



GOVERNMENT OF SINDH  
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1260/2019-20/0119

Karachi, dated the 15<sup>th</sup> July, 2020

To,

The Executive Engineer,  
Provincial Highway Division,  
Mirpurkhas.

**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 Ghulam Murtaza Enterprises v Provincial Highway Division Mirpurkhas*) held on 07<sup>th</sup> July, 2020, for your information and further necessary action, please.

  
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 Superintending Engineer, Provincial Highways Circle, Mirpurkhas.
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, Bungalow No. C-377/3, Phase-I, Qasimabad, Hyderabad.



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NO.AD(L-II)/SPPRA/CMS-1260/2019-20/0119

Karachi, dated the 15<sup>th</sup> July, 2020

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

(APPEAL)

*M/s Ghulam Murtaza Enterprises*

Versus

*Provincial Highway Division Mirpurkhas*

(NIT I.D # T00598-17-0011 DATED 04.02.2020)

**FACTS AND BACKGROUND**

The appellant, M/s Ghulam Murtaza Enterprises, Government Contractor Hyderabad, lodged complaints (vide letters No. GME/96 – 46 dated 20.03.2020 and 05.06.2020, respectively) addressed to this Authority as well as the Complaints Redressal Committee (CRC)<sup>1</sup> against the NIT No.TC/G-55/108/2020 dated 31.01.2020 floated by the Executive Engineer, Provincial Highways Division, Mirpurkhas 'the procuring agency' for procurement of five (05) works related to the 'construction/ improvement/ reconditioning of roads'<sup>2</sup> whereby the appellant stated to have submitted the bid along with supporting documents, through mail (TCS) on 19.02.2020, against the NIT's work listed at Sr. # 3 'construction of road from New Chore to Mehandre-jo-Par mile:0/0-9/0 (14.48 Kms) (remaining work) having an estimated cost as PKR 124,000,000/-' that was delivered/ received by the procuring agency on 20.02.2020. The appellant claimed therein to have visited the procuring agency's office on the scheduled date for submission/ opening of bids – that was 21.02.2020<sup>3</sup> – for witnessing the opening of the bids that did not take place and subsequently, the procuring agency issued a corrigendum<sup>4</sup> to extend the schedule for submission and opening of bids up to/ on 09.03.2020. The appellant further claimed to have visited the procuring agency's office on next schedule<sup>5</sup> where the procuring agency demanded the appellant to submit fresh and blank tender by withdrawing the previously submitted bid, which the appellant denied; hence, the appellant requested the CRC to redress the grievances as per rule. *In turn, this Authority (vide letters of even number dated 15 & 17.06.2020) also forwarded the appellant's complaints to the CRC with advice to redress the grievances and then furnish decision to the appellant as well as this Authority within the stipulated period as specified under Rule-31(5) of SPP Rules, 2010<sup>6</sup>.*

2. Subsequently, the appellant (vide letter No.GME/44 dated 17.06.2020) preferred an appeal before this Authority by stating that the Chairman CRC (vide letter No.AB/G-148/1214 dated 09.06.2020) called the appellant to attend a meeting on 11.06.2020 at 10.30 a.m. where the appellant appeared and submitted

<sup>1</sup> The CRC constituted under the chairmanship of Superintending Engineer, Provincial Highways Circle, Mirpurkhas vide notification No. E&A(W&S)/3-9/2020 dated 03.02.2020 issued by the Works & Services Department [https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender]

<sup>2</sup> Detailed description/ nature of the works can be accessed through instant procurement's NIT available on the PPMS website at ID # T0058-17-0011 dated 04.02.2020 [https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender]

<sup>3</sup> First attempt/ schedule for submission and opening of bids as mentioned in the NIT

<sup>4</sup> The procuring agency issued two corrigenda vide letters NO.TC/G-55/196/2020 & TC/G-55/206/2020 dated 21 & 24.02.2020, respectively, to extend the schedule for the opening of bids on 24.02.2020 & 09.02.2020 (second attempt/ schedule for submission/ opening of bids as mentioned in the NIT). The procuring agency issued the first corrigendum on the request made by the Assistant Executive Engineer, Irrigation Sub-Division D/Gr1 (Procurement Committee's Member) to postpone the meeting on account of the medical condition (fever); and thereafter, the procuring agency issued the second corrigendum due to the personal appearance of the Executive Engineer, Provincial Highway Division, Mirpurkhas (Procurement Committee's Chairman) before the honorable High Court of Sindh, Circuit Court Hyderabad, with regard to the C.P. No.D-215/2020.

