



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-587/2019-20

10973

Karachi, dated the 21st November, 2019

To,

The Secretary to Government of Sindh,
Local Government Department,
Karachi.

Subject: DECISION OF REVIEW COMMITTEE OF SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY (APPEAL LODGED BY M/S NAWAB & SONS CONSTRUCTION SERVICES VERSUS DISTRICT COUNCIL MATIARI).

The undersigned is directed to refer to the subject cited above and to enclose a copy of the Authority's Review Committee decision taken in its meeting on 30th October, 2019 for your information and further necessary action under intimation to this Authority, at the earliest, please.

[Handwritten Signature]
11/11/2019

ASSISTANT DIRECTOR (LEGAL-II)

A copy along with enclosures/ decision is forwarded for information to:

1. The Deputy Commissioner Matiari.
2. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
3. The Chairman District Council Matiari.
4. The Assistant Director (I.T), SPPRA [with an advice to post the Authority's Review Committee decision on website in terms of Rule-32(11) of SPP Rules, 2010.]
5. The Staff Officer to the Chairman Review Committee/ Managing Director SPPRA/ Review Committee Members (all).
6. M/s Nawab & Sons Construction Services, House # C-147, Block-3, Phase-I, near Markazi Jamia Masjid Qasimabad, Hyderabad.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-587/2019-20

Karachi, dated the November, 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

District Council Matiari

(NIT ID # T00590-19-0001 dated 18.07.2019)

Facts and background

The appellant, M/s Nawab & Sons Construction Services, Government Contractor Hyderabad, lodged a complaint (vide letter dated 16.08.2019) addressed to the Chairman, District Council Matiari/ Chairman Complaints Redressal Committee (CRC) and copy endorsed to the Sindh Public Procurement Regulatory Authority and others – for taking necessary action – against the NIT # 984/DCM/ENG/2019 dated 18.07.2019 floated by District Council Matiari 'the procuring agency' for procurement of sixty two (62) works related to the construction of concrete blocks, paver blocks, and drains etc.¹. In turn, the Authority vide letter dated 03.09.2019 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. In response to the aforementioned complaint, the procuring agency (vide its letter dated 23.08.2019) communicated the CRC decision to the appellant by stating that the appellant's bid was received to the procuring agency through courier service on 06.08.2019 at 02.00 p.m. i.e. after deadline for submission of bids; hence, the same was rejected on the grounds for late submission of bids². Subsequently, the appellant (vide letter dated 31.08.2019) lodged an appeal to this Authority against the CRC decision by requesting the Authority to place their matter before the Review Committee in terms of Rule-32(1) of SPP Rules, 2010.

3. Resultantly, the appellant's matter was taken up by the Authority's Review Committee for hearing in its meeting scheduled on 16.10.2019 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 date, time, and venue. 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 did not attend the meeting, due to which the Committee decided to provide an opportunity to the procuring agency to appear in next meeting, scheduled on 30.10.2019, for defending its position/ case and notices in this connection were again issued to the parties concerned vide this Authority's letter dated 24.10.2019. In compliance, Syed Shoukat Ali Shah, District Engineer,

¹ Detailed description/ nature of these works can be accessed through instant procurement's NIT and bid documents available on PPMS website at ID # T00590-19-0001 [<https://ppms.ppraisindh.gov.pk/PPMS/public/portal/notice-inviting-tender>]

² Date and time when the CRC meeting was convened was not mentioned/ disclosed in the decision. Moreover, the CRC decision was not signed by the committee members.

