GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY

NO.AD(L-II)/SPPRA/CMS-541/2019-20/0849 Karachi, dated the 24th October, 2019

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

(Appeal)

M/s Nawab & Sons Construction Services, Hyderabad
Versus
Municipal Committee, Shikarpur

(NIT ID # T01222-18-0007 dated 05.07.2019)

Facts and background

The appellant, M/s Nawab & Sons Construction Services, Government Contractor Hyderabad, lodged a complaint (vide letter dated 23.07.2019) addressed to the Chairman, Municipal Committee Shikarpur/ Chairman Complains Redressal Committee (CRC) and copy endorsed to the Sindh Public Procurement Regulatory Authority and others – for taking necessary action – against the NIT # MC/SHP/Engg:Bra:2909/2019 dated 14.06.2019 floated by Chief Municipal Officer, Municipal Committee, Shikarpur *'the procuring agency'* for procurement of seven works related to de-silting of nalas and construction of RCC cross etc.[1]. In turn, the Authority vide letter dated 05.08.2019 also forwarded the appellant's matter to the procuring agency's 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). *It was also advised to the procuring agency to award contracts after decision of the CRC and in case of failure of the CRC 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 in terms of Rule-31(6) and Proviso of Rule-31(7) of SPP Rules, 2010*[2].

2. Subsequently, the appellant (vide letter dated 05.08.2019) lodged an appeal to this Authority stating that they submitted a complaint to the procuring agency's CRC through courier service [TCS] on 23.07.2019 and same was received by the authorities concerned on 25.07.2019, albeit the CRC had failed to decide the matter within stipulated time period; therefore, the appellant requested the Authority to place their matter before the Authority's Review Committee[3].

3. Resultantly, the appellant's matter was taken up by the Authority's Review Committee for hearing in its meeting scheduled on 28.08.2019 at 01.00 p.m. and notices, in this regard, were issued to the parties concerned vide this Authority's letter dated 22.08.2019 to appear before the Committee on scheduled dated, time, and venue. Both the parties failed to attend the meeting[4], hence, the Committee decided to reschedule the matter for hearing on 18.09.2019. In compliance, Mr. Taj Muhammad Soomro, Proprietor, M/s Nawab & Sons Construction Services (the appellant) appeared before the Review Committee; however, the representative of the procuring agency could not attend the meeting due to

[1] Detailed description/ nature of these works can be accessed through instant procurement's NIT available on PPMS website at ID # T01222-18-000 [https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender]

[2] In response to the complaint lodged by M/s Nawab & Sons, the Chairman CRC vide letter dated 01.10.2019 asked the appellant to appear in his office, within four days i.e. up to 04.10.2019, along with requisite documents to be discussed in the CRC. Such letter was issued by the procuring agency's CRC after passing sixty seven (67) days of complaint received by them.

[3] TCS Tracking ID # 2065580660 dated 25.07.2019 revealed that the CRC received the delivery on 26.07.2019 at 9.52 a.m.

[4] Mr. Aijaz Ahmed Shiakh, Chief Municipal Officer, Municipal Committee Shikarpur vide his letter dated 28.08.2019 informed the Authority that he had assumed this charge on 26.08.2019. Moreover, the District Management directed him not to leave headquarter till 10th Muharam-ul-Haram. Therefore, he requested the Authority to fix the matter for hearing in next meeting.

hearing of the case in the Honorable High Court of Sindh, Circuit Court Larkana[5]. Based on the procuring agency's given justification, the Committee decided to fix the matter for hearing in meeting scheduled on 16.10.2019, and notices, in this regard, were issued to the parties concerned vide this Authority's letter dated 08.10.2019 to appear before the committee. In compliance, Mr. Jahanzeb Khan, Assistant Executive Engineer, Municipal Committee Shikarpur *'representative of the procuring agency'* and Mr. Taj Muhammad Soomro, Proprietor, M/s Nawab & Sons Construction Services *'the appellant'* appeared before the Committee's meeting.

Review Committee Proceedings

4. The Chairperson of the Review Committee commenced the meeting by welcoming all the participants of the meeting and introduced the members of the Review Committee. Then, the chair asked the appellant to present their case/ version on the instant procurement before the committee.

Appellant's Version

5. Mr. Taj Muhammad Soomro *'the appellant'* apprised the Committee that they had participated in the instant procurement's NIT work listed at Sr. # 7 *[providing & fixing of paver block (60mm) at Larai Eid Ghah from main gate of Eid Ghah to Sports Complex, Municipal Committee Shikarpur]* and submitted their bid to the procuring agency through courier service *'TCS'* on 18.07.2019 in terms of Rule-24(2) of SPP Rules, 2010[6]. When they deputed their representative to the procuring agency's office to witness opening of bids on 19.07.2019, they found all members of the procurement committee as absent.