<sup>5</sup> Second attempt/ schedule for submission and opening of bids as mentioned in the NIT/ corrigendum

<sup>6</sup> 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.

all the required documents; nevertheless, the CRC has not furnished its decision as yet<sup>7</sup>. Therefore, the appellant requested the Authority to place the matter before the Review Committee in terms of Rule-31(5) of SPP Rules, 2010<sup>8</sup>.

3. Accordingly, the appellant's case was processed and considered/ taken-up by the Authority's Review Committee for hearing in its meeting scheduled on 07.07.2020 at 01.00 p.m. and notices, in this regard, were issued to the parties concerned (vide this Authority's letter of even number dated 24.06.2020) to appear before the Committee on the scheduled date, time, and venue in terms of Rule-32(8) of SPP Rules, 2010<sup>9</sup>. In compliance, Mr. Muhammad Ayoub Junejo, Superintending Engineer, Provincial Highway Circle Mirpurkhas, Mr. Abdul Sattar Khatti, Executive Engineer, Provincial Highways Division, Mirpurkhas '*representatives of the procuring agency*' and Mr. Mujeeb Rind, Proprietor M/s Ghulam Murtaza Enterprises '*the appellant*' appeared before the Committee.

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

### APPELLANT'S VERSION

5. Mr. Mujeeb Rind '*the appellant*' apprised the Committee of his intention to participate under instant procurement NIT's work listed at Sr. # 3 and the appellant, in this regard, downloaded the bid documents from the Authority's PPMS website and then submitted the bid as PKR 100,052,576/-<sup>10</sup> along with tender fee plus bid security – original pay orders – and other supporting documents through courier service (TCS)<sup>11</sup> on 19.02.2020 in terms of Rule-24(2) of SPP Rules, 2010<sup>12</sup>, that was received by the procuring agency on 20.02.2020. The appellant in support of the appeal contended that he visited the procuring agency's office on 21.02.2020 and again on 09.03.2020 – under first and second attempt/ schedule for submission/ opening of bids<sup>13</sup> – to witness the opening of bids, which did not take place on both the scheduled dates and the procuring agency did not post any corrigendum on Authority's website.

6. The appellant further contended that his firm is registered with Pakistan Engineering Council (PEC) in category C-4, which renders the firm to perform project's construction work up to an estimated cost of PKR 200 million<sup>14</sup>. Nevertheless, the procuring agency rejected the appellant's bid by posting BERs on the Authority's website after the expiry of the original bid validity period, and a further extension in this regard was not sought. Furthermore, the procurement committee has recommended for award of the procurement contract in question to M/s Haji Sirajuddin Soomro, which offered bid as PKR 122,062,801/- (19% more than the appellant's bid).

### PROCURING AGENCY'S VERSIONS

7. Mr. Abdul Sattar Khatti, Executive Engineer, Provincial Highway Division '*representative of the procuring agency*' at the very outset admitted that the appellant's bid was received through TCS that was

<sup>7</sup> Ibid.

<sup>8</sup> The procuring agency's CRC (vide letter No.AB/G-148/1221 dated 12.06.2020) furnished the CRC decision (*received to this Authority on 01.07.2020*) whereby it was held that 'while going through the reply of the Executive Engineer Provincial Highway Division Mirpurkhas and allegations leveled by the complainant, it was observed that procurement process was made according to SPPRA Rules and the bids were opened by the procurement committee in presence of the contractors on the fixed date and time. Hence, the complaint was dismissed.  
[<http://www.pprasinhd.gov.pk/committee/67CRCPHCMirpur02072020.pdf>]

<sup>9</sup> 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.

<sup>10</sup> The appellant's quoted bid is verifiable from the bid documents submitted to the procuring agency as well as this Authority along with an appeal preferred before the Review Committee

<sup>11</sup> TCS Tracking ID # CN: 2066359972

<sup>12</sup> 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.

<sup>13</sup> Ibid.

