



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-988/2019-20/4094

Karachi, dated the 01st July, 2020

To,

- The Deputy Commissioner,
Khairpur.
- The Executive Engineer,
Buildings Division,
Khairpur.

Subject: DECISION OF REVIEW COMMITTEE OF SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY.

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 Rashidi Enterprises v Buildings Division Khairpur*) held on 23rd June, 2020, for your information/ compliance and further necessary action under intimation to this Authority, at the earliest.


ASSISTANT DIRECTOR (LEGAL-II)

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

1. The Secretary to Government of Sindh, Works & Services Department, Karachi.
2. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
3. 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*].
4. The Staff Officer to the Chairman/ Members Review Committee.
5. M/s Rashidi House, Near Dabreer Imam Bargah, Ali Murad Mohalla, Khairpur.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-988/2019-20

Karachi, dated the June, 2020

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

(Appeal)

M/s Rashidi Enterprises
Versus
Buildings Division Khairpur

(NIT ID # T00610-19-0003 dated 21.12.2019)

Facts and background

The appellant, M/s Rashidi Enterprises, Government Contractor & Material Supplier Khairpur¹, lodged a complaint (vide letter No.RTC151 dated 31.01.2020) addressed to this Authority and others against the NIT No. TC/G-55/1478/2019 dated 16.12.2019 floated by the Executive Engineer, Buildings Division Khairpur 'the procuring agency' for procurement of 'Construction of Trauma Centre/ Emergency Centre between Pir Wasan to Faiz Ganj Road with Mehran Highway at Jafar Khan Jalalani Stop Taluka Thari Mirwah District Khairpur i. Civil Works and ii. Electrification having an estimated cost of PKR 21.3 and 1.2 million, respectively (under production of Bonus Program)² whereby the appellant raised concerns by stating that he obtained bid documents through paying the tender fee to the procuring agency and then dropped bids (quoted 22% below the estimated costs) along with supporting documents and bid securities in the tender box that were not opened by the procuring agency on the scheduled date for submission/ opening of bids.

2. The appellant further alleged that while submitting bids, the procurement committee's members, except Chairman, were not present there in the procuring agency's office and the Executive Engineer Buildings Division Khairpur (Chairman Procurement Committee)³ insisted the appellant for signing blank tenders with an ulterior intention to favor his blue-eyed contractors in infraction of the applicable procurement rules and regulations. Therefore, the appellant requested the authorities concerned to investigate the matter and bound the procuring agency to conduct bidding process openly and transparently by ensuring presence of procurement committee's quorum as required under SPP Rules⁴.

3. In turn, the Authority (vide letter of even number dated 07.02.2020) forwarded the appellant's matter to the Deputy Commissioner Khairpur, being Chairman of the procuring agency's complaints redressal committee (CRC)⁵, with advice to redress the grievances and furnish its decision to appellant as well as this Authority within the stipulated time as specified under Rule-31(5) of SPP Rules, 2010⁶.

4. Subsequently, the appellant (vide letter No.RTC158 dated 12.02.2020) preferred an appeal, along with review appeal fee⁷, stating that the CRC had failed to decide the matter within the stipulated time, therefore, requested the Authority to place the matter/ case before the Review Committee in terms of

¹ Syed Mukhtiar Shah Rashidi, Proprietor M/s Rashidi Enterprises

² Detailed description/ nature of the works can be accessed through instant procurement's NIT available on the PPMS website at ID # T00610-19-0003 [https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender]

³ As per procurement committee constituted by the Works & Services Department's notification issued vide letter NO.E&A(W&S)/3-9/91 dated 05.01.2018 and posted by the procuring agency along with the NIT on the PPMS website

⁴ Rule-7(2) provides that the procurement committees comprising three members: all members shall form quorum

⁵ As per complaints redressal committee constituted by the procuring agency's order issued vide letter NO.TC/G-55/16/2014 dated 16.01.2014 and posted by the procuring agency along with the NIT on the PPMS website

⁶ Rule-31(5) provides that the complaints 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.

