



GOVERNMENT OF SINDH  
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-2676/2021-22/0560

Karachi, dated the 10<sup>th</sup> January, 2022

To,

The Secretary,  
Works & Services Department,  
**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 Pakistan Civil & Electric Works V/s Executive Engineer, Provincial Building Division Health Works (Lower Sindh) Hyderabad) held on 09 & 30.12.2021, for your information and 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 Chief Engineer Building Division Hyderabad.
2. The Superintendent Engineer. Provincial Building Division Health Works (lower Sindh) Hyderabad.
3. The Executive Engineer, Provincial Building Division Health Works (Lower Sindh) Hyderabad.
4. 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)
5. The Staff Officer to the Chairman / Members Review Committee.
6. The Appellants.



GOVERNMENT OF SINDH  
SINDH PUBLIC PROCUREMENT REGULATORY  
AUTHORITY



No.AD (L-II) SPPRA/CMS-2676/2020-21

Karachi, dated the 6<sup>th</sup> January, 2022

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

M/s Pakistan Civil & Electric Works

Vs

Executive Engineer Provincial Building Division Health Works Lower Sindh  
Hyderabad

PPMS NIT NO. T10839-20-0002

Decision of the Review Committee held on 30.12.2021

| Date(s) of meeting(s) | 9.12.2021 & 30.12.2021   |   |  |
|-----------------------|--|---|--|
| Appellant             | <u>M/s Pakistan Civil &amp; Electric Works</u>   |   |  |
| Procuring Agency      | <u>Executive Engineer Provincial Building Division<br/>Health Works Lower Sindh Hyderabad</u>  |   |  |
| Appeal received on    | 16.06.2021   |   |  |
| Bid Opening date      | 24.05.2021   |   |  |
| Bid Evaluation Report | 02.06.2021   |   |  |
| Contract signed       | Not posted as yet. <i>(Complains that contract is not awarded)</i>   |   |  |
| Sr.                   | Appellant's Version  | Procuring Agency  | Remarks/Rules  |
| 1.                    | The appellant submitted that the Secretary Works and Services Department had transferred the project of namely "Establishment of paed's cardiac unit at NICVD Karachi ADP 562 2020-21" to the Executive Engineer Provincial Building Division No.II Karachi and the Executive Engineer Provincial Building Division II had also assumed the charge for the said project on 21.5.2021 as per the notification of Secretary Works and Services Department. | The Executive Engineer procuring Provincial Building Division Health Works Lower Sindh Hyderabad submitted that he was empowered by the Chief Engineer Buildings Hyderabad to conduct the procurement process in the wider public interest. | The Review Committee observed that the Secretary Works and Services Department had allowed to the Executive Engineer Provincial Building Health Works Division II Karachi to execute the scheme 562/2020-21. Furthermore, from the perusal of record available it appears that the Executive Engineer had also assumed the |

*(Handwritten signatures and initials)*

|           |  |  |   |
|-----------|--|--|---|
|           | <p>However, the Executive Engineer Provincial Building Division 1. Health Works Lower Sindh illegally floated NIT for the procurement of works for the said scheme.</p>  |  | <p>charge of the said works.</p>  |
| <p>2.</p> | <p>The appellant submitted that the mega project was initially awarded to the Contractor Abdul Majeed &amp; Company two years ago and work has been abandoned since two years in order to increase the project cost. The appellant also informed that the earlier contractor had left the work illegally but no action was taken against such contractor who caused the loss to the exchequer.</p> | <p>The Executive Engineer submitted that the earlier contractor had not completed the contract obligations because the cost of the project had been increased due to inflation. He clarified that the earlier contract was awarded by the then Project Director.</p> <p>The Executive Engineer also informed that the matter of such contract is sub-judice before the Honorable High Court of Sindh @ Karachi.</p> <p>The Executive Engineer submitted that the work was terminated and tender was floated to procure the works afresh In order to complete the works timely.</p> |   |
| <p>3.</p> | <p>The appellant further submitted that the tender was again called by the Executive Engineer Provincial Buildings Division Health Works Lower Sindh Division 1 Hyderabad by changing the scope of the work without getting approval from the relevant forums.</p>   | <p>The Executive Engineer submitted that the fresh tender had been floated in order to complete the works that was left by the then contractor.</p> <p>The XEN informed that due to the increase in the cost of steel and other items, the cost of the work had increased and it was not possible to procure the same work in the same cost. Hece, he had called the bids with some</p>  | <p>The Review Committee observed that the Executive Engineer changed the scope of work when he called the bids afresh without getting approval from the Planning and Development Board, Planning and Development Department</p> |