<sup>14</sup> [https://www.pec.org.pk/fee\\_Pakistan1.aspx](https://www.pec.org.pk/fee_Pakistan1.aspx)

publicly opened on 09.03.2020<sup>15</sup>. He added that the procuring agency, on account of unavoidable circumstances, issued two corrigenda<sup>16</sup> to extend the schedule for submission and opening of bids on 24.02.2020 and then on 09.03.2020 when the bids were publicly opened in presence of the representatives of around forty (40) contractors<sup>17</sup>.

8. The procuring agency's representative submitted that the bids were being solicited under the Single Stage One Envelope bidding procedure and same were opened by following the mechanism as laid down under Clause-7.5 of the Authority's Procurement Regulations (Works)<sup>18</sup> read with Rule-47(1) of SPP Rules, 2010<sup>19</sup>. Through this process, the appellant's bid under the quoted work was found as the lowest submitted, but not the lowest evaluated, bid amounting to PKR 100,052,576/-<sup>20</sup> (18.52% below the estimated cost) as defined under Clause-v & w of Sub-rule-2(1) read with Rule-49 of SPP Rules, 2010<sup>21</sup>. Subsequently, the procurement committee carried-out post-qualification procedure to determine the eligible and responsive bidder/ lowest evaluated bidder where the *appellant's bid was found as non-responsive on account of non-conformance to the criterion listed in the NIT at Sr. # iv (at least three works of same specifications and nature in the desert area completed during past three years, duly supported with a completion certificate for serial number 1, 2 & 3)*. The procuring agency's representative further submitted that the original bid validity of ninety (90) days under instant procurement expired on 06.06.2020 due to the closure of offices from 18.03.2020 to 11.05.2020 (COVID-19); therefore, this period was further extended for ninety (90) days after seeking prior approval

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> See the bidders' attendance sheet – signed on 09.03.2020 – posted along with the BERs at ID # BE00598-17-0011-1 dated 01.07.2020 on the Authority's PPMS website [<https://ppms.pprasinhd.gov.pk/PPMS/public/portal/ber>]

<sup>18</sup> Clause-7.5 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 and the bid opening is not delayed on the plea of absence of bidders or their representatives, as their presence is optional. The public tender opening is an important step in the tendering process as opening of tenders publicly helps to demonstrate that the tendering process is transparent and increases bidders' confidence in the public procurement process. [Steps to be followed are stated as under:-] (i) the tender box should be opened and all tenders removed and counted; (ii) first envelopes marked "Withdrawal" should be read out and the envelope containing the corresponding tender shall be returned without being opened. The withdrawal must be noted on the record of the tender opening; (iii) next, envelopes marked "Modification" should be opened one at a time and the envelope containing the corresponding tender located and opened. Details of the modified tender should be read out and recorded, ensuring that the details relate to the modified, not the original tender. Both the original tender and modification should be stamped on key pages and signed by the chairperson of procurement committee and by all members of the procurement committee, if demanded. (iv) after counting the remaining tenders, each tender envelope should be identified by giving it a serial number divided by total number of tenders received. When 5 bids are received then bids will be identified by marking them in following manner; 1/5, 2/5, 3/5, 4/5, 5/5; (v) bid opening sheet (BOS) is prepared containing the information relating to bids announced at the opening; (vi) tenders should then be opened, one at a time, and the relevant details i.e. the name of the bidder, total amount of each bid, alternative bids discount amount/percentage, and amount of call deposit and name of bank should be read out aloud and recorded as a line item against each serial number in the bid opening sheet. Reading out prices should avoid any disputes regarding price changes at a later date; (vii) officer/official chairing procurement committee shall encircle the rates and total bid price and all the members of PC shall sign each and every page of financial proposal; (viii) minutes of the opening of the tenders/bids shall be issued and shall also mention over writing or cutting if any; (ix) tender/bid with any condition or where the conditions mentioned in the NIT have been allured or omitted will not be entertained, will be declared non-responsive and shall stand rejected; (x) all bidders in attendance shall sign an attendance sheet evidencing their attendance; (xi) upon completion of the tender opening, all members of the PC shall sign the bid opening sheet. (xii) where tender openings for more than one tendering process are conducted at the same time, they must be conducted consecutively, with one opening completed, recorded and tenders removed, before the next opening commences.