⁷ Authority's Office Order No. Dir(A&F)/SPPRA/18-19/0325 dated 26.07.2019 [https://ppms.pprasindh.gov.pk/PPMS/]

Rule-31(5) of SPP Rules, 2010⁸. In turn, the Authority (vide letter of even number dated 28.02.2020) forwarded the appellant's matter to the procuring agency with advice to update/ confirm status of the appellant's bid security, latest by 05.03.2020, in terms of Rule-32(1) of SPP Rules, 2010⁹, for *ascertaining the maintainability of the case*. In response, the procuring agency (vide letter No.TC/G-55/146/2020 dated 04.03.2020 – received to this Authority on 10.03.2020) stated that the appellant purchased bid documents against two works¹⁰ through paying tender documents issuance fees amounting to PKR 4,500.00 on 22.01.2020; however, the appellant did not submit bids to the procuring agency on the scheduled date for submission and opening of bids that was 23.01.2020. In addition, the procuring agency furnished list of bidders (total forty bidders) who participated/ witnessed the opening of bids and signed the bidders' attendance sheet on 22.01.2020 in terms of Rule-41(6) of SPP Rules, 2010¹¹ [emphasis added on the number of bidders and date for the opening of bids¹²].

5. Meanwhile, before the procuring agency's aforementioned response, the appellant's case was processed and considered/ taken-up by the Authority's Review Committee for hearing in its meeting scheduled on 18.03.2020 at 11.00 a.m. and notices, in this regard, were issued to the parties concerned (vide this Authority's letter of even number dated 12.03.2020) to appear before the Committee on scheduled date, time, and venue in terms of Rule-32(8) of SPP Rules, 2010¹³. However, the said meeting was later on postponed by this Authority (vide letter of even number dated 17.03.2020) in pursuance of the Services General Administration & Coordination Department's Order issued vide letter NO.SOI(SGA&CD)-6/29/2019 (SMC) dated 14.03.2020¹⁴.

6. Subsequently, the instant matter was rescheduled for hearing by the Review Committee on 23.06.2020 at 12.00 p.m., and notices, in this regard, were again issued to the parties concerned (vide this Authority's letter of even number dated 10.06.2020). In compliance, Engineer Shah Zaman Shaikh, Executive Engineer Buildings Division Khairpur '*representative the procuring agency*' appeared before the Committee, whereas, the appellant did not attend the meeting¹⁵.

REVIEW COMMITTEE PROCEEDINGS

7. The Chairperson of the Review Committee commenced the meeting by welcoming all the participants of the meeting. Then, the chair asked the procuring agency's representative to present the case/ version on the instant procurement before the committee.

Procuring Agency's Version

8. Engineer Shah Zaman Shaikh, Executive Engineer, Buildings Division Khairpur '*representative of the procuring agency*' clarified that the appellant visited the procuring agency's office on 22.01.2020 for purchasing bid documents against NIT's work listed at Sr. # 1 (including i. Civil Work, and ii. Electrification)¹⁶ that were issued vide DR. No.15604 dated 22.01.2020 after charging tender documents fee amounting to PKR 4,500.00 in terms of Rule-20 of SPP Rules, 2010¹⁷. However, the appellant did not approach the procuring agency for submission/ opening of bids that took place on 23.01.2020 – second

⁸ Ibid.

⁹ Rule-32(1) provides that 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.

¹⁰ Works as mentioned under para-1 (i. Civil Work and ii. Electrification)

¹¹ Rule-41(6) provides that all bidders in attendance shall sign an attendance sheet

¹² Read in conjunction with the Review Committee's observations/ findings

¹³ Rule-32(8) provides that it shall be mandatory for the appellant and the head of procuring agency or his nominee not below the rank of BS-19 to appear before the Review Committee as and when called and produce documents, *if required*.

¹⁴ It was directed therein that no employee shall visit the offices of Sindh Secretariat, Karachi, and also *shall not leave headquarter* in the wake of outbreak of COVID-19.

