



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-527/2019-20

Karachi, dated the September, 2019

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

(Appeal)

*M/s Ghulam Murtaza Enterprises; and M/s Abdul Rasheed Bhutto
Versus*

Hala Irrigation Division, Hala

(NIT ID # T00877-18-0004 dated 17.06.2019)

Facts and background

M/s Ghulam Murtaza Enterprises, Hyderabad (hereinafter referred to as the appellant # I) lodged a complaint vide letter dated 04.07.2019, addressed to the Sindh Public Procurement Regulatory Authority (hereinafter referred to as the Authority) as well as to the Director General, Monitoring & Evaluation Cell, Irrigation Department against the NIT # TC/G-55/2019 dated 14.06.2019 floated by the Executive Engineer, Hala Irrigation Division (hereinafter referred to as the procuring agency) for procurement of eight (08) works related to the cement concrete lining and others. In turn, the Authority vide letter dated 11.07.2019 also forwarded the appellant's matter to the procuring agency's complaints redressal committee (CRC) with an advice to redress the grievances and furnish its decision to the appellant as well as this Authority within stipulated time period as specified under Rule-31(5) of SPP Rules, 2010 (Amended 2019).

2. Subsequently, the aforementioned appellant and M/s Abdul Rasheed Bhutto, Shikarpur (hereinafter referred to as the appellant # II) lodged separate appeals vide letters dated 17.07.2019 & 20.07.2019, respectively, to the Authority's Review Committee stating that the procuring agency's CRC had failed to decide their complaints within stipulated time period of seven days; hence, their cases be placed before the Authority's Review Committee in terms of Rule-31(5) read in conjunction with Rule-32 of SPP Rules, 2010.

3. Accordingly, the appellants' matter was taken up by the Authority's Review Committee for hearing in its meeting scheduled on 28.08.2019 at 12.00 p.m. and notices in this regard were issued to the concerned parties vide this Authority's letter dated 21.08.2019 for appearing before the committee on scheduled date, time and venue. In compliance, Mr. Mukhtiar Ahmed Abro, Superintending Engineer, Rohri Canal Circle, Hyderabad¹, and Mr. Tariq Ahmed Kehar, Executive Engineer, Hala Irrigation Division, Hala (representatives of the procuring agency); and Mr. Ghulam Murtaza, Proprietor (appellant # I), and Mr. Abdul Rasheed Bhutto, Proprietor (appellant # II) appeared before the Review Committee.

Review Committee Proceedings

4. At the outset of the meeting, the Chairperson of the Review Committee welcomed all the participants of the meeting and introduced the members of the Review Committee. Then, the chair briefed over the bidders complaints redressal mechanism as given under SPP Rules, which provides that any bidder being aggrieved by any act or decision of the procuring agency after the issuance of notice inviting tender and prior to the award of contract may lodge a written complaint to the procuring agency's CRC, which is bound to announce its decision within seven days and intimate the same to the bidder and the Authority within three working days; if the CRC fails to arrive at the decision within seven days that the

¹ Mr. Mukhtiar Ahmed Abro, Superintending Engineer, Rohri Canal Circle, Hyderabad attended the meeting on behalf of the Director General, Monitoring & Evaluation Cell, Irrigation Department, Government of Sindh.

[Handwritten signatures]

aggrieved bidder may file the review appeal to this Authority within ten (10) days of such transfer in terms of Rule-31(1) to (7) read in conjunction with Rule-32 of SPP Rules, 2010. The chair further highlighted that a bidder not satisfied with decision of the procuring agency's CRC may also lodge an appeal to the Review Committee within ten (10) days of announcement of the decision provided that the bidder has not withdrawn the bid security, if any, deposited by them in terms of Rule-32(1) of SPP Rules, 2010. Since the procuring agency's CRC failed to decide the appellants matter in the instant procurement case and the appellants lodged their appeal within specified time period; hence, their cases have been considered for hearing by the Authority's Review Committee in terms of Rule-31(5) read with Rule-32 of SPP Rules, 2010.

5. Subsequently, the chair asked the appellants to present their case/ version on the instant procurement before the committee.

Appellants' Version

6. Mr. Abdul Rasheed Bhutto (appellant # II) while arguing his appeal apprised the Committee that they reached in the procuring agency's office to submit their bids on the scheduled date for submission and opening of bids, which was fixed as on 03.07.2019 at 12.00 p.m. whereby they found the procuring agency's procurement committee as absent. They requested the procuring agency to place tender box so that they can drop their bids as filled on the bid documents downloaded from the Authority's website; however, the procuring agency neither placed tender box nor received their bids. Subsequently, they left the procuring agency's office at 20.30 p.m. and lodged a complaint to the procuring agency's CRC on 04.07.2019 that failed to redress their grievances.

