



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1053/2019-20/0846

Karachi, dated the 06 July, 2020

To,

The Chairman District Council,
Tando Muhammad Khan.

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 Asif Raza Contractor v District Council Tando Muhammad Khan*) held on 23rd June, 2020, for your information and further necessary action.


06/07/2020
ASSISTANT DIRECTOR (LEGAL-II)

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

1. The Secretary to Government of Sindh, Local Government Department, Karachi.
2. The Deputy Commissioner Tando Muhammad Khan.
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 Asif Raza Contractor, Chandia House, Near Dr. Lashari House, Nehar Ki Pati, Laloo Lashari, Hyderabad.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1053/2019-20

Karachi, dated the July, 2020

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

(Appeal)

M/s Asif Raza Contractor
Versus

District Council Tando Muhammad Khan

(NIT ID # T01639-19-0006 dated 25.01.2020)

Facts and background

The appellant, M/s Asif Raza Contractor, Hyderabad, lodged a complaint (vide letter No.ASR 182 dated 13.02.2020) addressed to the Chairman Complaints Redressal Committee (CRC)¹ and copy endorsed to this Authority against the NIT No.DC/TMK/Engg/464/2020 dated 23.01.2020 floated by the Chief Officer, District Council Tando Muhammad Khan '*the procuring agency*' for procurement of eleven (11) works '*earth fillings and construction of C.C blocks etc.*'² whereby the appellant raised concerns by stating that he downloaded bid document against NIT's work listed at Sr. # 10 '*Construction of C.C. Block Streets Village Saeedpur, Union Council Saeedpur, District Council Tando Muhammad Khan*' from the Authority's website and approached the procuring agency to submit the bid on the scheduled date (11.02.2020 at 09.45 a.m.) where the bidding process did not take place. The appellant alleged that he was informed about rescheduling the bids due to absence of the Chairman Procurement Committee (PC) without issuing any notice/ corrigendum for extension in the schedule of submission and opening of bids. *Therefore, the appellant requested the CRC to direct the PC for ensuring open bidding through issuing corrigendum for extension in the schedule of submission/ opening of bids.*

2. The Authority (vide letter of even number dated 27.02.2020) also forwarded the appellant's matter to the CRC with an advice to take appropriate action in the matter as per rules under intimation to this Authority. In response, the Chairman CRC (vide letter No.DC/TMK/25/2020 dated 03.03.2020) overwhelmingly denied the appellant's allegations by stating that the bidding process took place in a fair and transparent manner where the appellant did not approach the procuring agency and/ or its CRC on the scheduled date and time for submission of bids that took place on 11.02.2020.

3. Subsequently, the appellant (vide letter No.ARC/191 dated 02.03.2020) preferred an appeal, along with review appeal fee³, stating that he lodged a complaint to the CRC, which did not receive his complaint and the procuring agency awarded the procurement contracts to favorable contractors; hence, the appellant requested the Authority to place the matter/ case before the Review Committee in view of the evidence available to the appellant. In turn, the Authority (vide letter of even number dated 06.03.2020) advised the appellant to appear, along with supported documents, before the Deputy Director (Legal), SPPRA, on 10.03.2020 for scrutiny of record and ascertaining the maintainability of the case before placing the same for hearing by the Authority's Review Committee in terms of Rule-2(1)(f) of SPP Rules, 2010⁴, where the appellant presented original record including bid quoted on the bid document; pay orders (bid security); and professional registration as well as experience certificates etc.

4. After examining the given record, 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.

¹ The CRC constituted by the procuring agency's notification issued vide letter No.DC/TMK/GEN/419/2020 dated 07.01.2020

² Detailed description/ nature of the works can be accessed through instant procurement's NIT available on the PPMS website at ID # T01639-19-0006 dated 25.01.2020 [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender>]

³ Authority's Office Order No. Dir(A&F)/SPPRA/18-19/0325 dated 26.07.2019 [<https://ppms.pprasindh.gov.pk/PPMS/>]

⁴ 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

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 the scheduled date, time, and venue in terms of Rule-32(8) of SPP Rules, 2010⁵. 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 14.03.2020⁶.

5. Subsequently, the instant matter was rescheduled for hearing by the Review Committee on 23.06.2020 at 12.30 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, Muhammad Ayub, Chief Officer, and Muhammad Suleman, Council Officer, District Council Tando Muhammad Khan '*representatives of the procuring agency*' and Mr. Asif Raza, Proprietor M/s Asif Raza Contractor '*the appellant*' appeared before the Committee.

REVIEW COMMITTEE PROCEEDINGS

6. 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 his case/ version on the instant procurement before the committee.