¹⁵ It was confirmed by the procuring agency's representative that the appellant passed away peacefully; therefore, the Committee unanimously decided to extend the proceedings for disposal of pending matter enabling the procuring agency to proceed further as per law.

¹⁶ Ibid.

¹⁷ Rule-20 provides that the procuring agency shall provide the bidding documents to all interested bidders in accordance with the procedures and requirements specified in the Notice Inviting Tender. The procuring agency may charge a fee for bidding documents, which shall not exceed the cost of preparation and printing.

attempt/ schedule for submission and opening of bids – as per corrigendum issued by the procuring agency (vide letter No.TC/G-55/11/2020 dated 03.01.2020). Later on, the appellant submitted a complaint to the procuring agency's CRC¹⁸, which called the appellant who was thereafter willing to withdraw his case subject to the condition for award of procurement contract while floating upcoming tenders by the procuring agency. Resultantly, the appellant also withdrew his call deposits from the procuring agency's office that construes the appellant's consent to withdraw his case.

- Syed Adil Gilani (Member of Review Committee) asked the procuring agency's representative as to why the bids were not received and opened under first attempt/ schedule for submission and opening of bids – as mentioned in the NIT – that was fixed on 06.01.2020;
 - ◆ The procuring agency's representative stated that the instant procurement's NIT was floated by the then Executive Engineer who got retired on attaining the age of superannuation on 15.01.2020. Subsequently, he assumed the charge of this post when the referred corrigendum for extension in deadline of submission and opening of bids was already issued by the procuring agency.
- Engr. Munir Ahmed Shaikh (Member of Review Committee) asked the procuring agency's representative as to how the extension of time period for submission of bids was made – whether advertisement of corrigendum was made in newspapers as well as on the Authority's PPMS website as required under Rule-21(2) or 22(2) of SPP Rules, 2010^{19,20}, read with Clause-4.10 of the Authority's Procurement Regulation (Works)²¹;
 - ◆ The procuring agency shared a copy of the corrigendum issued vide letter dated 03.01.2020²² that is reproduced herewith: *'The NIT No.TC/G-55/1478 dated 16.12.2019 issued by this office in which date of issue and date of opening is hereby extended up to 23.01.2020, as same are already been published in the daily leading newspapers. The bid shall be received back on 23.01.2020 up to 12.00 p.m. and opened on the same date at 03.00 p.m. in the office of the undersigned in presence of the bidders or their representative who may wish to be present. All other terms and conditions remains unchanged [Sd./- Executive Engineer (Buildings), Works & Services Department Khairpur.] [emphasis added on the time for submission and opening of bids²³]*
- Subsequently, the Chair of the Committee asked the procuring agency's representative to update the current status of instant bidding process;
 - ◆ The procuring agency's representative confirmed that procurement contracts [NIT's works listed at Sr. # 1 (I) & (II)] have not been awarded yet. The bid

¹⁸ Ibid.

¹⁹ Rule-21(2) provides that any information, that becomes necessary for bidding or for bid evaluation, after the invitation to bid or issue of the bidding documents to the interested bidders, shall be provided in a timely manner and on equal opportunity basis. Where notification of such change, addition, modification or deletion becomes essential, such notification shall be made in a manner similar to the original advertisement.

²⁰ Rule-22(2) provides that [the procuring agency may extend the deadline for submission of bids only, if one or all of the following conditions exist] if the procuring agency is convinced that such extraordinary circumstances have arisen owing to law and order situation or a natural calamity that the deadline should be extended; *provided that the advertisement of such extension in time shall be made in a manner similar to the ordinal advertisement.*

