



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1553/2019-20/0941

Karachi, dated the 25th September 2020

To,

The Executive Engineer,
Thatta Drainage Division,
Thatta.

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 Aamir Aftab Construction Company v. Thatta Drainage Division Thatta*) held on 16th September 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, Irrigation Department, Karachi.
2. The Director Design, Irrigation in Sindh, Hyderabad.
3. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
4. The Assistant Director (I.T), SPPRA [*with advice to post the decision on the Authority's website in terms of Rule-32(11) of SPP Rules, 2010*].
5. The Staff Officer to the Chairman/ Members Review Committee.
6. M/s Aamir Aftab Construction Company, Ward # 4, Doctor Gali, Taluka Sujawal District Sujawal.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1553/2019-20/0941

Karachi, dated the 25th September 2020

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

REVIEW APPEAL

Between:

M/s Aamir Aftab Construction Company

v.

Thatta Drainage Division Thatta

NIT ID Number

To0988-20-0001 dated 23.07.2020

FACTS AND BACKGROUND

The appellant, M/s Aamir Aftab Construction Company, Government Contractor Sujawal, lodged a complaint (vide letter dated 12.08.2020) addressed to the Complaints Redressal Committee (CRC)¹ – and copy endorsed to this Authority – against the NIT No.SKP/G-148/363/2020 dated 20.07.2020 floated by the Executive Engineer, Thatta Drainage Division ‘the procuring agency’ for ‘procurement of abkalani and other material’. The appellant claimed therein that he submitted a bid through the mail³ received by the procuring agency before the deadline for submission of bids⁴ in terms of Rule-24(2) of SPP Rules, 2010⁵; however, the Procurement Committee (PC) did not open the bids, inclusive bids submitted by other bidders, on the scheduled date without issuing any corrigendum. Subsequently, the procuring agency verbally instructed the bidders to attend a meeting on 12.08.2020, whereupon the bids already received were opened by disclosing the bidders’ names and bid securities only without reading aloud the amount of each quoted bid in contravention of Rule-41 *ibid*⁶; hence, the appellant requested the authorities concerned to take action against the procuring agency’s officers and also restrain them from extending further bidding process till final decision. In turn, this Authority (vide letter dated 19.08.2020) forwarded the appellant’s complaint to the CRC with advice to redress the grievances and then furnish the decision to the appellant as well as this Authority within the

¹ Constituted under the chairmanship of Director Design In Sindh, Irrigation Department, Hyderabad vide notification No.SO(R&S)8-110/2018-19 dated 28.11.2020 Issued by the Irrigation Department, Government of Sindh

² Detailed description/ nature of procurement work is accessible via instant procurement’s NIT and bid document available on the PPMS website at ID # To0988-20-0001 [<https://ppms.pprasinhd.gov.pk/PPMS/public/portal/notice-inviting-tender>]

³ TCS tracking ID # 2066467406 revealed the appellant’s mail/ bid was delivered to Mr. Qurban Ali Junejo of the procuring agency on 10.08.2020 at 12.22 p.m. [<https://www.tcsexpress.com/tracking>]

⁴ The deadline for submission and opening of bids as per NIT was 10.08.2020 at 02.00 p.m. and 03.00 p.m., respectively

⁵ 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.

⁶ (1) the date for opening of bids and the last date for the submission of bids shall be the same, as given in the bidding documents and in the notice inviting tender; (2) subject to provisions of Rule-18, in case, the two dates are different, the date and time, given in the bidding documents shall apply; (3) the bids shall be opened without one hour of the deadline for submission of bids; (4) all bids shall be opened publicly in the presence of all the bidders, or their representatives, who may choose to present in person, at the time and place announced in the invitation to bid; (5) the procuring agency shall read aloud the name of the bidder and total amount of each bid, and of any alternative bids if they have been permitted, shall be read aloud and recorded when opened; (6) all bidders in attendance shall sign an attendance sheet; (7) all bids submitted after the time prescribed as well as those not opened and read out at bid opening, due to any procedural flaw, shall not be considered, and shall be returned without being opened; (8) the official chairing procurement committee shall encircle the rates and all the members of procurement committee shall sign each and every page of financial proposal; (9) the procurement committee shall issue the minutes of the opening of the tenders and shall also mention over writing or cutting, if any.

stipulated period as per the mechanism laid down under Rules-31(3) & (5) read together with Rule-31(6) & (7) *ibid*⁷.

2. Subsequently, the appellant preferred an appeal along with review appeal fee⁸ (vide letter dated 26.08.2020) before the Authority's Review Committee whereby the appellant stated that he attended the CRC's meeting on 19.08.2020 and presented his concerns; however, the CRC failed to announce its decision despite lapse of the stipulated time. Hence, the appellant requested to consider the matter for hearing in terms of Rule-31(5) read with Rule-32(5) *ibid*⁹.

3. This Authority forwarded the appellant's matter (vide letter dated 02.09.2020), after conducting its initial scrutiny/ examination, to the procuring agency with advice to update/ confirm the bid security status latest by 07.09.2020, for ascertaining the maintainability of appeal in terms of Rule-32(1) of SPP Rules, 2010¹⁰. In response, the procuring agency (vide letter dated 04.09.2020) furnished its reply, which reads as follows:

"In compliance with your good office letter dated 02.09.2020, it is submitted that during the scrutinizing of documents submitted by M/s Amir Aftab Construction, Government Contractor, it was observed that he has no experience of last three (3) years in the related field. This condition was announced in the NIT of this office vide No.SKP/G-148/362 dated 20.07.2020 in eligibility criteria at clause-iv. Due to this reason, M/s Amir Aftab Construction Co., Government Contractor, was disqualified. His bid security is kept in the office of the undersigned he can receive it any time [Sd/- Executive Engineer Thatta Drainage Division]."