Hece

|    |   |   |  |
|----|---|---|--|
|    |   | <p>changes in the work items.</p> <p>The Executive Engineer informed that the Revised PCI had been submitted to the Planning and Development Board, Planning and Development Department for approval and necessary action.</p>  | <p>Furthermore, it was observed that the Executive Engineer had neither gotten the Revised PC I approved from the competent forum nor the procedure was followed for changing the scope of the work.</p>   |
| 4. | <p>The appellant complained that the procuring agency "the Executive Engineer Provincial Buildings Health Work Lower Sindh Division 1 Hyderabad misused his power and called the bids without international competitive bidding and without conducting the Pre-Bid meeting.</p>   | <p>The procuring agency denied any misuse of power and submitted that the National Competitive bidding method was adopted.</p>  | <p>The Review Committee observed that as per the SPP Rules 2010(amended up-to-date), the procuring agency was required to call the bids by adopting the International Competitive bidding process.</p>   |
| 5. | <p>The appellant complained that only two bidders had submitted the tender i.e the appellant and M/S Maqbool Ahmed and Co in the presence of the Executive Engineer Provincial Buildings Division II Karachi but the tenders were not opened due to the presence of the XEN Provincial Building Division 1 Hyderabad.</p> | <p>The procuring agency informed that the bids were opened at scheduled time &amp; venue in the presence of procurement committee and the bidder but appellant had not submitted his bid to the office of the <u>Executive Engineer, Provincial Building Division II Karachi</u> instead of submitting to the office of the</p> | <p>It was noted that the appellant had submitted his bid to the office of the Executive Engineer, Provincial Building Division II Karachi instead of submitting to the office of the <u>Executive Engineer Provincial Building Division 1 Health Works Lower</u></p> |

Handwritten initials in blue ink

|   |  |  |  |
|---|--|--|--|
|   |  | procuring agency.  | <u>Sindh Hyderabad</u>   |
| 5 | The appellant submitted that the procuring agency had not opened bids on scheduled time but Bid Evaluation Report had been uploaded on PPMS website on 02.06.2021. The bidder complained that BER was fake, dubious and managed  | <p>The procuring agency informed that the Bid Evaluation Report had been uploaded on PPMS website by the procuring agency after the proper evaluation of bids.</p> <p>The Procuring Agency clarified that 1 bidders had participated in the bid opening process and the minutes of the bid opening meeting, and attendance sheet signed by the bidder are documentary evidences that the bid opening was held on 24.05.2021 in a transparent manner.</p> | The Review Committee observed that the procuring agency had inserted difficult and discriminatory conditions therefore the participation could not be enlarged.  |
| 6 | The appellant complained that the procuring agency had issued work orders whereas the Review Appeal of the appellant was pending before the Review Committee. The appellant claimed that such signing of contract by the procuring agency was against the SPP Rules & Regulations. | <p>The procuring agency clarified that work orders were issued to the successful bidders who fulfilled the requirement, furthermore, the appellant had not submitted his bid hence there was no question of the complaint and the Review Appeal.</p> <p>The procuring agency claimed that there was no legal obligation upon the procuring agency to stop the procurement process and not to award the work.</p>   | The Review Committee noted that the procuring agency was required to issue the work orders after the announcement of the decision of the CRC, otherwise the procuring agency was required not to sign the contract till the expiry of the appeal period or after the final adjudication of the Review Committee. |

Handwritten initials in blue ink

|   |  |  |  |
|---|--|--|--|
|   |  | The procuring agency submitted that the appellant was not intending bidder he just wanted to obstruct the procurement process and requested to the Review to check the Bid Security-documents of the appellant.  |  |
| 7 |  | Replying to a question, regarding the non compliance of the observations of the Authority that are communicated on PPMS Website, the procuring agency clarified that the procurement process was completed in accordance with the Rules and the regulations. | The Review Committee observed that the procuring agency had not complied with the observations that were communicated on PPMS website. |
|   |  | <u>Status of the procurement</u>   |  |
|   |  | Responding to a question regarding award of work, the procuring agency informed that the procurement contract had been signed to the successful bidder.  |  |

**Findings of the Review Committee;**

1. **The Committee observed that the procuring agency had illegally changed the scope of work when the instant NIT was re-tendered.** It is a well-known reality that the physical and financial scope of a project, as determined and defined in the project document (PC-I), is appraised and scrutinized by the agencies concerned before submitting it for approval of competent forum i.e Provincial Development Working Party(PDWP) or others. Once approved, the executing agency is required to implement the project in accordance with the PC-I provisions. It has no authority to change and modify any approved parameter of the project on its own. If the sponsoring agency feels that the project could not be implemented in accordance with the approved parameters, a revised PC-I is submitted for approval of the competent forum immediately. No expenditure is undertaken beyond the approved scope and cost of the project, and if done, it is to be considered as illegitimate expenditure.
2. In the instant matter the Executive Engineer changed the scope of work and removed the various items from the scope of work and such change in the scope of work is considered as a

major deviation to the commercial requirements and technical specifications of the development work.

