



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1338/2019-20/0261

Karachi, dated the 30th July, 2020

To,

The Deputy Director Food,
Regional Food Directorate,
Hyderabad.

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 Pearl Enterprise v. Regional Food Directorate Hyderabad*) held on 21st July 2020, for your information 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, Food Department, Karachi.
2. The Director Food Sindh, 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 Pearl Enterprise, Suite # 10, Plot # 10, Falak Residency, Street # FT-1, Frere Town, Qua Bath Island, Clifton, Karachi.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1338/2019-20/0261

Karachi, dated the 30th July, 2020

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

(APPEAL)

M/s Pearl Enterprise

Versus

Regional Food Directorate Hyderabad

(NIT ID # T01200-19-0006 DATED 23.05.2020)

FACTS AND BACKGROUND

The appellant, M/s Pearl Enterprise, Karachi, lodged a complaint (vide letter dated 18.06.2020) addressed to the Chairman Complaints Redressal Committee (CRC)¹ – copy endorsed to this Authority and others – against the Notice Inviting Tender (NIT) No.F-Tender(Gen:)/2020-21/419 dated 20.05.2020 floated by the Deputy Director Food, Hyderabad Region 'the procuring agency' for procurement related to the 'transportation of wheat within district, other district (within region) and other region for the year 2020-2021'² whereby the appellant raised averments to have participated/ submitted the bid(s) that was disqualified under technical evaluation by the Procurement Committee (PC)³ on grounds of non-conformance with two conditions as listed at Sr. # 6 & 8 'registration certificate from Registrar of Firms (in case of registered firm/ company); and transport contractors who have not worked with the Food Department earlier are required to provide three years' experience in transport field' of the NIT⁴. The appellant further alleged for submission of all the supporting/ required documents along with the bid; nevertheless, the PC disqualified the appellant to restrict the entry of new competitors and to favor specific bidders thus causing huge losses to the national exchequer; therefore, the appellant requested the CRC to intervene into the matter and issue directions for re-inviting the bids in an open and impartial manner. In turn, this Authority (vide letter dated 29.06.2020) also forwarded the appellant's matter 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, 2010⁵.

2. In response, the CRC (vide letter dated 02.07.2020) furnished the decision whereby it was held by two-third members⁶ that (a relevant portion is reproduced herewith) 'As far as M/s Pearl Enterprise is concerned, its plea is rejected [on the following ground]: The CRC also finds a contradiction in two documents provided by the applicant; the performance certificate provided by the applicant indicates its (05) years' work performance with Dewan Cement Ltd. Whereas, the registration certificate issued by Sindh Revenue Board (SRB) shows that the firm got itself registered from SRB on 08.06.2020 with effectiveness from 05.12.2019, therefore making it ineligible for competition'⁷.

¹ The CRC constituted under the chairmanship of Director Food Sindh vide notification No.SO(G)FOOD/7(43)/2018 dated 15.04.2020 issued by the Food Department [https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender]

² Detailed description of the procurement can be accessed through instant procurement's NIT available on the PPMS website at ID # T01200-19-0006 dated 23.05.2020 [https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender]

³ The PC constituted under the chairmanship of Deputy Director Food Hyderabad vide notification No.E&A(FOOD)6(60)/17 dated 07.02.2019 issued by the Food Department [https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender]

⁴ Refer to the NIT – Requirement for Technical Proposal

⁵ 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.

⁶ Mr. Muhammad Akram, Accounts Officer/ Representative of Accountant General Sindh put his dissent note on the issue as reproduced herewith: 'I disagree with para-3(ii) as the applicant fulfills the conditions as laid down in tender doc'.

⁷ http://www.pprasindh.gov.pk/committee/70CRCP/foodDept14072020.pdf

3. Given the CRC's aforementioned decision, the appellant (vide letter dated 03.07.2020) preferred an appeal, along with review appeal fee⁸, before the Review Committee with a request to review the CRC decision in the interest of financial transparency, fairness, and justice in terms of Rule-32(1) of SPP Rules, 2010⁹. In turn, the Authority advised the procuring agency to confirm the current status of bid security submitted by the appellant to ascertain the maintainability of case and the procuring agency in response confirmed the appellant's bid security as intact and has not been released as yet.

