



GOVERNMENT OF SINDH  
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1346/2019-20/0260

Karachi, dated the 29<sup>th</sup> July, 2020

To,

The Executive Engineer,  
Provincial Highways Division,  
Shaheed Benazirabad.

**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 Awais Dahri Construction Company v. Provincial Highways Division Shaheed Benazirabad*) held on 21<sup>st</sup> July 2020, for your information and further necessary action, please.

  
29/07/2020  
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 Project Director, Project Implementation Unit, Hyderabad-Mirpurkhas Dual Carriageway Project, 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 Awais Dahri Construction Company, House # 31, Mehran Colony, Near Shell Petrol Pump, Sakrand Road, Nawabshah.



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SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1346/2019-20/0260

Karachi, dated the 29<sup>th</sup> July, 2020

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

**(APPEAL)**

*M/s Awais Dahri Construction Company*  
Versus  
*Provincial Highways Division Shaheed Benazirabad*  
(NIT ID # T00583-19-0003 DATED 27.02.2020)

**FACTS AND BACKGROUND**

The appellant, M/s Awais Dahri Construction Company, Government Contractor Nawabshah, lodged a complaint (vide letter dated 18.06.2020) addressed to the Chairman Complaints Redressal Committee (CRC)<sup>1</sup> – copy endorsed to this Authority and others – against the Notice Inviting Tender (NIT) No.TC/G-55/142 dated 03.02.2020 floated by the Executive Engineer, Provincial Highways Division Shaheed Benazirabad ‘the procuring agency’ for procurement of three (3) works related to the ‘widening/ reconditioning/ construction of roads’<sup>2</sup> whereby the appellant raised averments to have submitted the bid along with supporting documents as required against the NIT’s work listed at Sr. # 2 ‘reconditioning of the road from Daur Moro road to village Haji Noor Muhammad Dahri via Aijaz abad road mile 0/0-2/4 = 4.00 Km having an estimated cost of PKR 46.225 million’ on the scheduled date for submission/ opening of bids (24.02.2020)<sup>3</sup> that was received by the procuring agency but opened on 16.03.2020 without any intimation to the appellant for witnessing such process. The appellant claimed to have paid several visits, after the bid submission, to get further updates in this regard from the procuring agency, nevertheless, the appellant could not get any information/ evaluation result due to the unavailability of the officers. The appellant alleged that the procuring agency, after three months of the opening of bids, posted the bid evaluation reports<sup>4</sup> on the Authority’s website on 16.06.2020 by replacing (altering and modifying the substance and amount of the appellant’s submitted bid) with a direct intention for the award of procurement contract to specific/ favorite bidder in a suspicious manner while bypassing the procurement rules and principles; therefore, the appellant requested the CRC to take notice over such violations within the prescribed time as mentioned under Rule-31(5) of SPP Rules, 2010<sup>5</sup>.

2. Subsequently, the appellant (vide letter dated nil)<sup>6</sup> preferred an appeal<sup>7</sup>, along with review appeal fee<sup>8</sup>, before the Review Committee by stating that the CRC had failed to decide the matter – as referred above – 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, 2010<sup>9</sup>. In turn, this Authority (vide letter dated 30.06.2020) forwarded the appellant’s matter to the procuring agency and its CRC with advice to update the current status of the appellant’s bid security and also the action taken/ decision held, if any, by the CRC against the appellant’s complaint/ grievances in order to ascertain the

<sup>1</sup> The CRC constituted under the chairmanship of Project Manager, Project Implementation Unit, Hyderabad-Mirpurkhas Dual Carriageway Project, Hyderabad vide notification No.E&A(W&S)/3-9/2020 dated 30.01.2020 issued by the Works & Services Department [<https://ppms.pprasinhd.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 # T00583-19-0002 dated 07.02.2020 [<https://ppms.pprasinhd.gov.pk/PPMS/public/portal/notice-inviting-tender>]

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

<sup>4</sup> Bid Evaluation Reports at ID # BE00583-19-003-1 to 3 [<https://ppms.pprasinhd.gov.pk/PPMS/public/portal/ber>]

<sup>5</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.

