GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY

No.:LC/SPPRA/CMS-3863/23-24/ 062 Karachi, dated the 21 July, 2023

To,

The Executive Engineer,
Karachi Development Authority,
KARACHI.

SUBJECT: DECESION OF THE REVIEW COMMITTEE OF SPPRA AGAINST THE REVIEW APPEAL SUBMITTED BY M/S MAFHH ENTERPRISES

The undersigned is directed to refer to the subject cited above and to enclose herewith a copy of the decision of Review Committee meeting held on 21.06.2023 against Review Appeal submitted by **M/s MAFHH Enterprises** on NIT No T01612-22-0022 for your information.

ASSISTANT DIRECTOR
(LEGAL)

A copy is forwarded for information and necessary action:

1. The Chairperson / Members of the Review Committee (All).
2. Assistant Director (I.T), SPPRA ***(with an advice to post the decision on the Authority's website in terms of Rule-32(11) of the SPP Rules, 2010).***
3. M/s MAFHH Enterprises D-14/1, Block-B North Nazimabad, Karachi, **(the Appellants)**

GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY

SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY

Decision of the Review Committee of SPPRA under Rule-32 of the SPP Rules, 2010 held on 21.06.2023

M/s MAFHH Enterprises..... the Appellant

V/S

Karachi Development Authority (KDA) ..... the Procuring Agency

1. Introduction:

1.1. Karachi Development Authority (KDA) published following two NITs in newspapers and uploaded on SPPRA Website and invited bids on Single Stage - Single Envelope for various works;

a) NIT No.EE/ED/KDA/2023/41 dated 16.3.2023 and SPPRA Serial No. T01612-22-0016 for six works.

b) NIT No.EE/ED/KDA/2023/56 dated 28.3.2023 and SPPRA Serial No. T01612-22-0022 for four works.

1.2. M/s MAFHH Enterprises participated in the bidding process on following two Works;

i) Work No. 6 of NIT No. EE/ED/KDA/2023/41 dated 16.3.2023 **- Improvement / Reconditioning of Roads, Sewerage and Laying of Paver blocks in UC-Darsano Chano, UC-Murad Memon, UC-Jam Murad Ali & UC-Thano District Malir (ADP-1954 of 2022-23).**

ii) Work No. 1 of NIT No.EE/ED/KDA/2023/56 dated 28.3.2023 **- Improvement / Rehabilitation of different Roads and Laying of Paver blocks and Sewerage Work in UC-Kathor District Malir (ADP No. 2303 of 2022-23)**

1.3. The appellant submitted a complaint to the CRC vide letter dated 11.5.2023 on recommendation of award of contract by the Procurement Committee to the higher bidder instead of the appellant being the lowest bidder.

1.4. Meeting of CRC was not convened within the stipulated time period provided in the Rules. Therefore, complainant lodged a Review Appeal vide letter dated 26.05.2023 to the Review Committee under Rule-31(5) of the SPP Rules, 2010.

1.5. The appellant has also filed a CP in Honorable High Court of Sindh.

2. Version's of Complainant and Procuring Agency:

2.1. Meeting started with recitation of verses from the Holy Quran. After that the Chair welcomed the participants and invited the complainant and representative of the Procuring Agency to explain their versions one by one.

Complainant's Version:

2.2. Mr. Yasir Anees, Proprietor M/s MAFHH Enterprises informed to the Committee that he had participated in the above mentioned works of the NITs issued by KDA. He claimed that he had quoted the rates 20% below from the Engineer's estimate but the Procuring Agency has recommended for award of contract to the higher bidder who have quoted bid 19.999994% below and stood at serial no. 20 in Bid Evaluation Report (BER) which is against the Rules.

Procuring Agency's Version:

2.3. Mr. Tariq Rafi, Superintendent Engineer, KDA informed that more than one bidder had quoted the same rates hence competition tied and it was not possible to award one contract to more than one contractor. Therefore, Procurement Committee rejected all bidders who had submitted the same bid and recommended for award to the next bidder.

2.4. He further informed that this practice is being followed in KDA from several years as no alternate option is available in the rules / regulations for tie bids and no objection from any quarter have been raised previously. He also informed that the difference in the bid of the appellant and the bidder who has been recommended for award of contract is Rs.6 only hence no loss to the exchequer. He explained that in case the process would be initiated afresh, the same situation may arise and due to inflation rates may receive high bids. Moreover, a large amount will be borne by Government exchequer on advertisement of NIT in newspaper. Therefore, the committee decided to proceed the procurement process.

3. Proceedings of the Review Committee:

3.1. Members of the Committee asked from the representative of the Procuring Agency regarding non-convening of the meeting of the CRC within stipulated time. Representative of the PA replied that they have not received any complaint to the CRC.

RA

3.2. The Members asked from Syed Muhammad Shakaib, independent professional on Review Committee regarding way out in case of "tie bids". He explained that as such no provision in the SPP Rules, 2010 and Regulations is provided to handle the bids received on same rates. He briefed that however, it is normal practice in procuring agencies that the tie bids have been decided through "coin toss" and bidders have no objection on it, neither it affect fairness and transparency in public procurement.

3.3. The Committee asked status of procurement from representative of Procuring Agency who replied that the contract has been awarded to the "Most advantageous bidder" as per Rules.

4. Observations of the Review Committee:

4.1. The RC was not satisfied from the reply of PA regarding non-convening of CRC as it is their responsibility to redress the grievance before award of contract as per Rules.

4.2. The RC observed that PA has not convened CRC meeting in timely manner and awarded the contract without final adjudication by the RC as the complaint stands transfer to the RC under Rule-31(5) of the SPP Rules, 2010.

4.3. RC also observed that there is no provision in the SPP Rules, 2010 and Regulations to explain the procedure in case of tie bids.

4.4. Ther is no material difference in the rates of bids rejected by the Procuring Agency on tie basis and the bid recommended for award, hence no loss to exchequer has been observed.

4.5. The Members requested MD SPPRA to take up this issue before the SPPRA Board in its next meeting for deliberation and necessary amendment in the SPP Rules, 2010 or Regulations in order to facilitate the Procuring Agencies.

Decision of the Review Committee:

After due deliberation, the Review Committee unanimously decided to;

1. ***Reject the appeal*** *on the grounds that the procuring agency had no alternate to consider the tie bids except to reject.*

2. ***Declare the instant procurement as Mis-Procurement*** *in terms of Rule-32 (7)(g) on violation of Rule-31(7) of the SPP Rules, 2010 as the PA had failed to convene the meeting of CRC and decide the Complaint within stipulated time and award the contract without final adjudication by the Review Committee.*

RA

3. ***Refer the matter to the head of department*** *of the procuring agency for initiation of disciplinary action against the officers / officials of the procuring agency responsible for Mis-Procurement.*

(Manzoor Ahmed Memon)
Member SPPRA Board
(Member)

(Syed Adill Gilani)
Member SPPRA Board
(Member)

(Engr. Syed Muhammad Shakaib)
Independent Professional
(Member)

(Khair Muhammad Kalwar)
Special Secretary
Planning & Development Department
(Member)

(Rubina Asif)
Managing Director, SPPRA
(Chairperson)