



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-963/2019-20/0114

Karachi, dated the 14th July, 2020

To,

The Secretary to Government of Sindh,
Public Health Engineering Department,
Karachi.

**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 Gulzar Ahmed Shaikh v Public Health Engineering Division Jamshoro*) held on 23rd June, 2020, for taking further necessary action, under intimation to this Authority, at the earliest.

[Signature]
14/07/2020
ASSISTANT DIRECTOR (LEGAL-II)

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

1. The Chief Engineer, Public Health Engineering Department, Hyderabad.
2. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
3. The Superintending Engineer, Public Health Engineering Circle, Hyderabad.
4. The Executive Engineer, Public Health Engineering Division, Jamshoro.
5. 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].
6. The Staff Officer to the Chairman/ Members Review Committee.
7. The appellant/ complainants.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-963/2019-20

Karachi, dated the July, 2020

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

(Appeal)

M/s Gulzar Ahmed Shaikh

Versus

Public Health Engineering Division Jamshoro

(NIT ID # T00820-19-0002 dated 11.11.2019)

Facts and background

The appellant, M/s Gulzar Ahmed Shaikh, Government Contractor Hyderabad, lodged a complaint (vide letter bearing No.GAS/205 dated 24.01.2020) addressed to the Chairman Complaints Redressal Committee (CRC)¹ – copy endorsed to this Authority and others for taking necessary action – against the NIT No.TC/3040/2019 dated 04.11.2019 floated by the Executive Engineer Public Health Engineering Division Jamshoro ‘the procuring agency’ for procurement of nine (09) works related to the ‘construction/ extension/ improvement of water supply schemes and reinforced cement concrete nalas’² whereby the appellant raised concerns to have submitted the bid along with supporting documents against the NIT’s work listed at Sr. # 9 ‘construction of RCC Nala from Dhamal Chowk towards Masoom Pak Dargah Roar Part-II Sehwan City having an estimated cost of PKR 42.5 million’ on the scheduled date for submission/ opening of bids (27.11.2019)³ that was received/ accepted but not opened by the procuring agency due to the absence of the procurement committee’s member. The appellant claimed to have approached the procuring agency on next schedule (13.12.2019)⁴ at 11.00 a.m. and waited there till 05.00 p.m. for witnessing the opening of already submitted bid whereby the Tender Clerk verbally informed that the opening of bids will be held on next schedule/ date due to absence of the Chairman and a member of the Procurement Committee (PC)⁵. The appellant further claimed that the procuring agency thereafter posted the bid evaluation reports⁶, showing the date for opening of bids as 13.12.2019, on the Authority’s website; hence, the appellant requested the CRC to cancel and re-invite the bids openly and transparently as per SPP Rules. In turn, this Authority (vide letter of even number dated 29.01.2020) also forwarded the appellant’s matter to the CRC with an advice to redress the appellant’s 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, 2010⁷.

2. Subsequently, the appellant (vide letter No.GAS/206 dated 03.02.2020) preferred an appeal by stating that the CRC had failed to decide the appellant’s matter within the stipulated period; hence, the appellant requested the Authority to place the matter before the Review Committee in terms of Rule-31(5) of SPP Rules, 2010⁸. In turn, the Authority (vide letter of even number dated 11.02.2020) advised

¹ The CRC constituted under the chairmanship of Chief Engineer Public Health Engineering Department Hyderabad vide notification No.SO(T)/PHE/SPP-Rules/2010 dated 21.04.2018 issued by the Public Health Engineering & Rural Development Department [https://ppms.pprasinhd.gov.pk/PPMS/public/portal/notice-inviting-tender]

² Detailed description/ nature of the works can be accessed through instant procurement’s NIT available on the PPMS website at ID # T00820-19-0002 dated 11.11.2019 [https://ppms.pprasinhd.gov.pk/PPMS/public/portal/notice-inviting-tender]

³ As per scheduled date for submission and opening of bids mentioned in the notice inviting tender

⁴ As per scheduled date for submission and opening of bids mentioned in the corrigendum

⁵ The PC constituted under the chairmanship of Superintending Engineer Public Health Engineering Circle Hyderabad vide notification No.SO(T)/PHE/SPP-Rules/2010 dated 2011.2018 issued by the Public Health Engineering & Rural Development Department [https://ppms.pprasinhd.gov.pk/PPMS/public/portal/notice-inviting-tender]

⁶ Bid Evaluation Reports at ID # BE00820-19-0002-1 to 9 [https://ppms.pprasinhd.gov.pk/PPMS/public/portal/ber]

⁷ 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.

