



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-3343/2021-22/0857

Karachi, dated 11th October, 2022

TO,

- The Secretary,
Public Health Engineering Division & Rural Development Department,
Karachi.
- The Executive Engineer,
Public Health Engineering Division-1,
Larkano.

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 namely **M/s Abdul Khaliq Bhutto v/s Executive Engineer, Public Health Engineering Division-1, Larkano** held on 20.07.2022, for information & necessary action.

(ABDUL SATTAR SOOMRO)
ASSISTANT DIRECTOR (LEGAL-II)

A copy is forwarded for necessary action to:

1. The Chief Engineer, (Dev/OM) Public Health Engineering Department, Sukkur.
2. The Superintending Engineer, Public Health Engineering Division-1, Larkano.
3. The PS to Chairman / Members of the Review Committee.
4. Assistant Director I.T. SPPRA (with advice to post the decision on authority website in terms of Rule-32(11) of SPP Rules, 2010).
5. The Appellant.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



No.AD (L-II) SPPRA/CMS-3343/2021-22

Karachi, dated, 01st August, 2022

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

Decision of the Review Committee held on 20.07.202

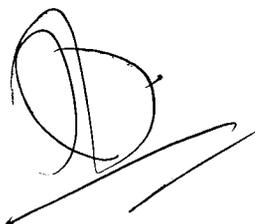
Name of Appellant	M/s Al Abdul Khalique Bhutto
Procuring Agency	The Executive Engineer Public Health Engineering Division-I, Larkano
PPMS ID # Reference No.	T00916-21-0009 AB/TC/2051, dated 27.04.2022
Appeal Received in Authority Dated	21.06.2022
Complaint addressed to the Chief Engineer O/M (Dev) PHED Larkano	31.05.2022
Dated of Posting Notice Inviting Tender	0 = 03-05-2022
Date of Opening of Bids	19-05-2022
Date of Posting Bid Evaluation Report	Various BER's have been posted from 29.05.2022 to 30.05.2022
SPPRA Observations communicated on	24-05-2022 02-06-2022
Estimated Cost of NIT Total	Around 422 Million
Total works in NIT	22
Appellant Related work	13
Issue involved	Not showing the bid of the appellant in BER after receiving through TCS

The Appellants submitted that they participated in the bidding process and quoted the lowest rates but the Procuring Agency did not open their bids.

The Executive Engineer submitted that when he was posted the procurement process had been completed and works had been awarded.

The Procuring Agency submitted that the Appellants bids were opened by the Procurement Committee on the date of the

	bid opening but the Procurement Committee found that the Appellant had not submitted the required documents such as Original Affidavit, Details of Machinery, Equipment & Staff. Therefore, his bid was rejected in terms of the NIT and SPP Rules.
The Appellant showed the photocopies of his bidding documents and demonstrated that he had submitted all the documents but the procuring agency removed the documents malafidely. The Review Committee noted that the photocopies of his bidding documents show that the appellant had sent the required documents.	The Procuring Agency submitted that the bidding documents received to the procuring agency were blank and rates were not quoted.
The Appellants also informed that the Procuring Agency did not show his bid in the Bid Evaluation Report.	The Procuring Agency also informed that the as the Appellant's bid was rejected being incomplete, no further evaluation was carried out.
The Appellants contended that the Procuring Agency did not inform them about their rejection of bids.	The Procuring Agency further submitted that a letter was written to the appellant and he was informed about his rejection of bids. The Review Committee asked the Executive Engineer to show the receipt of the letter. The Executive sought time for submitting the same. At last, no receipt was received from the procuring wherein it could be demonstrated that the appellant received the information about his disqualification.
The Appellants also contended that the Procuring Agency awarded the contract even the CRC failed to arrive at the decision and Review Appeal was pending.	The P.A also informed that they were unaware of the complaint of the Appellants as no intimation was sent to them for complaint. It was also informed that the work was awarded to the successful bidders whose bids were declared responsive in accordance with the terms and conditions of the NIT and Bidding documents.
The Appellants also contended that the Procuring Agency awarded contract on higher rates and awarded work on around 20% higher rates that caused financial losses to the exchequer.	The Procuring Agency contended that when the Appellant did not fill the rates properly there was no question about lower or higher rates.



Observations of the Review Committee:

1. The Review Committee observed that the procuring agency received the bid of the appellant with lower rates and failed to include his bids. Furthermore, the perusal of record and statements of the parties showed that the appellant had sent his bids and rates were properly documented. However, later on, the procuring agency removed the pages of bidding documents submitted by the appellant and reject the bid of the appellant knowingly and malafidely.
2. The Review Committee also observed even if the claim of the procuring agency is considered true ,then the Procuring Agency also failed to record the rejection of the bid of the appellant in the minutes of meeting in terms of Rule 41(9) which is as follows:

9. The procurement committee shall issue the minutes of the opening of the tenders and shall also mention over writing or cutting, if any.

