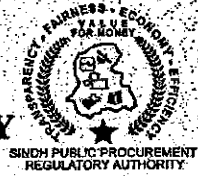




GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-872/2019-20/1828

Karachi, dated the 20 February, 2020

To,

- The Director Design,
Irrigation Department,
Office of Directorate Design, Shahbaz Building,
Hyderabad.
- The Executive Engineer,
Sakro Division, Mirpur Sakro,
Thatta.

Subject: DECISION OF REVIEW COMMITTEE OF SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY (APPEAL LODGED BY M/S GHULAM MURTAZA ENTERPRISES AND M/S RABBI TRADERS VERSUS EXECUTIVE ENGINEER, SAKRO DIVISION MIRPUR SAKRO.)

The undersigned is directed to refer to the subject cited above and to enclose herewith a copy of the Authority's Review Committee decision (*M/s Ghulam Murtaza and Anor v Sakro Division, Mirpur Sakro*) held in its meeting on 12th February, 2020, for your information and further necessary action under intimation to this Authority, at the earliest.

19/02/2020
ASSISTANT DIRECTOR (LEGAL-II)

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

1. The Secretary to Govt. of Sindh, Irrigation Department, Karachi.
2. The Superintending Engineer, Baghar Circle, Irrigation Department, Hyderabad.
3. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
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/ Members Review Committee.
6. M/s Ghulam Murtaza Enterprises, B. # C-377/3, Phase-I, Qasimabad, Hyderabad.
7. M/s Rabbi Traders, House # 99m, Civil Court Road, Bhatti Para, Kotri, Jamshoro.
8. M/s Abdul Wajid Khan, Shah Latif Colony, Makli District, Thatta.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-872/2019-20

Karachi, dated the February, 2019

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

(Appeals)

M/s Ghulam Murtaza Enterprises and M/s Rabbi Traders
Versus
Executive Engineer, Sakro Division Mirpur Sakro
(NIT ID # T00937-19-0003 dated 02.12.2019)

Facts and background

The appellants¹, M/s Ghulam Murtaza Enterprises and M/s Rabbi Traders, Government Contractors Hyderabad/ Jamshoro, lodged separate complaints (vide letters dated 24 & 31.12.2019, respectively) addressed to the Director General, Monitoring & Evaluation Cell/ Director Design, Directorate of Design, Irrigation Department, Hyderabad/ Chairman Complaints Redressal Committee (CRC) as well as this Authority against the NIT # TC/G-148/811/2019 dated 25.11.2019 floated by Executive Engineer, Sakro Division Mirpur Saro, District Thatta 'the procuring agency' for procurement of work 'Cement Concrete Lining of Khanti Naseer Link Channel from RD.0+000 to RD.18+300'² whereby the appellants raised concern that the procuring agency received their bids on 19.12.2019; however, the same were not opened publicly and instead a corrigendum was issued for extension in schedule of opening of bids on 23.12.2019. Subsequently, the appellants visited the procuring agency's office on 23.12.2019, albeit, the opening of bids could not be held again as required under Rules-41(1) & (3) of SPP Rules, 2010 (Amended 2019)³. In turn, the Authority (vide letters dated 31.12.2019 & 09.01.2020) also forwarded the matter to the procuring agency's CRC with an advice to redress the appellants' grievances and then furnish decisions within stipulated time period as specified under Rule-31(5) of SPP Rules, 2010⁴.

2. Subsequently, the appellants (vide letters dated 03 & 10.01.2020, respectively) preferred separate appeals, in the absence of review appeal fee⁵, stating that the procuring agency could not open the bids on the scheduled dates⁶ and the CRC, in this regard, has also failed to decide their matter – complaints as referred above – within stipulated time period, therefore, requested the Authority to place the cases before the Review Committee in terms of Rule-32 of SPP, 2010⁷. In turn, the Authority (vide letters dated 10 & 16.01.2020) forwarded the appellants' matter to the procuring agency with an advice to update/ confirm status of the appellants' bid security, latest by 21.01.2020, in terms of Rule-32(1) of SPP Rules, 2010⁸, for ascertaining the maintainability of the cases; however, the procuring agency could not furnish any response within prescribed time. Simultaneously, the Authority advised the appellants to submit review appeal fee, depending upon the estimated cost of procurement⁹, that was submitted by the appellants vide letters dated 10 & 23.01.2020, respectively.

¹ Appellant # I: M/s Ghulam Murtaza Enterprises; and Appellant # II: M/s Rabbi Traders

² Detailed description/ nature of the work can be accessed through instant procurement's NIT available on the PPMS website at ID # T00937-19-0003 [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender>]

³ Rule-41(1) & (3) provides that the date for opening of bids and the last date for 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.