<sup>19</sup> Rule-47(1) provides that Single Stage One Envelope bidding procedure shall be used as a standard bidding procedure for procurement of goods, works and services of simple and routine nature and where no technical complexity or innovation is involved

<sup>20</sup> BERs at ID # BE00598-17-0011-1 dated 01.07.2020 [<https://ppms.pprasinhd.gov.pk/PPMS/public/portal/ber>]

<sup>21</sup> Clause-v defines the *lowest evaluated bid* as a bid most closely conforming to evaluation criteria and other conditions specified in the bidding document, having lowest evaluated cost. Clause-w defines the *lowest submitted price* as the lowest price quoted in bid, which is otherwise not substantially response. Rule-49 provides that the bidder with the lowest evaluated cost, *but not necessarily the lowest submitted price*, shall be awarded the procurement contract, within the original or extended period of bid validity.

of the competent authority<sup>22</sup> and then the consent of the bidders in terms of Rules-38 of SPP Rules, 2010<sup>23</sup> and subsequently BERs were posted on the Authority's website on 01.07.2020<sup>24</sup>.

## REVIEW COMMITTEE'S FINDINGS

9. After hearing the parties at length, scrutinizing the procurement record, and discerning the applicable rules, the Review Committee concluded the crux of the appellant's case that was based on three main issues including (i) *the bids were not publicly opened*; (ii) *the eligibility criteria containing condition for bidders (with valid PEC license) to have completed three similar assignments with equivalent cost or above during last three years was discriminatory in nature and violation of the rules*; and (iii) *bid evaluation report was announced after expiry of the original bid validity period*. These issues one by one have been examined by taking into account the relevant procurement record and facts presented by the parties and concluded as follows:

- The procuring agency opened the bids on 09.03.2020 in accordance with the schedule (corrigendum) circulated vide letter dated 24.02.2020 that was also *received/ acknowledged by the appellant* in his complaint lodged before the CRC. Secondly, the BER of the impugned NIT's work shows the *submission of twelve (12) bids* by different firms/ bidders whose *representatives were present during the bids' opening session* and also signed the bidders' attendance sheet. Thirdly, the bid amount claimed (quoted) by the appellant and mentioned in the BER are of the same amount. *It may be noted that mere submission of the lowest bid/ offer does not warrant an award of procurement contract until and unless the bid fulfills the requisite criteria and other terms and conditions outlined in the bid documents in terms of Rule-49 of SPP Rules, 2010<sup>25</sup>.*
- The procuring agency may ask the bidders *to have completed previous projects of similar nature* in terms of Rule-46(1)(a)(iv) read with Rule-42(1) of SPP Rules, 2010, and Clause-2.6 of the Authority's Procurement Regulations (Works)<sup>26</sup>. The BER shows *this condition was fulfilled by all the bidders, except the appellant who raised an argument for having registration with PEC* under category C-4, which does not appear to be convincing, inasmuch as it is only issuance of a

<sup>22</sup> Approval for extension in bid validity period was accorded by the Chief Engineer Highways, Hyderabad, vide letter No.Misc/Gen/Extension B.V-C(i)/260 dated 12.05.2020

<sup>23</sup> Rule-38 provides that (1) a procuring agency, keeping in view nature of procurement, shall subject the bid to a validity period, which shall be specified in the bidding document and shall not be more than 90 days in case of National Competitive Bidding and 120 days in case of International Competitive Bidding; (1A) The bid validity period shall start from the date of opening of technical or financial bids, whichever is earlier; (2) Extension of bid validity period may be allowed subject to approval by the competent authority of the procuring agency, and with reasons to be recorded in writing; provided that if validity period has to be extended due to some slackness on the part of procuring agency, the competent authority shall fix responsibility and take appropriate disciplinary action; (3) After obtaining such approval, the procuring agency, shall request in writing all bidders to extend the bid validity period. Such a request shall be made before the date of expiry of the original bid validity period; (4) Such an extension shall not be more than of the original period of bid validity; (5) In case the procuring agency fails to finalize the bid evaluation within the extended time, the bids shall stand cancelled and a fresh bidding process shall be initiated; (6) Whenever an extension of bid validity period is requested, a bidder shall have the right to refuse to grant such an extension and withdraw his bid and bid security shall be returned forthwith; (7) Bidders who; (a) agree to extension of the bid validity period shall also extend validity of the bid security for the agreed extended period of the bid validity; (b) agree to the procuring agency's request for extension of bid validity period shall neither be requested nor permitted to change the price or other conditions of their bids.