<sup>6</sup> The appeal received in this Authority on 30.06.2020.

<sup>7</sup> The appellant in his preferred appeal referred to another NIT No.TC/G-55/257 dated 25.02.2020

<sup>8</sup> Authority’s Office Order No. Dir(A&F)/SPPRA/18-19/0325 dated 26.07.2019 [<https://ppms.pprasinhd.gov.pk/PPMS/>]

<sup>9</sup> Ibid.



maintainability of the case in terms of Rule-32(1) read with Clause-f of Sub rule-2(1) of SPP Rules, 2010<sup>10</sup>. In response, the procuring agency (vide letter dated 30.06.2020) confirmed the appellant's bid security as intact and has not been released yet; and the Chairman CRC (vide letter dated 03.07.2020) forwarded a letter submitted by the procuring agency that (relevant portion) is reproduced hereunder:

*"The NIT # TC/G-55/142 dated 03.02.2020 was canceled vide the procuring agency's corrigendum issued vide letter dated 17.02.2020. Moreover, it is submitted that for the same schemes/ works a fresh NIT # TC/G-55/257 dated 25.02.2020 mentioning therein the date of issue up to 16.03.2020 and opening on 01.04.2020, respectively. Furthermore, it is submitted that the complainant M/s Awais Dahri Construction Company dropped blank tender document in a tender box, neither had he filled any rate nor he quoted any premium. Hence his tender was rejected photocopy of the blank tender document containing the signature of the contractor are enclosed for evidence."*

3. Resultantly, the appellant's case was processed and considered/ taken-up by the Authority's Review Committee for hearing in its meeting scheduled on 21.07.2020 at 11.30 a.m. and notices, in this regard, were issued to the parties concerned (vide this Authority's letter dated 09.07.2020) to appear before the Committee on the scheduled date, time, and venue in terms of Rule-32(6), (8) & (10) of SPP Rules, 2010<sup>11</sup>. In compliance, Mr. Ghulam Shabir Memon, Project Manager, Hyderabad-Mirpurkhas Dual Carriageway Project, Mr. Muhammad Ismail, Executive Engineer, Provincial Highways Division Shaheed Benazirabad 'representatives of the procuring agency' and Mr. Awais Dahri, Proprietor M/s Awais Dahri Construction Company '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 appellants to present the cases/ versions, one by one, over the instant procurement issues/ grievances.

#### APPELLANT'S VERSION

5. Mr. Awais Dahri 'the appellant' apprised the Committee of his submission of bid – as PKR 45,507,361/- along with supporting documents including bid security and tender issuance fee – against the NIT's work listed at Sr. # 2 to the procuring agency on 16.03.2020<sup>12</sup>; however, the procuring agency did not open the bids on the scheduled date for submission/ opening of bids and assured the appellant for the opening of bids on next date through issuing another notice/ corrigendum that was not received/ dispatched/ informed to him. The appellant contended to have paid several visits for pursuing the next schedule and each time he was endured by the procuring agency with false hopes and surprisingly after the expiry of the bid validity period and without any intimation, the procuring agency announced the bid evaluation results<sup>13</sup>, showing whereof date for the opening of bids as 16.03.2020, via the Authority's website on 16.06.2020 in violation of the rules. The appellant further contended that he was present in the procuring agency's office on 16.03.2020 where the bids were not opened publicly as required under the rules to favor a particular bidder (M/s Nabi Bux Associates who quoted bid as PKR 45,965,489/-) for the award of contract on higher rates as compared to the bid quoted by him. The appellant alleged that the procuring agency, after receipt of the bid, deliberately replaced/ altered his submitted bid through changing the substance or amount of the bid in violation of Rule-43(1) of SPP Rules, 2010<sup>14</sup> and the

<sup>10</sup> 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. Clause-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.

<sup>11</sup> Rules-32(6), (8) & (10) provide that on receipt of appeal along with all requisite information and documents the Chairperson shall convene a meeting of the Review Committee within seven working days. 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. The Review Committee shall hear the parties and announce its decision within ten working days of submission of appeal. However, in case of delay, reasons thereof shall be recorded in writing.