District Council Matiari '*representative of the procuring agency*' and Mr. Taj Muhammad Soomro '*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. 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 works listed at Sr. # 45 & 59 [*Construction of C.C block at village Wahab Shah U.C. Odero Lal; and Construction of C.C block at village Pir Wah U.C Bhanoth*] and submitted their bids to the procuring agency through courier service 'TCS' on 05.08.2019 in terms of Rule-24(2) of SPP Rules, 2010³. When they deputed their representative to the procuring agency's office to witness opening of bids as scheduled on 06.08.2019, they found all members of the procurement committee absent. The appellant then shared the system generated TCS receipt by stating that their bid was received on 06.08.2019 at 09.00 p.m. and the procuring agency's version to have received the bid on 06.08.2019 at 02.45 p.m. contradicts with system generated receipt. The appellant plead that no one can either deny or manipulate the system generated data as accessible/ available on the courier service website.

Procuring Agency's Version

6. Syed Shoukat Ali Shah '*representative of the procuring agency*' clarified that they received the appellant's envelope '*bids*' on 06.08.2019 at 02.45 p.m. i.e. after deadline for submission of bids; hence, the appellant's bids were rejected on grounds of late submission.

- Syed Adil Gilani (Member of Review Committee) asked the procuring agency as to how it was ascertained that the appellant's bids were received on 06.08.2019 at 02.45 p.m.;
 - ◆ The procuring agency's representative shared a copy of TCS shipment delivery record whereby it was mentioned (hand-written) that the appellant's bid was received on 06.08.19 at 02.45 p.m. The procuring agency's representative claimed that the delivery timing on the shipment delivery record was mentioned by TCS office.
- Syed Adil Gilani pointed out as to why the shipments' receipt timings are mentioned under only two consignments as addressed to the procuring agency but not those as addressed to the consignees other than the procuring agency. Such observation was also endorsed by Mr. Assadullah Soomro (Member of Review Committee) who further added that apparently the procuring agency got a copy of the shipment delivery record and then overwrote the timings at their own level otherwise as to how the procuring agency received a copy of such internal shipment delivery record where the delivery timing is recorded for specific shipments pertaining to the procuring agency. Mr. Assadullah Soomro further added that the law and/ or general principle, in this conflicting situation, would support the shipment delivery receipt to be genuine or verifiable as issued or generated through tracking the shipment delivery record accessible via TCS system.
 - ◆ The procuring agency's representative affirmed that they approached the TCS office to get a copy of shipment delivery record and requested them to mention therein the timing for shipment deliveries relating to the procuring agency.

³ The appellant claimed to have submitted their bids to the procuring agency through TCS Tracking ID # 2065578568, which revealed that the envelope (bids) was received by the consignee/ procuring agency (Mr. Ahmed Ali Shah) on 06.08.2019 at 09.00 a.m.; whereas, the deadline for submission and opening of bids was mentioned in the NIT as 06.08.2019 at 02.00 p.m. and 03.00 p.m., respectively.



- Subsequently, the Committee urged the procuring agency to update the Authority regarding current status of the instant procurement's works where the appellant participated;
 - ◆ The procuring agency's representative was unclear while clarifying the exact position of the procurement; at one moment, the representative confirmed the contracts had been awarded but later he denied doing so. *Resultantly, the Committee advised the representative to submit the written statement exhibiting the current status of the instant procurement.*
- Syed Adil Gilani noted that the procuring agency was required to award the contract after the decision of the CRC as well as the expiry of the appeal period or the final adjudication by the Review Committee in terms of Rule-Rule-32(1) read with Rule-31(6) & Proviso of Rule-31(7) of SPP Rules, 2010⁴;
 - ◆ The procuring agency's representative was unaware of these rules as well as CRC. Thereafter, the procuring agency's representative, on an advice of the Committee, submitted written statement as reproduced verbatim herewith "*[it is respectfully submitted before this Authority that I undersigned District Engineer District Council Matiari do humbly state before the Authority that] the office of Chairman District Council Matiari received the subject shipment on dated 06.08.2019 at 02.45 p.m. and said copies of TCS record is also I produce before this Authority. That on dated 16.08.2019 the above name appellant M/s Nawab & Sons Construction Services also made application before Redressal Committee of District Council Matiari that the Redressal Committee also issued notice for appearance to appellant but no one from appellant appeared and Redressal Committee on dated 23.08.2019 addressed letter to appellant and also pointed out that the application of appellant was not on stipulated time. Further, it is clear from the documents that the application of the appellant was not on time and never he himself appeared before the bid process. That on 30.08.2019, all process of NIT were completed and work orders were issued to the different contractors who were appeared before the bid process. After the completion of NIT, we received your letter on dated 05.09.2019. So it is therefore submitted before this Honorable Authority that the application of appellant was not on time and the allegations are baseless. [Sd/- Syed Shoukat Ali Shah dated 30.09.2019]*"