⁸ Ibid.

the appellant to furnish photocopies of the documents *i.e. evidence in support of the bidder (complete set of documents including bid security and bid documents issuance fee) in terms of Rule-2(1)(f) of SPP Rules, 2010⁹, along with review appeal fee, depending upon the estimated cost of procurement, in terms of this Authority's Order dated 26.07.2019¹⁰*. In compliance, the appellant (vide letter No.GAS/207 dated 13.02.2020) furnished photocopies of the referred documents along with review appeal fee that were initially examined and thereafter the Authority (vide letter of even number dated 21.02.2020) forwarded the appellant's matter to the procuring agency with an advice to update/ confirm status of the appellant's bid security, latest by 27.02.2020, *for ascertaining the maintainability of the case*, in terms of Rule-32(1) of SPP Rules, 2010¹¹; however, the procuring agency did not respond.

4. Resultantly, 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 06.03.2020) to appear before the Committee on the scheduled date, time, and venue in terms of Rule-32(8) of SPP Rules, 2010¹². 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 14.03.2020¹³.

5. Thereafter, 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 09.06.2020). In compliance, Mr. Sajjan Mal, Executive Engineer, Public Health Engineering Division, Jamshoro '*representative of the procuring agency*' and Mr. Gulzar Ahmed Shaikh '*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. Gulzar Ahmed Shaikh '*the appellant*' apprised the Committee of his intention to participate under instant procurement and in this regard, the appellant deputed his authorized representative along with the tender fee in shape of pay order, amounting to PKR 3,000/- in favor of the procuring agency, for issuance of bid document against the NIT's work listed at Sr. # 9¹⁴ on 25.11.2019 in terms of Rule-20(1) of SPP Rules, 2010¹⁵; however, the procuring agency's Tender Clerk refused to issue the documents by referring the directions of higher-ups (Chairman and Member PC) to restrain from issuing such document(s) to any contractor. Alternatively, the appellant downloaded the bid documents from the Authority's PPMS website and then submitted the bids along with tender fee – original pay order – and supporting documents to procuring agency on 27.11.2020 in terms of Rule-24(2) of SPP Rules, 2010¹⁶.

⁹ Rule-2(1)(f) defines the bidder as a person or entity submitting a bid; or who intends to submit bid and is able to substantially prove such intention

¹⁰ Authority's Office Order No. Dir(A&F)/SPPRA/18-19/0325 dated 26.07.2019 [<https://ppms.pprasinhd.gov.pk/PPMS/>]

¹¹ 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.

¹² 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.

¹³ 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.

¹⁴ Ibid.

¹⁵ 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 NIT. The Procuring agency may charge a fee for bidding documents, which shall not exceed the cost of preparation and printing.

¹⁶ 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 appellant contended that the procuring agency accepted his sealed bid on 27.11.2019 and then verbally informed for the opening of bids on the next date due to the absence of the PC's member. The appellant in this connection approached the procuring agency on 13.12.2019 at 11.00 a.m. and waited there till 05.00 p.m., albeit the bids opening process did not take place there and the Tender Clerk, without issuing any notice for postponement of the meeting, informed the contractors for rescheduling the opening of bids to next date due to the absence of the PC's Chairman and Member. The appellant further contended that the procuring agency did not issue any notice for the opening of bids and directly posted the BERs¹⁷, without considering the appellant's submitted bid as PKR 40,010,372/-, on the Authority's PPMS website on 24.01.2020 for awarding the procurement contracts to specific bidders based on fraudulent and ill intentions as the bidders' attendance sheets have been maneuvered with hand-writing and signatures by one individual and bid evaluation reports were not signed by the PC Chairman as required under the rules. The appellant further claimed that his bid containing bid security amounting to PKR 2.5 million is still pending with the procuring agency.

Procuring Agency's Version

9. Mr. Sajjan Mal, Executive Engineer, Public Health Engineering Division, Jamshoro 'representative of the procuring agency' contended that the instant bidding procedure was undertaken by the then Executive Engineer (Mr. Sohail Ahmed Memon). As per procuring agency's official record, the procurement committee did not open the bids under first attempt/ schedule for submission/ opening of bids due to certain engagements – out of headquarter of the then Executive Engineer – and subsequently the procuring agency issued/ posted a corrigendum¹⁸ on the Authority's PPMS website on 26.11.2019 for submission and opening of bids on 13.12.2019 where the appellant did not participate/ submit bid. Thereafter, the awards of procurement contracts were made on 30.01.2020.