7. Mr. Ghulam Murtaza Enterprises (appellant # I) while arguing his appeal apprised the Committee that they downloaded bid documents against instant procurement's all works from the Authority's website in terms of Rule-24(2) of SPP Rules, 2010, which provides that '*the bidders may submit bids on the bidding documents issued by the procuring agency or downloaded from the Authority's website along with tender fee if any by mail or by hand*'. While approaching the procuring agency to submit their bids along-with bid security and other requisite documents on 03.07.2019, they found the procurement committee as absent till office closing hours. The procuring agency neither received their bids nor issued any corrigendum to extend the schedule for submission and opening of bids. The appellant further alleged that:

- The procuring agency did not post bidders' attendance sheet for opening of technical proposals on the PPMS website. Moreover, the procuring agency posted bidders' attendance sheet for opening of financial proposals, which was found fake as signatures of bidders representatives at Sr.# 3 & 14 [M/s Abdul Hakeem Chachar; and M/s Hafiz Rab Nawaz Co) and Sr.# 6 & 7 [M/s Al-Mursalein Engineering Construction Co.; and M/s Salar Enterprises) were same²;
- The procuring agency imposed a condition on bidders at Sr. # 11 of the NIT that provides '*no tender will be accepted posted by courier*'. Such condition is in contravention with Rule-24(2) of SPP Rules, 2010;
- The lowest evaluated bidders quoted bids above 12% to 14% of the estimated cost of work and submitted bid security equivalent to 5% of the estimated cost of work; whereas, Rule-37(1) of SPP Rules, 2010, provides that '*the procuring agency shall require the bidders to furnish a bid security not below one percent and not exceeding five percent of the bid price*';
 - ◆ The chair of the committee noted that the fixed amount of bid security was already mentioned by the procuring agency in the instant procurement NIT; hence, the bidders might have chosen to submit fixed amount of the bid security.

² <https://ppms.pprasindh.gov.pk/PPMS/public/portal/ber> (BER ID # BE00877-18-0004-1 dated 01.08.2019)

- The procuring agency did not post bidders' technical evaluation reports, containing their reasons for qualification and disqualification, on the PPMS website as required under Rule-45 of SPP Rules, 2010. Some bidders were qualified [technical evaluation] under one work and disqualified under another work while the evaluation criteria was same for all works; for instance: M/s Khokhar Brothers technically qualified under NIT works # 1, 6, 7 & 8 but disqualified under NIT works # 3 & 5;
- The procuring agency returned call deposits of ~~lowest evaluated~~ bidders before awarding contractors and same can be verified from the procuring agency's procurement record;
- They quoted competitive bid, lower than PKR 20 Million as compared to the lowest evaluated bidder, but the procuring agency did not receive/ accepted their bids. Subsequently, they approached the procuring agency's CRC and also Superintending Engineer but they failed to take any action or redress their grievances.

Procuring Agency's Version

8. Mr. Mukhtiar Ahmed Abro (representative of the procuring agency) while responding to queries raised by the Review Committee clarified that:

- The appellants neither obtained bid documents nor submitted bid documents fees to the procuring agency. The procuring agency's procurement committee was present in the procuring agency's office during receiving and opening bids as scheduled on 03.07.2019 wherein 53 firms/contractors, other than appellants, participated in the bidding process. In case, the appellants had any grievances related to the submission and opening of their bids or refusal to accept their bids by the procuring agency then they had to approach the procuring agency and/ or CRC on 03.07.2019 rather than approaching on next date [04.07.2019] of opening of bids as done by the appellants in the instant procurement case; therefore, the appeal may be dismissed at this stage.
 - ◆ Syed Adil Gilani (Member of Review Committee) noted that the procuring agency cannot stop any bidder from placing/ dropping bid document, even incomplete or without bid documents fees, during bids submission schedule; however, the procuring agency reserves the right to reject any bid provided that the reasons for rejection of such bids are explicitly mentioned in the bid evaluation report as required under Rule-45 read with Rule-42(1) of SPP Rules, 2010;
 - ◆ Mr. Asadullah Soomro (Member of Review Committee) highlighted that the appellants might have approached the procuring agency for issuance of bid documents but could not access the Tender Clerk and any other official of the procuring agency;
 - The procuring agency stated that the bid documents were available for issuance/ purchasing from the procuring agency's office with effect from the date of publication of NIT [17.06.019] to 02.07.2019; in case, the appellants had any difficulty to purchase bid documents during given response time then they could approach the CRC for redressal of such grievances.
 - The appellant # II clarified that they were not required to travel from Shikarpur to the procuring agency's office for issuance of bid documents when such documents were accessible/ available from the Authority's website and SPP Rules also permit bidders to submit their bids on the documents downloaded from the Authority's website along with tender fee in terms of Rule-24(2) of SPP Rules, 2010³.