3. The SPP Regulation of works has expressively stipulated that in case modification, alteration, variation and change in the scope of work is done, it is necessary to Revise the PCI and issue Revised Administrative Approval. The SPP Regulation 11.1.3 states

**11.1.3 Revised Administrative Approval:**

**PC-I of the scheme/work is required to be revised when any of the following conditions exists:-**

- (i) **original scope is modified/changed, even though the cost of the same may possibly be covered by savings on other items in the original rough cost estimate;**
- (ii) **When the expenditure on a work/scheme exceeds, or is found likely to exceed the administratively approved amount by more than 15 percent. Timely submission of revised rough cost estimate is required for revised administrative approval to maintain un-interrupted continuity in execution, and same should be obtained from the authority competent to approve the enhanced cost. No excess can be allowed over the revised cost.**

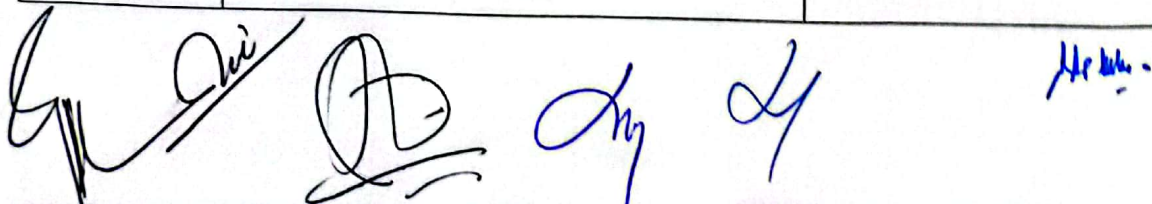
4. Reading and analysis of the above mentioned regulation make clear that the procuring agency illegally changed the scope of work without following the proper procedure and without getting necessary approval from the competent forum.

5. Furthermore, it was observed by the Review Committee that the Executive Engineer was working without legitimate Authority. It is better to throw light on the background of the execution of scheme 562/2020 in order to understand the matter accordingly.

6. Firstly, ADP scheme 562/2020 was being executed by the **Project Director-cum Project Engineer Establishment of Pediatric Cardiac Unit at N.I.C.V.D Karachi**. Later on, **the Executive Engineer (BS-18) Provincial Building Division II under Provincial Building Circle, Karachi** was allowed to execute the development works of ADP scheme NO.562-2020-21 of the Project Establishment of Pediatric Cardiac Unit at NICVD Karachi vide Works & Service Department's Notification **NO.EI(W&S)4-11/2021 Dated the 19<sup>th</sup> May 2021**. Finally, on 4<sup>th</sup> June 2021, **the Executive Engineer, Health Works (Lower Sindh) Hyderabad** was allowed to execute the development of works of ADP scheme 562/2020-21 vide Works & Services Department's Notification **NO.EI(W&S)4-11/2021 Dated the 4<sup>th</sup> June 2021**. The precise of the above discussion is given below in table:

**Execution Authority allowed by the Competent Authority**

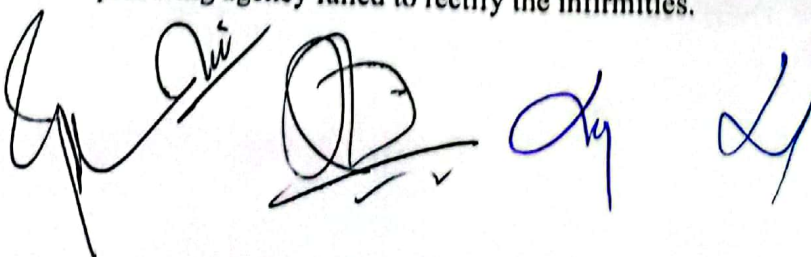
|          |  |  |
|----------|--|--|
| Firstly  | Project Director-cum Project Engineer Establishment of Pediatric Cardiac Unit at N.I.C.V.D Karachi   | From upto 19 <sup>th</sup> April         |
| Secondly | Executive Engineer (BS-18) Provincial Building Division II under Provincial Building Circle, Karachi | From 19.5.2021 upto 4 <sup>th</sup> June |
| Finally  | the Executive Engineer, Health Works (Lower Sindh) Hyderabad   | From 4 <sup>th</sup> June 2021 onwards   |