- Syed Adil Gilani (Member of Review Committee) pointed out that this Authority conveyed various observations, related to the NIT and BERs of procurement in question, to the procuring agency through PPMS website on 10.12.2019 and 28.01.2020¹⁹ whereby it was expressly advised the procuring agency to initiate fresh bidding process in terms of Rules-25 & 26 of SPP Rules, 2010²⁰, on account of non-compliance of procurement rules then why the procurement contracts were made on 30.01.2020?
 - ◆ The procuring agency's representative was unaware for the Authority's observations and could not overall satisfy/ respond towards the questions raised by the Committee.

Review Committee's Observations/ Findings

10. After hearing the parties at length and scrutiny of the procurement record, the Review Committee observed that the appellant claimed to have submitted proper bid against the NIT's work listed at Sr. # 9 that was received but not opened or intentionally ignored by the procurement committee while evaluation and announcing the bid results; whereas, the procuring agency claimed that the appellant did not submit the bids on 13.12.2019. The appellant in support of his claim placed on record copies of the bid which were purportedly submitted along with the pay orders prepared in respect of bid security and tender document issuance fee. Secondly, the appellant claimed that the procurement committee's quorum was incomplete due to which the bids were not opened on the scheduled date. *The Committee members irrefutably support the appellant's case to the extent of later case i.e. incomplete procurement*

¹⁷ Ibid.

¹⁸ Corrigendum issued by the procuring agency vide letter No.TC/4168/2019 dated 22.11.2019 and posted along with the NIT on the Authority's website on 26.11.2019 [<https://ppms.pprasinidh.gov.pk/PPMS/public/portal/notice-inviting-tender>]

¹⁹ The NIT and BERs' observations can be accessed under the Authority's comments section [<https://ppms.pprasinidh.gov.pk/PPMS/public/portal/notice-inviting-tender/T00820-19-0002 & B00820-19-0002-1 to 9>]

²⁰ Rules-25 & 26 provides that (1) A procuring agency may cancel the bidding process at any time prior to the acceptance of a bid or proposal; (2) The procuring agency shall incur no liability towards the bidders, solely by virtue of its invoking sub-rule (1); (3) Intimation of the cancellation of bidding process shall be immediately hoisted on the Authority's website and followed by prompt return of bid security; (4) The procuring agency shall, upon request by any bidder, communicate to such bidder, grounds for the cancellation of bidding process, but is not required to justify such grounds. 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: (1) Such an intimation in the bidding documents has notified that the procurement committee recommends to the competent authority that the bids have to be invited afresh; (2) The case has been declared as one of mis-procurement in pursuance of Rule-32 and 32-A

committee's quorum as verified while examining the bid evaluation reports²¹ that shows the presence of only two out of three members²² of the PC (Mr. Sohail Ahmed Memon, Executive Engineer Public Health Engineering Division Jamshoro; and Syed Ahmed Ali Shah, Executive Engineer, Education Works Division Jamshoro), which raises question over the sanctity of the procurement in question in terms of Rules-7(1) & (2) read with Rules-8 & 2(1)(g) of SPP Rules, 2010²³. The spirit behind the referred Rule-7(2) is to ensure the procurement process is conducted fairly and transparently which was blatantly violated under the instant procurement process. In view of the given facts and discussions hereinabove, the contentions of the appellant cannot be simplicity disregarded or dismissed, Furthermore, the Committee made the following observations:

- The procuring agency was required to furnish compliance or proceed accordingly to the NIT and BER's observations as conveyed by this Authority through PPMS website on 10.12.2019 & 28.01.2020. The procuring agency along with these observations was advised by this Authority to initiate fresh bidding process for the sake of rectification of timely infirmities²⁴; nevertheless, the procuring agency neglected the observations through issuing award of procurement contracts;
- The then Executive Engineer of the procuring agency expressly admitted, before the CRC in its meeting scheduled on 13.01.2020, for the opening of bids in the absence of the Chairman PC (third member) then why the CRC endorsed the procurement process was carried out in accordance with the rules²⁵;
- The procuring agency's CRC was required to decide the appellant's grievances within seven days and intimate the decision to the appellant as well as Authority within three working days in terms of Rule-31(5) of SPP Rules, 2010²⁶; and
- The procuring agency's representative has confirmed before this forum for the award of contracts under procurement in question on 30.01.2020; however, the procuring agency so far has not posted the contract documents – contract evaluation report; form of contract and letter of award; and bill of quantities or schedule of requirement – on the Authority's website that were required to be posted within fifteen (15) of signing of contracts in terms of Rule-50 read in conjunction with Rule-10 of SPP Rules, 2010²⁷.