3. The Procuring Agency maintained that Appellant’s bid was rejected therefore his name was not shown in the bid evaluation report. The Committee observed that the results of bid evaluation in the form of a report are recorded which are aimed at giving reasons for acceptance or rejection of bids. All bidder whether qualified or disqualified are mentioned in the BER. But in the instant matter the Procuring Agency neither recorded minutes of over writing of the Appellant nor **mention over writing which proved that the Procuring Agency failed to complete the procurement process as per the SPP Rules.**
4. The Review Committee observed that the procuring agency failed to intimate the Bid Evaluation Report to all bidders as required under Rule 45 of the SPP Rules 2010 (amended up-to-date).The Rule states that the Bid Evaluation Report shall be intimated to the all bidders three days prior to the award of the contract. The Rule 45 is reproduced as under:

45.[Announcement of Evaluation Reports – Procuring agencies shall announce the results of bid evaluation in the form of a report giving reasons for acceptance or rejection of bids. The report shall be hoisted on website of the Authority and that of the procuring agency if its website exists and intimated to all the bidders at least three (3) working days prior to the award of contract.

5. In the instant matter, the procuring agency had not informed the bidder regarding the Bid Evaluation Report which is the violation of the Rule 45 of the SPP Rules 2010(amended up-to-date).
6. The Procuring Agency awarded contract on higher rates which caused the loss of public money. The comparison the cost of the successful declared bids and the appellant’s rates are given below:
7. The above comparison of cost clearly shows that the Procuring Agency awarded contract on higher rates which caused **Rs 14479397/-** loss to the public money.

Work No.	Successful declared rates	The Appellant’s rates	Differential amount or loss caused
13. Construction of Paver Block and CC	M/s Aftab Ahmed Abbasi Rs.	M/s Abdul Khaliq Bhutto Rs.	Rs. 5,339,813/-

Drains Various wards city Naudero	19,819,210/-	14,479,397/-	
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Signing of Contract without Decision of CRC and during appeal period

8. 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.

(6) **The Procuring Agency shall award the contract after the decision of the complaint redressal committee;**

(7) **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.]

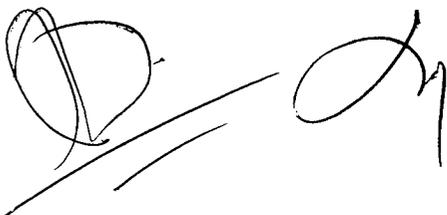
9. The sub rule 7 of 31 describes the **condition for the signing of contract in case of lodging of complaint. It is necessary that condition of CRC decision must be fulfilled before the signing of Contract.** It was mandatory upon the procuring agency to not sign the contract until the final adjudication by SPPRA review committee. However, the **procuring agency signed the contract** which is clear violation of SPP rule 32(8).

10. 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 showing the received bid of the Appellant.

11. 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"

12. 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;

13. The procuring neither followed transparency nor adopted proper procedure. The procuring agency neither informed to the bidder for financial opening nor before signing of contract waited till the final adjudication by the Review Committee. Therefore, it is evident from the discussion that the procuring agency violated the rules and failed to conduct an open competitive Bidding which is only possible in a transparent manner.

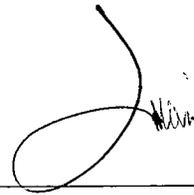


Review Committee Decision:

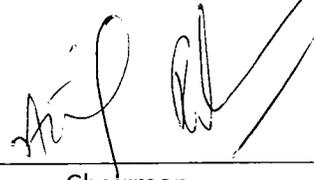
14. Given the proceedings, findings, observations and after due deliberation, in exercise of power conferred by the Rule 32(7)(g) of the SPP Rules, the Review Committee declare the procurement of works of NIT No. 13 (for which the appellants had participated) as Mis-procurement, as it has been established that the Procuring Agency has violated the SPP Rules during the procurement process.
15. Decides to refer the matter to the Competent Authority i.e. Secretary Public Health Engineering & Rural Development Department, Karachi for initiation of disciplinary action against the official(s)/ Officers of the procuring agency responsible for Mis-procurement.
16. Compliance of the decision shall be submitted within 15 days of the issuance of the decision.



Member
(Manzoor Ahmed Memon)
Member SPPRA Board



Member
(Munir Ahmed Shaikh)
Independent Professional



Chairman
(Atif Rehman)
Managing Director
(Sindh Public Procurement Regulatory Authority)