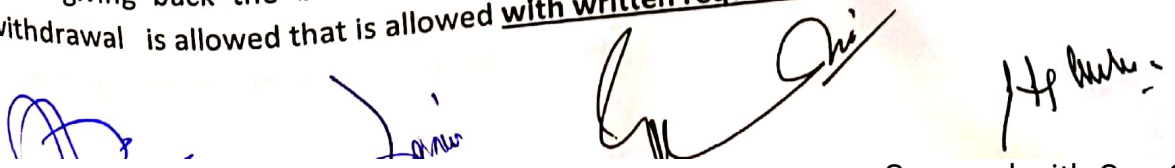
35. The procuring agency received the bid of the bidder but did not open the same. It was mandatory upon the procuring agency to open the bid which was received. However, the procuring agency failed to open the bid which is clear violation of rules.

36. The procuring agency contended that the bidder snatched the bid and did not return back to the procurement committee. The Committee observed that the statement of the procuring agency is self-contradictory in nature. The procuring agency stated before the CRC in (para-6) that "the envelope was given to check properly and rerun back to open in presence of the other bidder". On the other hand the procuring agency claims that the bidder snatched the bid and went out.

37. Even if it is assumed that the procuring agency had given the bids to the bidder for verification was it allowed under SPP Rules? The answer will be in negative. The SPP Rules are clear with regard to the submission and opening of bids. It is the responsibility of the procuring agency to properly manage the bids which are received to the procuring agency via mail or by hand. For that purpose SPPRA Regulation of works has provide the mechanism of tender box.

Regulation 7.1(C) (e) The bids will be dropped in the locked Tender Box or Cabinets may be used or when the tenders are in large volumes or in envelopes that are large or thick, they may be directly received by an assigned officer/official of the procuring agency. The key of the box should remain in possession of the officer who opens the tenders.

38. The regulation mentioned supra makes clear that the once the bids are received, these come in the custody of the procuring agency and the same will be opened. There is no any mechanism that may allow giving back the bids to the bidders for verification or checking even any modification or withdrawal is allowed that is allowed with written request prior to the submission of bids. Therefore,



if it is assumed that the bid was given back during the time of bid opening for any reasons i.e for checking or verification was also illegal and against the Rules/procedure.

The procuring agency also failed to satisfy the Review Committee that the bidder snatched the bid forcefully or fraudulently because there is no evidence available that may prove that the bidder snatched the bid. The procuring neither recorded the incident in the minutes of the bid opening meeting nor took any legal action timely. Therefore, the Review Committee is left with no option except to believe that the snatching was not happened.

40. The Review Committee observed that the signing of the contract by the procuring agency was a mistake. The Complaint redressal Committee had prohibited the procuring agency from acting or deciding in a manner, inconsistent with these rules and regulations. The procuring mistakenly considered that the this prohibition from the violation of rules was general not specific and it was for the future course of action i.e during the awarding of the work and signing of the contract whereas such prohibition was declared due to the actions already taken not for the future course of action. Besides, the decision was specifically announced after the complaint of the appellant it was not a general order.

41. The Committee also observed that the CRC had directed to the procuring agency to follow the procurement process in a transparent manner be observing rules and recording minutes in actual. The operative Para is reproduced as under:

"PC is to conduct Procurement proceeding in the transparent manner recording minutes in actual and comply with other statutory obligations categorically with the sole responsibility at their (PC)"

42. The procuring agency failed to follow the directions of Complaint Redressal Committee and signed the contract without rectifying the mistakes, following transparency opening the bid of the appellant and violating the principles of the open competitive bidding. Hence, the signing of the contract by the procuring agency was an illegal and against the decision of CRC & court's decision & Review Committee.

43. The Review Committee also observed that the procuring agency was required to follow the transparency in the complete process. The Rule 4 of SPP Rules is as under:-

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.

44. Whereas, in the instant procurement the procuring agency did not open the bid of the appellant, did not resolve the complaints, violated rules, could not make the custody of the bid, signed contract illegally and also did not comply with the decision of the of CRC as well as earlier decision of Review Committee. Theses all violations make clear that the procuring agency failed to complete the procurement in a transparent and fair manner.

Decision of the Review Committee:-

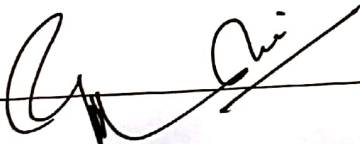
45. Given the proceedings, findings/observations and after due deliberation, the review committee, in exercise of statutory powers conferred upon it under Rule 32(7)(g) ibid read with Sub-Section (1) Section-2 of SPP act 2009 (i) declares the instant Procurement as **Mis-Procurement**.
(ii) The Review Committee decides to refer the case to the Competent Authority i.e. Secretary to Government of Sindh, Works & Services Department for initiation of disciplinary proceedings as per law against the officers/officials of the procuring agency responsible for the Mis-procurement, payment to Government as per Indemnity Agreement and payment to loss to bidder as provided in Rule-89 of SPP Rules.



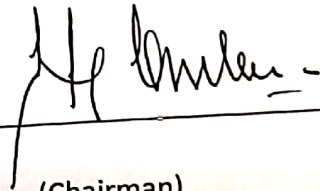
(Member)
Manzoor Ahmed Memon
Member SPPRA Board



(Member)
Munir Ahmed Shaikh
Independent Professional



(Member)
G. MOHI-UDDIN. ASIM
Representative of P & D Board,
Planning & Development Department Karachi



(Chairman)
Abdul Haleem Shaikh
Managing Director
Sindh Public Procurement Regulatory Authority
(SPPRA)