Review Committee Decision

11. In view of the foregoing findings/ observations, as mentioned under para-10, and after due deliberation, the Review Committee unanimously declares the instant procurement as **Mis-Procurement** in light of Rule-32(7)(g) of SPP Rules, 2010²⁸ read with Section-2(i) of SPP Act, 2009²⁹ and decides to

²¹ Ibid.

²² Ibid.

²³ Rules-7(2), (3), 8 & 2(1)(g) provides that the procuring agency shall, with the approval of its Head of the Department, constitute as many procurement committees, as it deems fit, each comprising odd number of persons and headed by a gazette officer not below the rank of BS-18 or if not available, the officer of the highest grade, and shall ensure that at least one of the members of the procurement committee is from the agencies or departments other than the procuring agency. *The procurement committees comprising three members: all members form quorum.* Procurement Committee(s) shall be responsible for; (1) Preparing and/ or reviewing bidding documents; (2) Carrying out technical as well as financial evaluation of the bids; (3) Preparing evaluation report as provided in Rule-45; (4) Making recommendations for the award of contract to the competent authority; and (5) Perform any other function ancillary and incidental to the above. *Bidding process means the procurement procedure under which sealed bids are invited, received, opened, examined and evaluated for the purpose of awarding a contract.*

²⁴ Ibid.


²⁵ <http://www.pprasinhdh.gov.pk/committee/39CRCPHEDKhl11022020.PDF>

²⁶ Ibid.

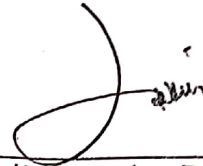
²⁷ Rule-50 & 10 provides that within fifteen (15) days of signing of contract, procuring agency shall publish on the website of the Authority and on its own website, if such website exists, the results of the bidding process, identifying the bid through procurement identifying number, if any, and the [following information]: (1) Contract Evaluation Report; (2) Form of Contract and Letter of Award; (3) Bill of Quantities or Schedule of Requirement. The procuring agency shall, immediately upon award of contract, make the evaluation report of the bid, and the contract agreement public through hoisting on the Authority's website as well as on procuring agency's website, if the procuring agency has such a website; provided where the procuring agency is convinced that disclosure of any information related to the award of a contract shall be against the public interest or may jeopardize national security, it can withhold only such information from public disclosure, subject to the prior approval of the Chief Minister.

²⁸ Rule-32(7)(g) provides that [unless the Review Committee recommends dismissal of an appeal being frivolous, in which case the bidder may lose the bid security deposited with the procuring agency, the Review Committee may] declare the case to be

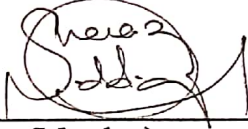
refer the matter to the Competent Authority for initiating disciplinary proceedings against the officer(s)/ official(s) responsible for mis-procurement in terms of Rule-32(A)(2) of SPP Rules, 2010³⁰.



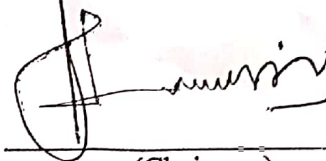
(Member)
Syed Adil Gilani
Private Member SPPRA Board
Representative Transparency International



(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

one of mis-procurement if material violation of Act, Rules, Regulations, Orders, Instructions or any other law relating to public procurement, has been established.

²⁹ Section-2(i) provide that the *mis-procurement* means public procurement in contravention of any provision of this Act, any rule, regulation, order or instruction made there under or any other law in respect of, or relating to, public procurement.

³⁰ Rule-32(A)(2) provides that & 10 provides that *on declaration of mis-procurement*; the head of the procuring agency, the Authority or the Review Committee shall refer the case to the Competent Authority for initiation of disciplinary proceedings against the officials of the procuring agency responsible for *mis-procurement* and may also refer the matter to the Sindh Enquiries and Anti-Corruption Establishment for initiating action against such officials.