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 21.07.2020 at 12 p.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, 2010¹⁰. In compliance, Mr. Saleemullah Siddiqui, Deputy Director Food, Ms. Zill-e-Huma Shaikh, Accountant, Regional Food Directorate Hyderabad 'representatives of the procuring agency' and Mr. Altaf Shaikh, M/s Pearl Enterprise 'representative of the appellant' appeared before the Committee.

REVIEW COMMITTEE PROCEEDINGS

5. 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 the case/ version over the instant procurement issues/ grievances.

APPELLANT'S VERSION

6. Mr. Altaf Hussain Shaikh 'representative of the appellant' apprised the Committee of his submission of bid against the instant procurement's work # 3 'all PRC's/ WPC's of Dadu District to Bolhari/ Kotri PRC of Jamshoro District having an estimated cost of PKR 57.50 million'¹¹ in terms of Rule-24(2) of SPP Rules, 2010¹², that was received/ opened by the PC on 09.06.2020¹³. The appellant contended that the PC, on one hand, raised only a single objection 'transport contractors who have not worked in the Food Department earlier are required to provide three years' experience in transport field' against the technical disqualification of the appellant that can be verified from the evaluation report¹⁴. On the other hand, the PC pointed out various reasons under the minutes of the meeting for the appellant's disqualification – the relevant portion is reproduced hereunder:

"M/s Pearl Enterprise (new bidder and first-time participant in the Food Department's tendering process). The technical proposal of the aforesaid firm was scrutinized and the procurement committee observed that the firm has never worked in the Food Department, Government of Sindh while it was necessary for those bidders, who have not worked with the department earlier to submit three (3) years' experience in transportation field; whereas, the bidder has submitted a copy of the performance certificate of transportation work with Cement Factory. Since it was a major requirement and submitted certificate was appeared to be invalid; the procurement committee further scrutinized the record of the firm and noted [following] observations: a. the procuring agency has required the bidders to be transport contractor in its principal activity in the NTN whereas, while scrutinizing the documents, it is noticed that contractor is shown as registered for other food activities and exporter in its principal activity contradicting to the requirement; b. it is further revealed from the SRB registration certificate of the contractor that

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

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 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.

¹¹ Ibid.

¹² 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.

¹³ The deadline for submission and opening of bids as per NIT was 09.06.2020 at 11.00 a.m. and 12.00 p.m., respectively

¹⁴ Bid Evaluation Report at ID # BE01200-19-0006-1 dated 16.06.20 [<https://ppms.pprasinhd.gov.pk/PPMS/public/portal/ber>]

*the firm has got the certificate issued on dated 08.06.2020, before one day of the opening of the tenders. Therefore, the committee discussed and is of the view that the firm does not possess the relevant experience; c. the participating firm has provided the three (3) years audited financial statements, on scrutiny of the same it was found that the nature of the business was shown as a sole proprietorship firm which deals with the purchase, process, and sale of rice, contradicting to the company profile as provided by the participating bidder against the requirement of the procuring agency. Considering all above mere facts, the procurement committee concluded that the firm does not possess experience and may not be able to handle the government's huge quantities of wheat which involved heavy government exchequer and thus decided to reject the firm in technical evaluation.*¹⁵

7. The appellant further contended that the procuring agency asked the bidders to have registration certificate issued by the Sindh Revenue Board (SRB) without mentioning any additional requirement for the number of years or date for issuance of the certificate and the appellant in this regard submitted a copy of the certificate¹⁶ issued by the SRB on 09.12.2019 along with the bid. The appellant also highlighted that they are registered with the Federal Board of Revenue since 2012 with principal business activity in required field of transportation and fulfilled all the conditions of technical evaluation.