⁴ Rule-31(5) 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 under rule 32, if the aggrieved bidder files the review appeal within ten (10) days of such transfer.

⁵ Authority's Office Order No. Dir(A&F)/SPPRA/18-19/0325 dated 26.07.2019 [<https://ppms.pprasindh.gov.pk/PPMS/>]

⁶ Bids were scheduled to be received and opened on 19.12.2019 & 27.12.2019 under first and second attempt/ schedule of NIT <http://www.pprasindh.gov.pk/SPPACT15MARCH2019.pdf>

⁷ Rule-32(1) provides that the a bidder not satisfied with decision of the procuring agency's complaints redressal committee may lodge an appeal to the Review Committee within ten (10) days of announcement of the decision provided that he has not withdrawn the bid security, if any, deposited by him.

⁹ ibid.

3. Accordingly, the appellants' cases were taken up by the Review Committee for hearing in its meeting scheduled on 12.02.2020 at 10.00 a.m. and notices, in this regard, were issued to the parties concerned (vide this Authority's letter dated 30.01.2020) to appear before the Committee on scheduled dated, time, and venue¹⁰. In compliance, the meeting was attended by the following (representatives):

Sr. #	Name of Representative with Designation	Name of Organization
Procuring Agency		
I.	Mr. Junaid Hashim Talpur, Director Design	Directorate Design, Shahbaz Building, Hyderabad
II.	Mr. Pritam Das, Superintending Engineer	Baghar Circle, Irrigation Department, Hyderabad
Appellants		
I.	Mr. Mujeeb Rind, Proprietor	M/s Ghulam Murtaza Enterprises, Hyderabad
II.	Mr. Adnan Gul Bhatti, Proprietor	M/s Rabbi Traders, Jamshoro

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 appellants to present the case/ version, one by one, on the instant procurement before the committee.

Appellant's Version

5. **M/s Ghulam Murtaz Enterprises:** Mr. Mujeeb Rind 'the appellant # I' apprised the Committee of his submission of bid on the bidding documents downloaded from the Authority's website where he (appellant) missed to submit tender fee, along with the bid submitted to the procuring agency, as required under Rule-24(2) of SPP Rules, 2010¹¹. Hence, the appellant expressed satisfaction over disqualification of his firm under instant bidding process.

6. **M/s Rabbi Traders:** Mr. Adnan Gul Bhatti 'the appellant # II' apprised the Committee of his submission of bid, along with requisite documents as required under instant procurement, on 19.12.2019 that was received but not opened by the procuring agency. Instead the procuring agency issued a corrigendum on 19.12.2019 whereby the schedule for opening of bids was extended up to 23.12.2019. Subsequently, the appellant approached the procuring agency on 23.12.2019 & 30.12.2019¹² where the procurement committee's members were present; however, the bids were not opened again without assigning any reason.

- The Chair of the Review Committee asked the appellant # II to submit an evidence in support of his participation in the bidding process i.e. submission of the bid to the procuring agency;
 - ◆ The appellant stated that he had already submitted copies of CDR and bank statement, showing CDR issued in favor of the procuring agency, while lodging an appeal to the Authority and his bid is still available with the procuring agency. The appellant further stated that the procuring agency posted bidders' attendance sheet, along with the bid evaluation report, which pertained to other procurement – abkalani material, annual material goods & services – whose bids were opened on 18.07.2020¹³. Secondly, the procuring agency maneuvered the bids of lowest submitted bidders # 2, 3 & 4 in such a way where the bid security of only single bidder – lowest submitted bidder # 1 M/s MBC & Sons – meets the required amount of 5% of bid price¹⁴. Thirdly, the procuring agency processed their call deposit for verification through the issuing bank; nevertheless, the appellant's competitive bid was not incorporated in the bid evaluation report.

¹⁰ The Review Committee's meeting for hearing instant matter was earlier scheduled on 31.01.2020; however, the meeting was rescheduled on 12.02.2020 due to unavailability of the members. Meanwhile, the Authority vide letter dated 23.01.2020 advised the procuring agency not to award the procurement contract till the final decision of the Review Committee in terms of Rule-32 read in conjunction with proviso of Rules-31(7) & 32(7)(a) of SPP Rules, 2010.

¹¹ Rule-24(2) provides that the bidder 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.