- Syed Adil Gilani (Member of Review Committee) instructed the appellant to ensure that NIT's reference number and nature of work are clearly indicated on the envelope before its submission to the procuring agency.

Procuring Agency's Version

6. Mr. Jahanzeb Khan *'representative of the procuring agency'* clarified that they received the appellant's envelope *'bid'* on 19.07.2019 without proper reference to the name and number of work[7], therefore, the appellant's bid was not inserted into the tender box. Subsequently, the appellant lodged a complaint to the procuring agency's CRC, which convened a meeting to decide the appellant's grievances as per rules; however, the appellant did not attend the meeting, when called by the CRC[8]. The procuring agency's rebutted all the allegations leveled by the appellant and further stated that despite such baseless allegations, they had not awarded the contracts so far as required under the rules.

- The Chair and Syed Adil Gilani pointed out that when the procuring agency received and opened the appellant's sealed envelope/ bid then they were required to insert the same into the tender box and/ or consider the same for further evaluation; bid deficiencies, if it had existed, were required to be incorporated by the procurement committee under the bid evaluation report as required under Rule-45 read with Rules-8 & 42(1) of SPP Rules, 2010. Subsequently, Syed Adil

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[5] Later on, the Chairman, Municipal Committee Shikarpur, vide letter dated 27.09.2019 informed the Authority that he had to appear in the Honorable High Court of Sindh, Circuit Court Larkana, due to which he could not attend the meeting. Therefore, another date may be fixed for hearing the appeal lodged by M/s Nawab & Sons.

[6] TCS Tracking ID # 2065580400 revealed that the appellant's envelope [bids] was received by the consignee [procuring agency] on 19.07.2019 at 10.55 a.m.; whereas, the deadline for submission and opening of bids was 18.07.2019 and 19.07.2019 at 02.00 p.m., respectively. Rules- 41(1) & (3) of SPP Rules, 2010, provides that *'the date for opening of bids and last date for the submission of bids shall be the same, as given in the bidding documents and in the notice inviting tender; the bids shall be opened within one hour of the deadline for submission of bids;*

[7] Under ITB # 5 of bid documents, it was explicitly mentioned that *the envelope containing the tender documents shall refer to the name and number of the work.*

[8] The procuring agency's CRC letter dated 01.10.2019 elucidates that the appellant was called to submit the documents after passing sixty seven (67) days of lodging of their complaint, when the complaint already transferred to the Authority's Review Committee in terms of Rule-31(5) of SPP Rules, which provides that ***'the complaint redressal committee shall announce its decision within seven days and intimate the same to the bidder and the Authority within three working days. If the committee fails to arrive at the decision within seven days, the complaint shall stand transferred to the Review Committee which shall dispose of the complaint in accordance with the procedure laid down in Rule-32, if the aggrieved bidder files the review appeal within ten (10) days of such transfer.'***

Gilani urged the procuring agency to update the Authority regarding current status of the instant work *'listed at Sr. # 7 of the NIT'*;

- The procuring agency stated that they had not awarded any contract so far.

Review Committee Observations

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

- It was the responsibility of the procuring agency to adhere to the procurement rules, regulations, and instructions and to ensure that procurements were conducted in a fair and transparent manner and that the object of procurement must bring value for money to the agency and that the procurement process was efficient and economical in terms of Rule-4 of SPP Rules, 2010;
- The procuring agency's CRC was required to decide the complainant's grievances within seven days and intimate the same to the appellant as well as Authority within three working days in terms of Rule-31(5) of SPP Rules, 2010, but the procuring agency failed to do so;
- The procuring agency was required to insert the bid, submitted by the appellant, into the tender box and/ or consider the same for further evaluation; bid deficiency, if any, was required to be incorporated by the procurement committee under the bid evaluation report as required under Rule-45 read with Rules-8 & 42(1) of SPP Rules, 2010;

Review Committee Decision

8. In light of the above observations as mentioned under para-7 and after due deliberation, the Review Committee unanimously decides that since the procuring agency had not awarded or signed procurement contract against the work listed at Sr. # 7 of NIT; hence, the procurement's proceedings for the said work be terminated in terms of Rule-32(7)(f) of SPP Rules, 2010 (Amended 2019), and fresh tenders be floated in terms of Rule-23(2) of SPP Rules, 2010 (Amended 2019). **Compliance of this decision shall be submitted to this Authority within fifteen (15) days of issuance of this decision.**

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

(Member)
Assadullah Soomro
Private Member
SPPRA Board

Not attended

(Member)
Nominee of Director General Audit Sindh

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

18/x

(Chairman)
Abdul Rahim Sheikh
Managing Director
Sindh Public Procurement Regulatory Authority