PROCURING AGENCY'S VERSION

8. Mr. Saleemullah Siddiqui, Deputy Director Food, Ms. Zill-e-Huma Shaikh, Accountant, Regional Food Directorate Hyderabad '*representatives of the procuring agency*' clarified that the appellant purchased bid documents against the instant procurement's two works as listed at Sr. # 3 & 7 '*all PRC's/ WPC's of Dadu District to Bolhari/ Kotri PRC of Jamshoro District and Shaheed Benazirabad to Bolhari/ Kotri PRC having an estimated cost of PKR 57.50 & 30.00 million, respectively*' in terms of Rule-20 of SPP Rules, 2010¹⁷. The procuring agency's representatives contended that those bidders, who applied for the first time, were required to submit the experience certificate for three years in transportation field as per terms and conditions of the bid document; whereas, the appellant submitted a copy of the performance certificate issued by M/s Dewan Cement Limited.

- Syed Adil Gilani (Member of Review Committee) pointed out that the condition # 8 of the bid document required the bidders to have **three years' experience** in transportation field and the appellant, in turn, submitted a copy of the performance certificate, which was not considered/ treated as to be a valid document by the PC on account of the certificate title as **performance certificate**; then *what is the difference between experience and performance certificate?*
 - ◆ The procuring agency's representative stated that the experience certificate shows the firm/ bidder is performing with its client from a particular number of years. The procuring agency's representative further stated that the PC also raised a similar query, while evaluation of the bids, from the appellant, that *the procuring agency asked the bidders to submit experience certificate then why did the appellant submit performance certificate?* Apart from it, the rest of the documents including NTN, SRB, and audited reports were not aligning with the **appellant's five years' experience**.
- Subsequently, the Chair asked the procuring agency's representative(s) about the current status of the instant procurement works;
 - ◆ The procuring agency's representative confirmed that all the procurement contracts, **except the appellant's quoted work(s)**; have been awarded and made public through posting on the PPMS website¹⁸ in terms of Rules-50 & 10 of SPP Rules, 2010¹⁹.

¹⁵ Refer to the minutes of the meeting accessible along with the bid evaluation report [PPMS ID # BE01200-19-0006-1]

¹⁶ SNTN # 3986169-4

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 Noticing Inviting Tender. The procuring agency may charge a fee for bidding documents, which shall not exceed the cost of preparation and printing.

¹⁸ Contract Documents at ID # C01200-19-0006-1 dated 16.07.2020

[https://ppms.pprasindh.gov.pk/PPMS/public/portal/contract_list?nitCode=%27T01200-19-0006%27]

¹⁹ 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

REVIEW COMMITTEE'S OBSERVATIONS/ FINDINGS

9. After hearing the parties at length and scrutiny of the procurement record, the Review Committee observed that the procuring agency in the present case solicited bids under Single Stage – Two Envelope Procedure in terms of Rule-46(2) read together with Rule-47(2) of SPP Rules, 2010²⁰, that were received and opened (technical proposals) by the PC on 09.06.2020. For the sake of convenience, it would be relevant to have a glance at the relevant clauses, as reproduced herein-below, available in the bid document which stipulates conditions to be complied with for qualifying under technical evaluation:

