



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-2346/2020-21/4024 Karachi, dated the 09th December, 2021

To,

The Secretary,
Education & Literacy Department,
Government of Sindh,
KARACHI.

Subject: DECISION OF THE 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 GMS Builders V/s Executive Engineer, Education Works Division Sujawal, held on 02.12.2021, for taking further necessary action under intimation to this Authority, at the earliest.


ASSISTANT DIRECTOR (LEGAL-II)

A copy is forwarded for information and necessary action to:

1. The Superintendent Engineer, Chairmen (CRC), (Education Works) Concerned Education Works Circle Sujawal.
2. The Executive Engineer, Education works Division Sujawal.
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.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY
AUTHORITY



No.AD (L-II) SPPRA/CMS-2346/2021-22

Karachi, dated the, 06th December, 2021

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

REVIEW APPEAL

Preferred by:

M/s.GMS Builders

VS

The Executive Engineer, Education & Works Division Sujawal
(Education & Works Department)

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

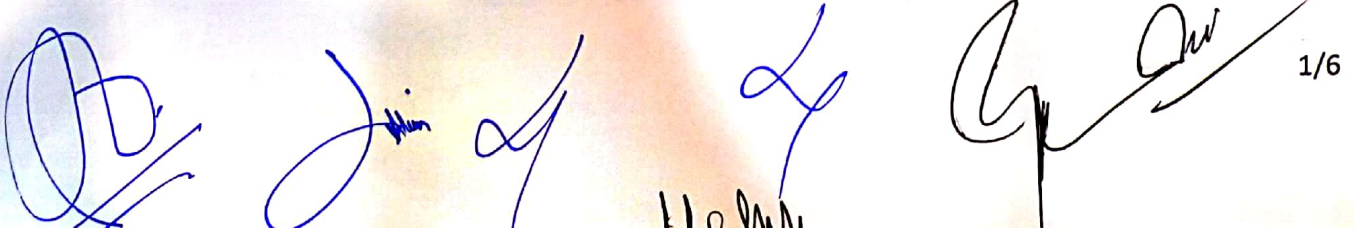
This Review Appeal has been preferred by the *M/s.GMS Builders* "appellant" in terms of Rule 31(5) read with Rule 32 of SPP Rules against the procuring agency, "The Executive Engineer, Education & Works Division Sujawal". The appeal has been preferred by the appellant with the following prayers:

- i. *Declare the case to be one of mis-procurement.*
- ii. *Declare that the procuring agency is in breach of its obligations under the Act, Rules and SPP Regulations*
- iii. *order the procuring agency for the payment of compensation by the officer(s) responsible for mis-procurement for cost incurred by the appellant on preparation of bid*
- iv. *Prohibit the procuring agency from the violation of rules.*

Background of the Case

2. The bids were called by the Procuring Agency the Executive Engineer, Education & Works Division Sujawal 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(First date) in the office of the Executive Engineer Education & Works Division Sujawal. The bidder sent his bid via courier services therein the controversy started between the appellant and the procuring agency over the opening of bids. The appellant claimed that the procurement committee was not present at the time of opening of bids and bid opening was not held nor any corrigendum was issued as required under law. Later on, the procuring agency uploaded the BER and the bid of the appellant was not shown in the BER.

3. The appellant complained the Superintendent Engineer, Education & Works Division Sujawal /Chairman Complaint Redressal Committee letter Ref.NO.531 dated 25.02.2021 and requested to Complaint Redressal Committee to prohibit the procurement committee from acting or deciding in a manner, inconsistent with these rules and regulations and also requested the Complaint Redressal



Committee chairman to decide the complaint timely. It was also prayed to the Complaint Redressal Committee that in case of failure of the Complaint Redressal Committee to decide the complaint, the procuring agency shall be prevented from awarding the contract, until the expiry of appeal period or the final adjudication by the Review Committee.

4. As the Complaint Redressal Committee failed to decide the complaint within stipulated time, the appellant approached the Review Committee of SPPRA vide letter No.Ref.532 dated 08.03.2021 wherein the bidder stated that the Bid Evaluation Report 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.

5. Accordingly, the appellant's case was taken up by the Review Committee for hearing in its meeting scheduled on 2.12.2021 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

6. In compliance, the appellant appeared before the Review Committee whereas the procuring agency was represented by the Executive Engineer, Education & Works Division Sujawal.

REVIEW COMMITTEE'S PROCEEDINGS

7. The meeting was started by welcoming all the members and participants.

The appellant's version

8. The appellant submitted that he is registered Contractor and possesses Experience and eligibility for participation in the bidding process.

9. The bidder submitted that he had sent his bids via courier service and the bid was received at the office of the procuring agency. However, the procuring agency failed to open his bid. The appellant further submitted that his bid was neither opened nor was shown in the Bid Evaluation Report.