<sup>12</sup> The deadline for submission and opening of bids as per NIT was 16.03.2020 at 10.30 a.m. and 11.30 p.m., respectively

<sup>13</sup> Ibid.

<sup>14</sup> Rule-43(1) provides that no bidder shall be allowed to alter or modify his bid(s) after the expiry of deadline for the receipt of the bids; provided that the procuring agency may ask the bidders for clarifications needed to evaluate the bids but shall not permit any bidder to change the substance or price of the bid.



appellant, in this regard, also approached the CRC, which failed to redress the grievances or take any action into the matter and meanwhile the procuring agency issued work orders in violation of the rules.

### PROCURING AGENCY'S VERSION

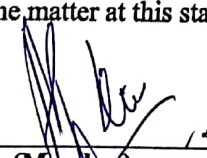
6. Mr. Muhammad Ismail, Executive Engineer, Provincial Highways Division Shaheed Benazirabad '*representatives of the procuring agency*' contended that the appellant submitted bid along with the supporting documents against the NIT's work listed at Sr. # 2 that was received/ accepted and subsequently opened publicly on 16.03.2020 by the Procurement Committee (PC)<sup>15</sup>, which found the appellant's bid as duly signed and stamped but **without quoting any bid/ rate and premium over the mentioned rates**. The procuring agency's representative further contended that the allegations leveled by the appellant are baseless, which can be traced by cross-verifying documents submitted by the appellant.

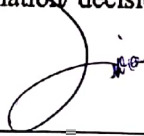
7. Mr. Ghulam Shabir Memon, Project Manager, Hyderabad-Mirpurkhas Dual Carriageway Project '*representatives of the procuring agency*' clarified that the appellant lodged a complaint to the CRC against the NIT # TC/G-55/142 dated 03.02.2020 that was already canceled as reported by the procuring agency through issuing a corrigendum vide letter dated 17.02.2020<sup>16</sup>; therefore, the CRC did not take any action in terms of Rule-25 of SPP Rules, 2010<sup>17</sup>. *Thereafter, the appellant filed a Constitutional Petition No. D-622/2020 in the Honorable High Court of Sindh, Circuit Court Hyderabad, whereof the Honorable Court has passed an order dated 09.07.2020 as reproduced hereunder*<sup>18</sup>:

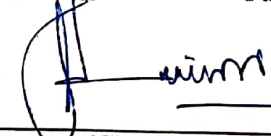
*"In compliance of order dated 07.07.2020 the respondent No.3 is present, who after receiving copy of memo of Petition, seeks time for filing para-wise comments. The respondent No. 3 is directed to file para-wise comments through learned Additional Advocate General, Sindh with copy advance to learned council for the petitioner. **In the meanwhile, the respondents are restrained from issuing work order till next date.** Learned counsel for the petitioner is directed to furnish complete address of the respondent No. 5 and thereafter office shall issue notice to the said respondent. Adjourned to 16.07.2020."*

### REVIEW COMMITTEE'S DECISION

8. The Committee is of the unanimous view that since the instant matter is already subjudice before the Honorable High Court, Circuit Bench Hyderabad, as reported by the procuring agency and the appellant; hence, the matter at this stage does not warrant further examination/ 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

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

<sup>15</sup> The PC constituted under the chairmanship of Executive Engineer Provincial Highways Division Shaheed Benazirabad vide notification No.E&A(W&S)3-9/91-13 dated 03.03.2017 issued by the Works & Services Department [<https://ppms.pprasinhd.gov.pk/PPMS/public/portal/notice-inviting-tender>]

<sup>16</sup> Ibid.

<sup>17</sup> Rule-25 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 procuring agency's website followed by prompt return of bid security; (4) the procuring agency shall, upon request by any of the bidders, communicate to such bidder, grounds for the cancellation of bidding process, but is not required to justify such grounds.

<sup>18</sup> The procuring agency further confirmed that the Honorable Court has fixed the instant matter for hearing on 12.08.2020.