BID EVALAUTION CRITERIA FOR THE TENDER YEAR 2020-2021	
Sr.#	Nature of documents required
I.	Complete profile and history of company showing clear official/ residential address and telephone numbers
II.	Copy of CNIC(s) of the owner(s) and/ or representative(s) of the firm
III.	Copy of NTN certificate showing the bidder as transport contractor in its principal activity
IV.	Registration certificate from Sindh Revenue Board showing the bidder as transport contractor in its principal activity
V.	Professional tax certificate from Excise & Taxation Department
VI.	Registration certificate from Registrar of Firms (in case of registered fir/ company)
VII.	Bank statement for the period from 01.04.2019 to 30.04.2020 showing minimum turnover of PKR 50/- million from scheduled bank, and will be determined on the basis of participating business/ firm account only
VIII.	Transport contractors who have not worked with the Food Department earlier are required to provide three years' experience under transportation field
IX.	Those transport contractors who have done the transportation work in Food Department are required to provide the performance certificate and no dues certificate from all the regions of food Department viz. Karachi, Mirpurkhas, Shaheed Benazirabad, Sukkur, and Larkana. Only valid and original certificates issued by the respective Deputy Director Food will be considered
X.	Affidavit on a non-judicial stamp paper of PKR 500/- undertaking following: (a) That the firm is neither defaulter non having outstanding dues of the Food Department and is not in litigation with Food Department, Government of Sindh; (b) That the contractor/ firm will be bound under obligation and sole responsible for completion of awarded work by him/ themselves and will not sublet the contract in any case; (c) That the bidder will provide three (3) specimen signatures of the contractor, the director(s) and/ or authorized representative(s) of the firm which shall be duly attested by the First Class Magistrate (FCM)/ Oath Commissioner

10. Upon perusal of the brief facts presented by the parties concerned and other documents placed on the record²¹, it appears that the appellant submitted bid against the instant procurement's work # 3 'Dadu

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.

²⁰ Rules-46(2) & 47(2) provide that (a) bids shall comprise a single package containing two separate envelopes. Each envelope shall contain separately the financial proposal and the technical proposal; (b) envelopes shall be marked as 'Financial Proposal' and 'Technical Proposal' in bold and legible letters to avoid confusion; (c) initially, only the envelope marked 'Technical Proposal' shall be opened; (d) envelope marked as 'Financial Proposal' shall be retained in the custody of the procuring agency without being opened; (e) procuring agency shall evaluate the technical proposal in a manner prescribed in advance, without reference to the price and reject any proposal which does not conform to the specified requirements; (f) no amendments in the technical proposal shall be permitted during the technical evaluation; (g) financial proposals of technically qualified bids shall be opened publicly at a time, date and venue announced and communicated to the bidders in advance; (h) financial proposal of bid found technically non-responsive shall be returned unopened to the respective bidder; and (j) bid found to be the lowest evaluated or best evaluated bid shall be accepted. Single Stage Two Envelope Bidding Procedure shall be used for goods, works and services where the bids are to be evaluated on technical and financial grounds and price is taken into account after technical evaluation.

²¹ Including the original technical proposal submitted by the appellant to the procuring agency

to Bolhari²² that (technical bid) was found as disqualified by the PC mainly on non-complying with the conditions # III, IV & VIII as mentioned above. Subsequently, the appellant challenged the PC decision before the CRC whose majority of the members (two-third members) upheld the PC decision²³.

11. The Review Committee after considering the rival contentions advanced by the parties, scrutinizing the available procurement record, and discerning the applicable rules, discussed each issue/impugned condition one by one and concluded as follows:

- **Condition # III - NTN certificate showing the bidder as transport contractor in its principal activity:** The procuring agency's representative established contention that the appellant's NTN shows its principal activity for *other food activities* and other activities as an *exporter*. The Committee cross-verified the appellant's NTN status via the FBR public portal that shows the appellant's principal activity under multiple fields including *transportation and storage/support activities for transportation/ other transportation support activities*²⁴, which eventually supports the appellant's plea to the extent of this requirement/ condition. The Committee further noted that it was the prime responsibility of the PC members to conduct significant due diligence of the bidders, while conducting bids evaluation, for the sake of maintainability of the procurement principles as laid down under Rule-4 of SPP Rules, 2010²⁵;
- **Condition # IV – Registration certificate from Sindh Revenue Board showing the bidder as transport contractor in its principal activity:** The procuring agency's representative raised a plea that the appellant got registered itself with the SRB before a day of submission of the bid; hence, the appellant does not possess relevant experience. The Committee is of the view that the procuring agency was required to undertake the evaluation of bids as per criteria and other terms and conditions outlined in the bidding documents in terms of Rule-42(1) of SPP Rules, 2010²⁶. As such, the appellant submitted copies of the SRB Provisional Certificate of Registration issued on 09.12.2019 and the Sindh Sales Tax Registration Certificate issued on 08.06.2019 showing its principal activity as *service provided or rendered by persons engaged in inter-city transportation or carriage of goods by road*, which sufficed for qualification the criterion as per referred rule. In case, the appellant committed any offence due to late registration and so on then there are certain penalty provisions available under Sub-Section-43(i) of Sindh Tax on Services Act, 2011²⁷, that need to be dealt by the respective forum;
- **Condition # VIII – Transport contractors who have not worked with the Food Department earlier are required to provide three years' experience under the transportation field:** The procuring agency's representative insisted that the appellant submitted a copy of the performance certificate instead of experience certificate. The procuring agency's representative established contention that the performance certificate differs from experience certificate in the sense that the latter certificate shows the firm/bidder's performance with its client for a particular number of years and in this regard the PC, while evaluation of the bids, also raised similar query from the appellant. The Committee is of the view that the procuring agency asked the bidder(s) to have three years' experience under transportation filed and the appellant, in turn, submitted a performance certificate issued by M/s Dewan with regard to the satisfactory performance of the appellant in transportation field since last five (5) years. An objective person while going through the content of the performance certificate could have construed the purpose, without any iota of doubt, of the submitted certificate. Secondly, if the PC required any clarification in this regard then it was mandatory to be sought in writing in terms of Rule-43(2) of SPP Rules,

²² The appellant vide letter bearing No.PE04/No.F-Tender(Gen)/2020-21/419 dated 27.07.2020 confirmed this Authority for submission of a bid to the procuring agency against only one route – a copy of the letter is available on the Authority's record

²³ Ibid.

²⁴ <https://e.fbr.gov.pk/esbn/Service.aspx?PID=AyX3FR0w9HWU5dQshrruAw%3d%3d> (NTN No. 3986169-4)

²⁵ 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.

²⁶ Rule-42(1) provides that all bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the bidding documents


²⁷ <https://e.srb.gos.pk/SOP/SINDHSALESTAXONSERVICESACT2011.pdf>

2010²⁸. Thirdly, if the PC had any ambiguity or confusion over the expression/ word 'performance' then it could approach a dictionary to know its literal meaning, as mentioned below, in terms of Rule-2(2) of SPP Rules, 2010²⁹:

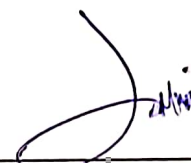
*'Performance means the successful completion of a contractual duty, usu. resulting in the performer's release from any past or future liability; execution; (2) also termed full performance'*³⁰

REVIEW COMMITTEE DECISION

12. In view of the foregoing position/ findings, as mentioned under para-11, and after due deliberation, the Review Committee concluded that the appellant fulfilled the requisite technical evaluation criteria in terms of Rule-42(1) of SPP Rules, 2010³¹ and its disqualification on the given reasons by PC/ CRC was unjustified. The Review Committee, therefore, unanimously decides that since the procuring agency has not awarded or signed contract against procurement work listed at Sr. # 3 (Dadu to Bohari) of the bid document, where the appellant participated/ submitted bid, therefore, the procurement proceedings *specific to that work* may be terminated in terms of Rule-32(7)(f) of SPP Rules, 2010³², and fresh tenders be floated in terms of Rule-23(2) & 26(1) of SPP Rules, 2010³³. 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



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

²⁸ Rule-43(2) provides that any request for clarification in the bid, made by the procuring agency, shall invariably be in writing. The response to such request shall also be in writing.

²⁹ Rule-2(2) provides that the expression used but not defined in these rules shall have the same meanings as are assigned to them in the Act and, if not defined there, as in the ordinary usage of language.

³⁰ Black's Law Dictionary (9th ed. 2009) available at Westlaw.

³¹ Ibid.

³² 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.

³³ 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.