¹² ibid

¹³ Bid Evaluation Report at ID # BE00937-19-0003-1 dated 04.02.20 [https://ppms.pprasinhd.gov.pk/PPMS/public/portal/ber]

¹⁴ See bid evaluation report and minutes of bids' opening meeting - ibid

- The Committee asked the appellant to share an evidence against the procuring agency's request made to the issuing bank for verification of his call deposit;
 - ◆ The appellant could not submit any evidence against his claim. The appellant stated to have dropped bid in the tender box and his call deposit is still available with the procuring agency.

Procuring Agency's Version

7. Mr. Pritam Das, Superintending Engineer, Baghar Circle, Hyderabad 'representative of the procuring agency' contended that M/s Rabbi Traders – appellant # II – did not submit bid to the procuring agency, therefore, the appellant does not fall under the definition of bidder. He stated that the appellant might have issued the call deposit through a bank; however, such bid was not received by the procuring agency. The procuring agency's representative further stated that various contractors prepare call deposits but do not participate in bid process and subsequently file complaints to seek undue favors.

- Syed Adil Gilani (Member of Review Committee) pointed out that the Authority received another complaint dated 05.02.2020 from M/s Abdul Wajid Khan, Government Contractor Thatta, who claimed to have submitted bid to the procuring agency through courier service (TCS received by M. Aslam on 18.12.2019)¹⁵ in terms of Rule-24(2) of SPP Rules, 2010, then why such bid, whether qualified or not, was not incorporated in the bid evaluation report;
 - ◆ The procuring agency's representative stated that the referred bid was also not received by the procuring agency.
 - ◆ The appellant # II contended that Mr. Pritam Das was not present during opening of the bids then how he can claim the firms/ bidders who participated/ present during opening of the bids (or not)? Both the appellants urged that the CRC should have at least called its meeting to redress the grievances as required under the rules.
- Syed Adil Gilani further pointed out that estimated cost of instant procurement was equivalent to PKR 172.35 million that required the bidders/ firms to have registration with Pakistan Engineering Council (PEC) under Category¹⁶ C-4 rather than C-3 as required/ asked by the procuring agency in contravention of Rule-46(1)(a)(iii) of SPP Rules, 2010¹⁷, read with Clauses-2.12 & 7.6(B)(i)(1)(A) of the Authority's Procurement Regulations (Works)¹⁸;
 - ◆ The procuring agency's representative stated that bid – offered/ quoted – could exceed 20% of the estimated cost of amount, therefore, bidders registered under PEC C-3 were invited to submit bid. *He confirmed that procurement contract has not been made yet.*

Review Committee's Observations/ Findings

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

- **Appellants' Cases:** The appellant # I (M/s Ghulam Murtaza Enterprises) expressed his satisfaction over disqualification of his bid due to non-submission of tender fee while submitting bid to the procuring agency. The appellant # II (M/s Rabbi Traders) claimed to have dropped his bid into the tender box – procuring agency's office – on 19.12.2019 that was not opened on the scheduled date(s); however, the procuring agency's representatives rejected such claim for submission of bid made by the appellant. The Committee asked the appellant # II to provide probable evidence in support of his participation for submitting/ dropping tender box, albeit he failed to do. The Committee is of view that the standard of proof – substantial evidence consonant with the law – in relation to have submitted bid to the procuring agency was the responsibility of

¹⁵ TCS Tracking ID # 2066033504 dated 18.12.2019

¹⁶ https://www.pec.org.pk/fee_Pakistan.aspx (limits of construction cost of project – category C4: up to 200; C3: up to 500 M)

¹⁷ Firms/ individuals registered with PEC are allowed to participate in tenders/ bids of value, whose amount does not exceed the limit of the category in which it is registered...the bidder is of valid license holder of PEC and falls within the category and discipline allowed to participate

¹⁸ Firms/ individuals registered with PEC are allowed to participate in tenders/ bids of value, whose amount does not exceed the limit of the category in which it is registered...the bidder is of valid license holder of PEC and falls within the category and discipline allowed to participate

the appellant # II and he could take reasonable/ foreseeable steps through requesting the procuring agency to issue an acknowledgement of receipt stating the date and time in terms of Clause-7.1(C)(f) of the Authority's Procurement Regulations (Works)¹⁹ but he could not do so.