7. From the above mentioned discussion it is clear that the Executive Engineer, Health Works (Lower Sindh) Hyderabad was allowed on 4<sup>th</sup> June 2021 to execute the scheme but interestingly the Executive Engineer (Lower Sindh) Hyderabad not only prepared bidding documents, advertised bids but also carried out technical as well as financial evaluation of the bids, prepared evaluation report as provided in Rule 45 of the SPP Rules and made recommendations for the award of contract to the competent authority. All these action were carried out by the Executive (Lower Sindh) Hyderabad without legal Authority and delegation of the Authority to procure the works. For clarification and understanding, the chronology of the procurement process is mentioned below:

|                                       |                   |
|---------------------------------------|-------------------|
| Date on which NIT uploaded            | 09-05-2021        |
| Technical opening of bids             | 24.5.2021         |
| Financial opening of bids             | 2.6.2021          |
| Issuance of BER                       | 02-06-2021        |
| <b>Contract documents uploaded on</b> | <b>20-06-2021</b> |

8. It is evident from the supra mentioned facts that the Executive Engineer Provincial Buildings Division Health Works Lower Sindh Hyderabad had procured the works illegally without legitimate Authority, clear authorization, and without delegation of powers as required under rule 14 of the SPP Rules.
9. The Executive Engineer contended that he was authorized by the Chief Engineer to continue the work on the procurement process. The committee is of the view that the Chief Engineer is not the competent enough to override the orders of the Administrative Secretary. Therefore the working of the Executive Engineer without clear delegation and authorization was against the rules and law.
10. The Executive Engineer also contended that the execution of works was transferred unto him by the competent Authority on 4.6.2021. The committee observed that the notification was issued on 4.6.2021 but the procurement process was carried out by the procurement committee under the headship of the Executive Engineer before the issuance of the notification.
11. The Review Committee observed that the SPPRA had communicated many infirmities, which were posted on PPMS website, to the procuring agency for rectification. However, the procuring agency failed to rectify the infirmities.

 Several handwritten signatures and initials are present at the bottom of the page, including a large signature on the left, a circular stamp in the middle, and several initials on the right.

*He lms*



12. The Review Committee also observed that procuring agency did not mention the estimated cost of bid in the NIT which is against the SPP rules 2010 (amended up-to-date) and regulations.
13. The Review Committee also observed that the procuring agency was required to call the international competitive bidding because the amount of bid exceeded US Dollar 10 million .however the procuring agency did follow the SPP Rules accordingly. The SPP Rule 15(2)(ii) states:

**15(2)(ii).International Competitive Bidding shall be the default method of procurement for all procurements with an estimated cost equivalent to US \$ 10 million or above**

14. It was also observed that the procuring agency had introduced two difficult and discriminatory conditions which discriminated among bidders therefore the bidding process could not be held in a competitive and transparent manner. Two difficult conditions are as under:

***Minimum Eligibility Requirement of at least two (2) projects of similar nature and complexity and (multistory) Government of Sindh,Semi Government in hand with cost of each project over Rs,1500 Million***

***Available bank Credit line shall be specific to the project and (establishment Peads Cardiac Unit at NICVD Karachi) with Credit line of at least Rs.500 Million BANK CREDIT LETTER MUST BE SUBMITTED WITH TENDER DOCUMENTS WILL BE VERIFIED FROM STATE BANK.***

15. Furthermore, the procuring agency was required to ask for the Annual Turnover (not less than estimated bid cost) or twice the estimated cost of project. In the instant case procuring agency had called the bids for the estimated cost of about 2000 million but the Annual Turn Over was called up-to 1500 Million.

| Minimum Annual Turn Over that was required to be called as per estimated cost | Annul Turn Over Required by the Procuring Agency | Short Amount of Turn over that was not required by the procuring agency |
|---|--|---|
| Rs. 2091.361 Million  | Rs.1500 Million                                  | 591.561illion   |

- ✓ 16. The Review Committee also observed that the procuring agency awarded the work knowing that the Complaint Redressal Committee failed to decide the complaint and the Review Appeal of the appellant was pending for the final adjudication by the Review Committee. The Signing of contract without CRC decision and during the pendency of Appeal is against the SPP Rule 31(7).



**Decision of the Review Committee:**

Given the proceedings, findings, observations and after due deliberation, in exercise of power conferred by the Rule 32(7) (g), the Review Committee:

1. Declares the instant **procurement of the complete NIT** as Mis-Procurement.
2. Decide to refer the matter to the Competent Authority i.e. Secretary Works and Services Department Karachi for initiation of disciplinary action against the official(s) of the procuring agency responsible for Mis-procurement.
3. The Committee also decided to send the copy of the decision of the Review Committee to the Planning and Development Board, Planning and Development Department for taking necessary action in the matter as per rules and Policy.

*h. The content is not a word, and it was decided by the committee to return the proposal*

Member  
(Manzoor Ahmed Memon)  
Member SPPRA Board

Member  
(Syed Adil Gilani)  
Member Transparency International

Member  
(G. Mohi-Uddin Asim)  
Representative of P & D Board ,P& D  
Department Karachi

Member  
(Munir Ahmed Shaikh)  
Independent Professional

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