²¹ Clause-4.10 provides that the procuring agency may extend the deadline for submission of bids, as per conditions mentioned in Rule 22; *provided that advertisement of such extension in time shall be done in a manner similar to the original advertisement, in which case all rights and obligations of the procuring agency and bidders previously subject to the original dead line will thereafter be subject to the dead line extended.* In case, corrigendum or addendum is issued, following points be taken into consideration:- I. notice of corrigendum or addendum is issued prior to expiry date of submission of bids or at least published within 3 days of expiry date/opening date and hoisting on the same date. II. notice is to be advertised in a manner similar to the original advertisement. *Affixing of corrigendum on notice board of office of the procuring agency cannot a substitute to the requirement of publication in newspaper or hoisting on SPPRA website as the case may be.* iii. in case of material deviation or addendum, it is necessary to provide a minimum response period of fifteen days which will be counted from the date of publication/hoisting of such corrigendum or addendum; iv. in case addendum which envisages additional items to be tendered, then it is essential to enhance the response period by fifteen days to be counted from date of publication or hoisting on SPPRA website addendum at least for new items.

²² Ibid.

²³ Rule-41(3) provides that the bids shall be opened within one hour of the deadline for submission of bids.

evaluation reports²⁴ have been posted on the Authority's PPMS website on 22.06.2020 in terms of Rule-45 of SPP Rules, 2010²⁵.

Review Committee's Observations/ Findings

9. After hearing the parties at length and close scrutiny of the procurement record, the Review Committee observed that:

- **Appellant's Cases:** Through instant appeal, the appellant has sought the relief from the Review Committee: a. That, the procuring agency may be directed to award procurement contracts after conducting bidding process in an open and transparent manner by following the SPP Rules and regulations in letter and spirit; and b. That, the appellant, being competent and professional contractor, insisted to have quoted competitive bid as 22% below the estimated cost against at NIT's works listed at Sr. # 1 (including i. Civil Work, and ii. Electrification)²⁶ that (bids) were received but not opened by the procuring agency and in this connection the appellant directly approached the procuring agency's CRC, for redressal of grievances, which failed to decide the matter; hence, the appellant requested to decide the case as per rules and regulations. Following to receipt of this appeal, this Authority called the appellant to submit/ present copies of bid documents with supported evidence including bid securities/ call deposits; professional registration certificates; and experience certificates etc. that were received/ examined by the Authority and resultantly his case/ appeal found maintainable to be heard in terms of Rule-2(1)(f) of SPP Rules, 2010²⁷. The appellant, thereafter, was continuously pursuing his case through submitting reminders (vide letter NOs.RTC160, RTC162 & RTC167 dated 21 & 24.02.2020 & 17.03.2020, respectively) to this Authority which transpires that he was willing to seek remedy as per law irrespective of any compromise or withdrawal of his instant case/ appeal.
- **Procurement Observations:** The procuring agency failed to comply with the following requirements as required under the referred rules:
 - ◆ The procuring agency issued corrigendum, for extension in time period for submission and opening of bids up to 23.01.2020 without any reason, in the absence of its publication in newspapers and posting on the Authority's website as required under Rule-21(2) or 22(2) of SPP Rules, 2010, read with Clause-4.10 of the Authority's Procurement Regulation (Works)²⁸. *The question arises as to how the bidders, those who submitted bids under instant procurement, came to know for the revised/ extended schedule when such information was not made public as required under the referred rules.* Such restricted practice by the procuring agency defeats the purpose and object of the Act in terms of Rule-4 of SPP Rules, 2010²⁹ read with Clause-2.2 of the Authority's Procurement Regulations (Works)³⁰, which requires core procurement principles (provide equal opportunity/ information to all the interested bidders; and ensure transparency and fairness etc.) to be retained/ ensured at each procurement stage. *It is*

²⁴ ID # BE00610-19-0003-1 & 3 dated 06 & 22.06.2020, respectively [<https://ppms.pprasinidh.gov.pk/PPMS/public/portal/ber>]

²⁵ Rule-45 provides that the 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 its website exists and intimated to all the bidders at least three (3) working days prior to the award of contract

²⁶ Ibid.

²⁷ Rule-2(1)(f) defines the bidder as a person or entity; i. submitting a bid; or ii. who intends to submit a bid and is able to substantially prove such intention.