³ The appellant # I shared copies of pay orders [bid document issuance fees] issued in favor of the procuring agency for the Authority's record.

- ◆ The Committee asked the procuring agency to clarify as to why the condition # 11 [no tender will be accepted posted by courier] was imposed to bidders through NIT;
 - The procuring agency stated that they could have rectified this infirmity if the Authority had conveyed them such observation. Moreover, the procuring agency did not receive complaint or query from any bidder/ contractor, including appellants, over such infirmity.
- ◆ Syed Adil Gilani pointed out that it was the responsibility of the procuring agency to ensure compliance of the SPP Rules while undertaking procurement. Mr. Gilani also pointed out that 10-22 bidders participated under each work under instant procurement; however, the procuring agency technically qualified only 2-3 bidders whose bids were above the estimated cost of work.
- ◆ Engr. Munir Ahmed Shaikh (Member of Review Committee) pointed out that how a bidder qualified under one work and disqualified under other works when the technical evaluation criteria was same for all works. Subsequently, *the chair asked the procuring agency to update for the current status of the instant procurement*;
 - The procuring agency stated that they have not awarded the contracts as yet due to instant appeals lodged before the Authority's Review Committee.

Review Committee Observations

9. After hearing parties at length and perusal of the available record, the Review Committee observed that:-

- It was responsibility of the procuring agency to adhere to the procurement rules, regulations, and instructions and to ensure that procurements are conducted in a fair and transparent manner and the object of procurement brings value for money to the agency and procurement process is efficient and economical in terms of Rule-4 of SPP Rules, 2010;
- The procuring agency imposed a condition at Sr. # 11 of the instant procurement's NIT that provides 'no tender will be accepted posted by courier', which was in contravention of Rule-24(2) of SPP Rules, 2010. *The Authority in this regard also circulated policy instructions vide letter dated 19.02.2019 to avoid such practices including non-acceptance of bid documents sent by the bidder(s) through mail/ courier⁴;*
- The procuring agency was required to decide the complainants' grievances within seven days and intimate the same to the appellants as well as Authority within three working days in terms of Rule-31(5) of SPP Rules, 2010; but they have failed to do so.
- The procuring agency was required to mention clear reasons for acceptance or rejection of bids through posting bid evaluation reports on the Authority's website in terms of Rule-45 of SPP Rules, 2010;
- The procuring agency was required to mention minimum amount of turnover of last three years under bidder's technical evaluation criteria in terms of Rule-46(2) of SPP Rules, 2010, read with Clause # 7.9.2 of the Authority's Procurement Regulation (Works); but they have failed to comply with these requirement;
- The procuring agency should have adopted Single Stage One Envelope bidding procedure for instant procurement as these works fall under simple and routine nature that does not require technical complexity or innovation in terms of Rule-47(1) of SPP Rules, 2010;


⁴ <http://www.pprasinhdh.gov.pk/policies/Policy19February2019.PDF>

Review Committee Decision

10. In light of the observations and violations of Rules as mentioned under para-9, and after due deliberation, the Review Committee unanimously decides that the instant procurement's proceedings may be terminated in terms of Rule-32(7)(f) of SPP Rules, 2010, and fresh tenders be floated, after modifying the contents of notice inviting tender/ bid documents, in terms of Rule-23(2) of SPP Rules, 2010. Moreover, the Review Committee:

- ❖ Declares the instant procurement as mis-procurement and refers the matter to the head of department for initiation of disciplinary proceedings against the officials of the procuring agency responsible for mis-procurement in terms of Rule-32(A)(2) of SPP Rules, 2010; and
- ❖ Decides that the concerned Executive Engineer shall pay Rs.10,000/ from his Pocket to each appellant as compensation for cost incurred by the bidders/ appellants on preparation of bid in terms of Rule-32(7)(e) of SPP Rules, 2010.


11. Compliance of the above decision shall be submitted before the Review Committee within seven (07) days of receipt of decision by the procuring agency.




(Member)
Syed Adil Gilani
Private Member SPPRA Board
Representative Transparency International



(Member)
Asadullah Soomro
Private Member
SPPRA Board



(Member/ Independent Professional)
Engr. Munir Ahmed Shaikh
Retd. Executive Engineer
Public Health Engineering Department
Government of Sindh



(Chairman)
Tameezuddin Khero
Managing Director
Sindh Public Procurement Regulatory Authority