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 announced its decision vide its letter dated 23.08.2019⁶; however, the procuring agency failed to intimate the same to this Authority within three working days as required under Rule-31(5) of SPP Rules, 2010;

⁴ The Authority vide its letter of even number dated 03.09.2019 also advised that the procuring agency shall award the contract after the 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 expiry of appeal period or the final adjudication by the Review Committee.


⁵ The procuring agency's representative did not submit any evidence pertaining to the issuance of CRC meeting letter to the appellant. It is not mandatory for the bidder to attend the procuring agency's office in order to qualify the bid(s).

⁶ The procuring agency's CRC decision was required to be signed by all the members of the CRC in order to ensure that the members participated the meeting and unanimously decided the matter.

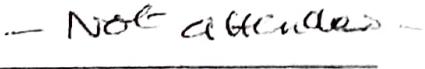
- The procuring agency's representative statement confirms that the contracts, under the instant procurement, were awarded on 30.08.2019 i.e. before the expiry of appeal period or final adjudication by the Review Committee in terms of Rule-32(1) of SPP Rules, 2010;
- The procuring agency was required to mention minimum amount of turnover of last three years under bidder's technical evaluation criteria in terms of Rule-46(1)(a)(ii) 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 requirement⁷;
- The procuring agency was required to post contract documents – evaluation report; form of contract and letter of award; and bill of quantities or schedule of requirement – on the Authority's website within fifteen (15) days of signing of contract in terms of Rule-50 read in conjunction with Rule-10 of SPP Rules, 2010; however, the procuring agency has failed to post these documents on the Authority's website [as yet], violating the aforementioned rules; and
- The claim of the procuring agency to have received the appellant's bid, against NIT's works listed at Sr.# 45 & 59, after the deadline of submission of bids could not be verified from the given evidence due to the reasons (observations of the Committee members) mentioned under paragraph-6.

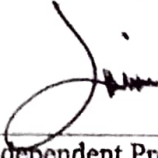
Review Committee Decision

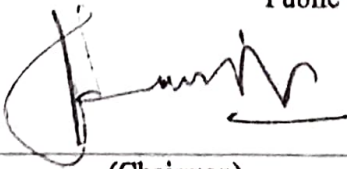
8. In light of the above observations, as mentioned under para-7, and due deliberation, the Review Committee unanimously declares the instant procurement's works⁸ shown at Sr. # 45 & 59 as **Mis-Procurement** in light of SPP Rule-32(7)(g) of SPP Rules, 2010, read with Section-2(i) of SPP Act, 2009 and decides to refer the matter to the Competent Authority for initiating disciplinary proceedings against the officer(s)/ official(s) responsible for mis-procurement in terms of Rule-32(A)(2) of SPP Rules, 2010 (Amended 2019).


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


 (Member)
 Assadullah Soomro
 Private Member
 SPPRA Board


 (Member)
 Nominee of Director General Audit Sindh


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


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

⁷ The observation was conveyed to the procuring agency through PPMS website on 19.07.2019 with an advice to rectify the same; nevertheless, the procuring agency failed to do so.

⁸ NIT's works listed at Sr. # 45 & 59: Construction of C.C Blocks at villages Arzi Hakro and Pir Wah