10. The appellant also submitted that the procuring agency did not open the bids on scheduled time, date, venue mentioned in the NIT and bidding documents.

11. Furthermore, the appellant submitted that the procuring agency neither published the corrigendum nor uploaded on PPMS that was compulsory under the SPP Rules and Regulations.

12. Furthermore, the bidder submitted that his rates were lower than that of the contractor who have been shown as the successful by the procuring agency.

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.

13. The appellant also submitted that bid preparation cost a lot of money and the deprivation from participation in the bidding made him bear much loss financially.
14. The bidder also requested that he may be granted the compensation of the bid preparation.
15. Responding to a question regarding the bid security with drawl, the bidder submitted that he had withdrawn the bid security because the bid validity period had expired due to delay in the decision of the Review Committee
16. The bidder was asked to provide the evidence for the submission of Complaint Redressal Committee application. The bidder showed the receipt of the complaint by the procuring agency.

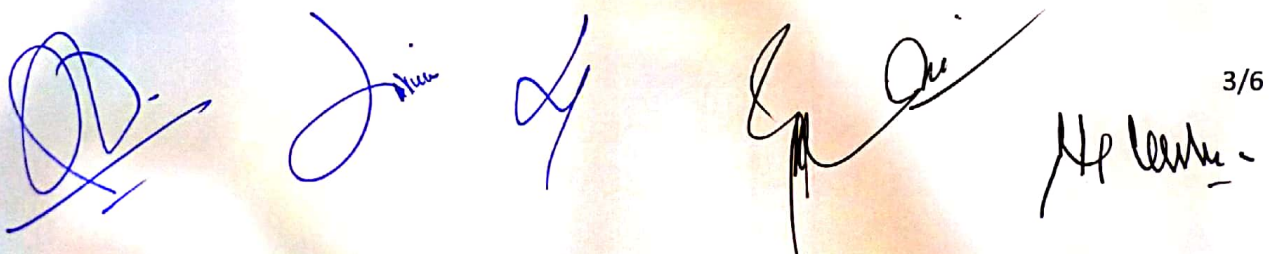
The Procuring Agency's Version

17. The procuring agency submitted that the bids were opened as per scheduled time, date and venue mentioned in the bidding documents. The procuring agency informed that the bids were opened on the second date of bid opening.
18. The procuring agency submitted that the appellant did not participate in the bidding process.
19. It was also informed by the procuring agency that the bidder had not approached Complaint Redressal Committee.
20. The procuring agency submitted that the corrigendum was affixed in the office and all bidders were informed that the bids will be opened on next date as mentioned in NIT.
21. The procuring agency submitted that the record available shows that the appellant had withdrawn his bid security
22. The Executive Engineer requested the Review Committee for the grant of next date and assured the Review Committee that he will bring the relevant documents, information and records of the procurement.
23. The procuring agency was granted time and date for the proving of record and any other information to prove their above said view point. However procuring agency failed to furnish any such information or record on the next date.

Findings of the Review Committee

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

24. Firstly, the bidder contends that the procuring agency did not open his bid illegally whereas the procuring agency claims that the bidder did not participate in the bidding.
25. Secondly, the bidder also contends that the procuring agency neither opened the bids on scheduled time, date and venue nor issued corrigendum on the other hand the procuring agency contends that corrigendum was issued.
26. Thirdly, the bidder submitted that the procuring agency has illegally awarded the contract without complying with the decision of Complaint Redressal Committee. Contrarily, the procuring agency has argued that the contract was awarded legally.
27. Fourthly, the bidder submitted that the procuring agency has not followed the transparency in the procurement which is against rules and the procuring agency believes variably.



Observation of the Review Committee

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

29. 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. The procuring agency contended that the bidder did not participate in the bidding process whereas the Review Committee observed that, the bidder paid tender fees, submitted bid Security and sent the bid via- Courier which was received by the procuring agency. These actions of the appellant are sufficient evidences to believe that the appellant had participated in the bidding process but his bid was not opened by the procuring agency illegally.

30. The procuring agency did not open the bids on the date neither issued corrigendum nor advertised such non-opening in a manner similar to the original advertisement. The procuring agency contended that the notice was affixed on the board of the procuring agency to inform the bidders that the bids will be opened on the next date of opening. The Review Committee observed that the SPP Rules and Regulations are clear about the issuance of corrigendum and it has been expressly described that the affixing of notice shall not substitute for the advertisement. The Regulation 10.4(ii) of SPP Regulations of Works states:

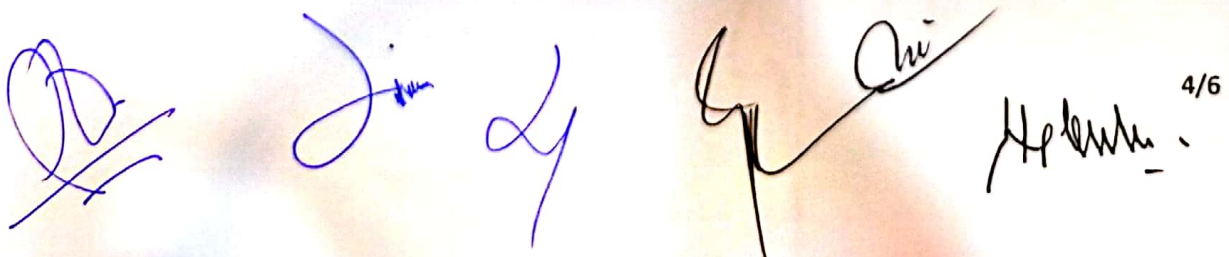
ii. Notice is to be advertised in a manner similar to the original advertisement. Affixing of corrigendum on notice board of office of the procuring agency cannot be a substitute to the requirement of publication in newspaper or hoisting on SPPRA website as the case may be

31. The supra mentioned regulation expressly states that the affixing of notice on the notice board of the procuring agency cannot be substituted for advertisement of the extension or any other corrigendum. Hence, it is clear that the procuring agency has violated the SPP Rules and Regulation because the procuring agency did not advertise the non-opening as required under rules.

32. The procuring agency failed to convene the meeting of Complaint Redressal Committee. It was contended by the procuring agency that the bidder had not approached Complaint Redressal Committee. However, the perusal of record makes evident that the bidder had approached Complaint Redressal Committee but Complaint Redressal Committee failed to decide the matter according to rules.

33. The procuring agency illegally awarded the contract without resolution of the complaint of the bidder. The Review Committee observed that signing of contract and issuing of work orders by the procuring agency without decision of Complaint Redressal Committee and without final adjudication of the Review Committee was against the SPP Rules.

34. The committee is of the view that the SPP Rule-31 describes the way of signing the contract if the complaint has been lodged.

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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).

35. 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 Complaint Redressal Committee decision and final adjudication by SPPRA which is clear violation of SPP rule 32(8).

36. The procuring agency failed to furnish the records of the procurement whereas as per rules procuring agency was mandatorily required to furnish the records of procurement before the Review Committee under SPP Rules. The Rule 32(8) states:-

"8. 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 as and when called and produce documents, if required".

37. The procuring agency was required to upload the contract document on PPMS website within fifteen days of signing of contract. However, the procuring agency failed to publicize the awarding of work which is against the rules. The Rule 50 of SPP Rules states that:-

50. Publication of the Award of Contract - [Within fifteen (15) days of signing of contract,]² procuring agency shall publish on the website of the Authority and on its own website, if such a website exists, the results of the bidding process, identifying the bid through procurement identifying number, if any, and the following information:

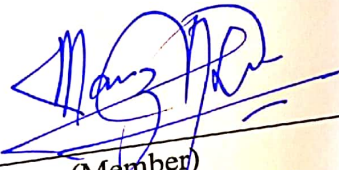
- (1) [Contract]' Evaluation Report;
- (2) Form of Contract and Letter of Award;
- (3) Bill of Quantities or Schedule of Requirement.


38. The procuring agency failed to complete the procurement process in a transparent manner as required under rules. The procuring agency failed to open the bid of the appellant, did not issue corrigendum, did not resolve the complaint, caused loss to the exchequer ,did not publicize the signing of contract, failed to produce the record and violated the SPP Rules and Regulations. Hence, it is evident that the procuring agency has violated the principle of transparency in the procurement process.


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Decision of the Review Committee:-

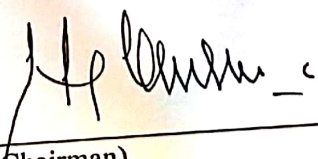
39. Given the proceedings, findings/observations and after due deliberation, the review committee, in exercise of statutory powers conferred upon it under Rule 32(7)(g) ibid read with Sub-Section (1) Section-2 of SPP act 2009:
- Declares the instant Procurement as Mis-Procurement.
 - The Review Committee decides to refer the case to the Competent Authority i.e Secretary School Education & Literacy Department for initiation of disciplinary proceedings against the officials of the procuring agency responsible for the Mis-procurement.
 - Orders the payment of compensation for cost incurred by the appellant on preparation of bid by the officer(s) responsible for Mis-procurement in terms of Rule 32(7) (e).
 - Orders the recovery of loss to the Government an amount equivalent to ten times, under integrity pact.


(Member)
Manzoor Ahmed Memon
Member SPPRA Board


(Member)
Syed Adil Gilani
Transparency International Pakistan


(Member)
Munir Ahmed Shaikh
Independent Professional


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


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

The loss of