<sup>24</sup> Ibid

<sup>25</sup> Ibid

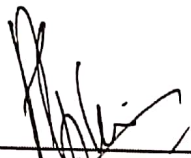
<sup>26</sup> Rules-46(1)(a)(iv) & 42(1) provides that [Save as otherwise provided in these rules, the following procedures shall be permissible for open competitive bidding; (1) Single Stage – One Envelope Procedure (a) Notice Inviting Tenders and bidding documents of this method shall contain the following information] *any other factor deemed to be relevant by the procuring agency subject to provision of Rule-44*. All bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the bidding documents. Clause-2.6 provides that in order to determine the eligibility of bidder when pre-qualification is not undertaken, the procuring agency may ask for additional information/documents, but such information shall be limited to documents that are essential to *ensure the bidder's capability to successfully perform the contract*. The participation of the bidder shall not be denied for the reasons not related to its capability and resources to successfully perform the contract. The procuring agency shall carry out due diligence on the technical and financial qualifications of bidders to be assured of their capabilities in relation to the specific project which may include [the following]:- (i) general experience; (ii) similar experience; (iii) personnel capabilities; (iv) equipment capabilities; (v) financial position; and (vi) litigation history etc.; *The criteria to be met are to be set out in the bidding documents and, if the bidder whose bid has been determined to be the lowest but who does not have the capability to perform the contract, his bid is to be rejected. In such event, the Procuring agency is to make a similar determination for the next-lowest bidder*

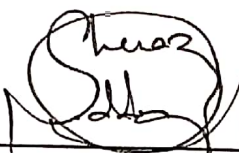
license by PEC and is supposed to be a pre-requisite for any contractor to be qualified for participation in public or even private tenders as required by the law<sup>27</sup>. This is in fact a minimum requirement which a contractor required to fulfill. It does not certify the ability of the bidder nor is a certification in respect of the competence and guaranteed satisfactory performance of any works to be performed by a contractor for a procuring agency. *If the procuring agency is of view that some previous experience of certain works is necessary, then incorporation of such condition in the tender cannot be held to be discriminatory as it applies to all the contractors and in view of the fact that already twelve (12) bidders participated, such argument appears to be misconceived and cannot be sustained on this ground alone – reliance in this behalf was also placed on a judgment passed by the honorable High Court of Sindh, Sukkur Bench, reported as 2020 CLC 323<sup>28</sup>.*

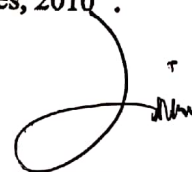
- The procuring agency extended the bid validity period on account of the lock-down situation and closure of the respective office for around two (2) months on the orders of Government of Sindh (pandemic situation of COVID-19). Due to which, the bidding procedure got delayed and the bid validity period was extended for further ninety (90) days with the approval accorded by Competent Authority and consent of the bidders in terms of Rule-38 read with Rule-49 of SPP Rules, 2010<sup>29</sup>.

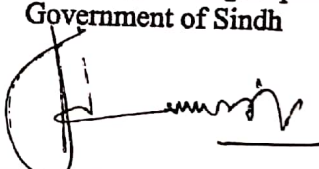
### REVIEW COMMITTEE'S DECISION

10. Given the foregoing findings, as mentioned under para-9, and after due deliberation, the Review Committee unanimously decides to reject/ dismiss the appeal and vacate the bar provided for in the proviso of sub-rule(7) of Rule-31 in light of Rule-32(7)(a) of SPP Rules, 2010<sup>30</sup>.

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

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

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

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

<sup>27</sup> Registration with professional institutions in respective fields shall apply as required by the law.

<sup>28</sup> C.P. No. D-842 and C.M.A No. 3230 of 2019 (M/s AM & MJ Brothers Pvt. Ltd. v. Province of Sindh)

<sup>29</sup> Ibid.

<sup>30</sup> 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