Appellant's Version

7. Mr. Asif Raza '*the appellant*' apprised the Committee of his intention to participate under instant procurement NIT's work listed at Sr. # 10 (Construction of CC Block Streets Village Saeedpur, Union Council Saeedpur, District Council, Tando Muhammad Khan) having an estimated cost of PKR 0.998 million and the appellant, in this connection, filled/ quoted the bid on the bid document downloaded from the Authority's PPMS website in terms of Rule-24(2) of SPP Rules, 2010⁷. Subsequently, the appellant approached the procuring agency for submission of bids on the scheduled date and time that was 11.02.2020 at 10.00 a.m.

- The Chair of Review Committee asked the appellant as to how he will prove his presence in the procuring agency's office for submission of bid on 11.02.2020?
 - ◆ The appellant stated that he attended the procuring agency's office on 11.02.2020 at 09.30 a.m. along with complete documents that were later on submitted in the Authority on its direction. The appellant further stated that he did not witness the process for submission and opening of bids as the procuring agency's office was locked.
- Engr. Munir Ahmed Shaikh (Member of Review Committee) noted that the appellant could have recorded/ captured the event showing the procuring agency's office as locked for the sake of proving his position/ claim by placing probable evidence before the forum.
 - ◆ The appellant stated that he did not record the event but later on approached the CRC, which refused to receive the complaint sent through courier service (TCS).

Procuring Agency's Version

8. Muhammad Ayub, Chief Officer, District Council Tando Muhammad Khan '*representative of the procuring agency*' clarified that the procuring agency opened bids in the office of Deputy Commissioner Tando Muhammad Khan on 11.02.2020 at 10.00 a.m. where eight (08) bidders/ firms participated⁸. The appellant approached the procuring agency in late hours (after deadline for submission of bids); therefore his bid was not received/ accepted. Nevertheless, the procuring agency advised the

⁵ 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.
⁶ 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 an outbreak of COVID-19.
⁷ Rule-24(2) 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.
⁸ The procuring agency's representative shared original photographs captured while opening of bids in presence of the bidders

appellant to approach the CRC in case of any grievances but the appellant demanded for award of procurement contract otherwise threatened for lodging complaint.

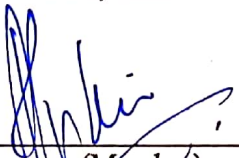
Review Committee's Observations/ Findings

9. After hearing the parties at length and close scrutiny of the procurement record, the Review Committee observed that the appellant claimed to have approached the procuring agency for submission of bids on 11.02.2020 at 09.30 a.m. *where the procuring agency's office was locked*. Per contra, the procuring agency's representatives claimed that the appellant approached the procuring agency for submission of bids in late hours (after deadline for submission of bids) and then demanded for award of procurement contract. *The Review Committee asked the appellant, who has initial onus of proof in this case to establish his claim on the balance of probabilities, as to how he will prove his presence in the procuring agency's office, where the offices were locked, on the scheduled date/ time for submission and opening of bids*; however, the appellant in turn failed to provide any probable evidence with regard to the allegations leveled against the procuring agency.

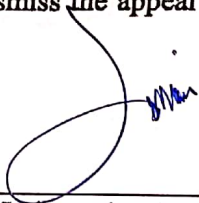
10. The Review Committee, by scrutiny of the appellant's record, further observed that the appellant in his appeal preferred in this Authority claimed that *he (the appellant) was present in the office of the Chief Officer, District Council Tando Muhammad Khan on 11.02.2020 from 09.45 a.m. to 03.00 p.m. where he (the appellant) was informed that Chairman of procurement committee who belongs to Karachi would not attend the office; hence dropping and opening of bids will take place next time*. The Review Committee observed a contradiction exists between the appellant's version before and during the hearing of the case, which eventually supports the procuring agency's claim.

Review Committee Decision

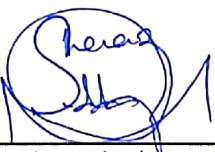
11. In view of the foregoing findings/ observations, as mentioned under paras-9 & 10, and after due deliberation, the Review Committee unanimously decides to reject/ dismiss the appeal in light of Rule-32(7)(a) of SPP Rules, 2010⁹.



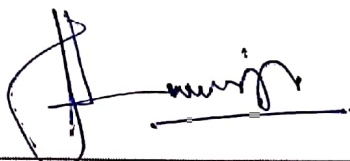
(Member)
Syed Adil Gilani
Private Member SPPRA Board
Representative Transparency International



(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

⁹ Rule-32(7)(f) provides that [the Review Committee may] reject the reference, stating its reasons and vacate the bar provided for in the proviso of sub-rule (7) of Rule-31