²⁸ Ibid.

²⁹ Rule-4 provides that while procuring goods, works or services, procuring agencies 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.

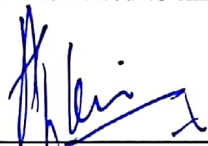
³⁰ Clause-2.2 provides that the public procurement has a number of objectives which are enumerated herewith:- (a) economy and efficiency in the implementation of the project/scheme including the procurement of the works and related services thereof, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations; (b) provide equal opportunity and information to all eligible and interested bidders to compete in the procurement process; (c) ensure transparency and fairness in the process; (d) obtaining works and services of the appropriate quality; (e) avoid cost and time over run; and (f) best value for money.

clarified here that affixing of corrigendum on notice board of the procuring agency's office cannot be a substitute to the requirement of publication in newspapers and hoisting/posting on the Authority's website as expressly mentioned under Clause-4.10(ii) of the Authority's Procurement Regulations (Works)³¹. Secondly, the corrigendum envisages the schedule for submission and opening of bids as 23.01.2020 up to 12 p.m. and 03 p.m., respectively, which contravenes the Rule-41(3) of SPP Rules, 2010³²;

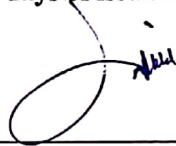
- ◆ The procuring agency (vide letter No.TC/G-55/146/2020 dated 04.03.2020), in response to this Authority's letter dated 28.02.2020, submitted a list of forty (40) bidders as an evidence for opening of bids publicly under instant procurement on 23.01.2020 where the Authority observed that the bidders' attendance sheet was signed on 22.01.2020³³ and the number of participated bidders does not match to the information provided under bid evaluation reports;
- ◆ The procuring agency's representative, while clarifying queries raised by the Review Committee, stated that the CRC heard the appellant and resolved his grievances. In this case or whatsoever, the CRC had to announce the decision by submitting it to the bidder and the Authority in terms of Rule-31(5) of SPP Rules, 2010³⁴;

Review Committee Decision

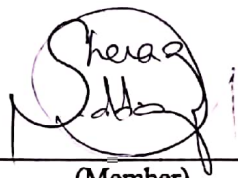
10. In view of the foregoing findings/ observations, as at para-9, and after due deliberation, the Review Committee unanimously decides that since the procuring agency has not awarded or signed contract against procurement works as mentioned under NIT's Sr. # 1 (Civil Work and Electrification), therefore, the procurement proceedings may be terminated in terms of Rule-32(7)(f) of SPP Rules, 2010³⁵, and fresh tenders be floated in terms of Rule-23(2) & 26(1) of SPP Rules, 2010³⁶. Compliance of the decision shall be submitted to this Authority within fifteen (15) days of issuance of this decision.



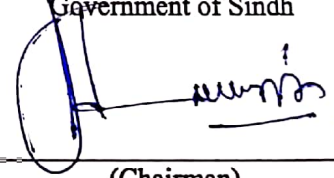
(Member)
Syed Adil Gilani
Private Member SPPRA Board
Representative Transparency International



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



(Member)
Sheeraz Siddiqui
Director (Audit)
Nominee of Director General Audit Sindh



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

³¹ Ibid.

³² Ibid.

³³ Attendance sheet of various contractors who participated on the occasion of opening of tenders on 22.01.2020

³⁴ Ibid.

³⁵ 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.

³⁶ Rules-23(2) & 26(1) provides that procuring agency shall re-issue the Notice Inviting Tenders, in accordance with Rule-17 and 18, if it is convinced that there is a material infirmity in the bidding process, which cannot be addressed without modifying the contents of bidding documents. [The procuring agency may re-issue tenders in case, the bidding process has been cancelled, as provided in Rule-25 or one of the following conditions exist] such an infirmity in the bidding documents has surfaced that the procurement committee recommends to the competent authority that the bids have to be invited afresh.