■ **Procurement Related Observations:**

- ◆ The procuring agency failed to furnish compliance with regard to the NIT's observations as conveyed by this Authority through PPMS website on 05.12.2019²⁰;
- ◆ The procuring agency was required to use standard bidding documents, containing required information, for procurement of work²¹ in terms of Rules-21(3) & 21(1) of SPP Rules, 2010²²; however, the procuring agency failed to do so;
- ◆ The procuring agency was required to open the bids publicly in presence of all the bidders, or their representatives, at the time and place announced in the invitation to bid in terms of Rule-41(4) of SPP Rules, 2010²³, however, the procuring agency failed to comply such requirement by opening the bids on 30.12.2019 when the actual date for opening of bids was 19.12.2019. *In case of extension of time period for submission and opening of bids, the procuring agency was required to issue corrigendum in a manner similar to the original advertisement as per Rule-22(2) read in conjunction with Rule-4 of SPP Rules, 2010²⁴;*
- ◆ The procuring agency's CRC was required to decide the complainants' grievances within seven days and intimate the decision to the appellants as well as Authority within three working days in terms of Rule-31(5) of SPP Rules, 2010; however, the procuring agency failed to comply these requirements;
- ◆ The procuring agency was required to solicit bids from bidders/ contractors having registration with PEC under category C-4 rather than C-3 (as the estimated cost of instant procurement falls within the limits of PKR 200) in terms of Rule-46(1)(a)(iii) of SPP Rules, 2010, read in conjunction with Clauses-2.12 & 7.6(B)(i)(1)(A) of the Authority's Procurement Regulations (Works)²⁵; however, the procuring failed to comply such requirement. Imposition of such condition might have curtailed the level of competition as well as loss (expected) to government exchequer due to acceptance of bid higher than 18.17% of the estimated cost²⁶;
- ◆ The procuring agency posted bidders attendance sheet, along with bid evaluation report, that pertains to another tender opened on 18.07.1019. Secondly, the bid evaluation report shows participation – bids received – of nine bidders, whereas, the report shows the details of bids of only four bids (bidders). The procuring agency was required to incorporate details of all bidders, showing reasons for acceptance or rejection, in the bid

¹⁹ When a bidder submits a bid directly to the officer/ official assigned by the procuring agency or when it is sent through either courier service or by post; the officer on request from the bidder shall issue an acknowledgement of receipt stating the date and time

²⁰ See the Authority's observations under NIT's details section

²¹ Such observation also conveyed by the Authority through PPMS website on 05.12.2019

²² Rule-21(1) & (3) provides that the bidding documents shall include: letter of invitation for bid; data sheet containing information about the assignment; instructions for preparation of bids; amount and manner of payment of bid security and performance guarantee (where applicable); manner and place, date and time for submission of bidding documents; manner, place, date and time of opening of bids; method of procurement used; a detailed and unambiguous evaluation criteria; terms and conditions of the contract agreement, as far as already known by the procuring agency; terms of reference and technical specification of goods, works or services to be procured, subject to Rule 13; manner in which tender price is to be assessed and completed, including information about tax liability; currency in which tender price is to be formulated and expressed; bid validity period; a copy of integrity pact to be signed by the parties; and any information which is specified in regulations issued by the Authority. The procuring agency(ies) shall use standard bidding documents as notified by the Authority

²³ Rule-41(1) provides that all bids shall be opened publicly in the presence of all the bidders, or their representatives, who may choose to be present in person, at the time and place announced in the invitation to bid

²⁴ Proviso of Rule-22(2) & 4 provides that the advertisement of such extension in time shall be made in a manner similar to the original advertisement. While procuring goods, works or services, procuring agency shall ensure that procurements are conducted in a fair and transparent manner and the object of procurement brings value for money to the agency and the procurement process is efficient and economical


²⁵ ibid

²⁶ ibid

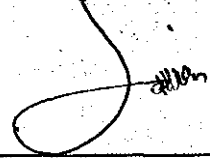
evaluation report in terms of Rule-45 of SPP Rules, 2010²⁷. Thirdly, the procuring agency has affirmed in the minutes of meeting to have received and opened bids on 19.12.2019 and 30.12.2019, respectively, which is blatant violation of Rule-41(1) & (3) of SPP Rules, 2010²⁸.

Review Committee Decision

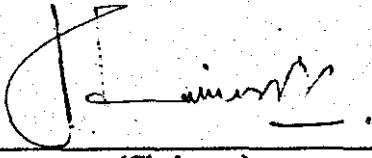
9. In light of the above observations/ findings, as at para-8, and after due deliberation, the Review Committee unanimously decides that since the procuring agency had not awarded or signed contract against the procurement work, therefore, the procurement proceedings for the instant work may be terminated in terms of Rule-32(7)(f) of SPP Rules, 2010²⁹, and fresh tenders be floated in terms of Rule-23(2) & 26 of SPP Rules, 2010. 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/ 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

²⁷ 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 it exists and intimated to all the bidders at least three (3) working days prior to the award of contract

²⁸ ibid

²⁹ Rule-32(7)(f) provides that [the Review Committee may] direct that the procurement proceedings may be terminated, in case the procurement contract has not been signed.