4. Accordingly, the appellant's case was taken up by the Review Committee for hearing in its meeting scheduled on 16.09.2020 at 11.45 a.m. In this regard, the Authority (vide letter dated 09.09.2020) issued summons to the parties concerned to appear in person or depute an authorized representative(s) along with relevant documents and evidence before the Committee on the scheduled date, time, and venue in terms of Rules-32(6), (8) & (10) *ibid*¹¹. Simultaneously, the Authority restrained the procuring agency from issuing the procurement contracts until the Committee's final decision in terms of Rule-32 read together with the proviso of Rule-31(7) *ibid*¹².

5. In compliance, Mr. Abdul Majeed Khaskheli (Assistant Executive Engineer, Sakro Drainage Division Thatta), Mr. Abdul Hameed Kalhoro (Divisional Accounts Officer) 'the procuring agency's

⁷ Any bidder being aggrieved by any act or decision of the procuring agency after the issuance of notice inviting tender may lodge a written complaint. 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. The procuring agency shall award the contract after the decision of the complaint redressal committee. Mere fact of lodging of a complaint shall not warrant suspension of the procurement proceedings; provided that in case of failure of the Complaint Redressal Committee to decide the complaint; the procuring agency shall not award the contract, until the expiry of appeal period or the final adjudication by the Review Committee.

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

⁹ The bidder shall submit [following documents] to the Review Committee:- (a) a letter stating his wish to appeal to the Review Committee and the nature of the complaint; (b) a copy of the complaint earlier submitted to the complaint redressal committee of the Department and all supporting documents; (c) copy of the decision of procuring agency/ complaint redressal committee, if any.

¹⁰ 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.

¹¹ 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.

¹² *ibid*.

representatives' and Mr. Amir Aftab Khattl (Proprietor M/s Amir Aftab Construction Company) 'the appellant' appeared before the Review 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 the case/ version over the instant procurement issues/ grievances.

APPELLANTS' VERSION

7. Mr. Amir Aftab Khattl 'the appellant' apprised the Committee of his submission of a bid against instant procurement through the mail received on 10.08.2020 by the procuring agency. The appellant submitted that he visited the procuring agency's office on the scheduled date for the opening of bids (10.08.2020 at 03.00 p.m.), where he witnessed the presence of other firms/ bidders whose bids were received but not opened by the procuring agency without the issuance of any corrigendum for extension of the bidding process. The appellant claimed that he visited the procuring agency's office on the next working day (11.08.2020), where he was verbally informed about the opening of the bids on 12.08.2020. Resultantly, the appellant again attended the procuring agency's office on 12.08.2020, where the envelopes were opened by disclosing the amount of bid security only; whereas, the rest of the information, specifically bid quoted by the bidders, were not publicly announced as required under Rules-41(3) to (5) *ibid*¹³.

8. The appellant further submitted that he conveyed his concerns to the CRC, which afforded the appellant an opportunity of hearing; however, the CRC could not decide the matter on account of the procuring agency's representative failure to attend the meeting for presenting viewpoint. In the meantime, the procuring agency announced the bid evaluation report via the Authority's PPMS website¹⁴ on 07.09.2020, whereby the PC disqualified the appellant based on non-conformance with the eligibility criteria (three years' experience of relevant field). The appellant contended that his disqualification based on the given reason was unjustified as he qualified by the same procuring agency under a similar nature of procurement in 2016¹⁵.

PROCURING AGENCY'S VERSION

9. Mr. Abdul Majeed Khaskhell (the PC's Secretary/ Member) and Mr. Abdul Hameed Kalhoro 'the procuring agency's representatives' submitted that the procuring agency invited bids under instant procurement (abkalan material including office stationery/ hardware/ & other accessories, repair of hydraulic gates & civil works, and vehicles' spare parts, etc.) based on the following eligibility criteria 'essential conditions' formulated in accordance with the single stage one envelope bidding procedure, as specified under Rule-46(1) *ibid*¹⁶:

- Registration with Pakistan Engineering Council, in relevant category;
- Registration with Income Tax, Sales Tax Department and Sindh Revenue Board;

¹³ *Ibid*.

¹⁴ Bid Evaluation Report at IDs # BE00988-20-0001-1 [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/ber>]

¹⁵ Refer to the procurement record accessible via the Authority's web at Sr. # 29515 [<http://e.pprasindh.gov.pk/tenderlist>]

¹⁶ (a) notice inviting tenders and bidding documents of this method shall contain [the following] eligibility criteria; i. relevant experience; ii. turnover of at least three years; iii. registration with Federal Board of Revenue (FBR) for income tax, sales tax in case of procurement of goods, registration with the Sindh Revenue Board (SRB) in case of procurement of work and services, and registration with Pakistan Engineering Council (where applicable); iv. any other factor deemed to be relevant by the procuring agency subject to provision of Rule-44; (b) each bid shall comprise one single envelope containing the financial proposal and required information mentioned at clause (a) above; (c) all bids received shall be opened and evaluated in the manner prescribed in the notice inviting tenders or bidding document.

- Affidavit to the effect that the firm/ contractor have not been blacklisted;
- Three years' experience in relevant field; and
- Turnover of business in three (3) years amounting to PKR 10.00 million per annum.

10. Mr. Abdul Majeed Khaskhell further submitted that the procuring agency received the proposals/ bids on the scheduled date/ time (10.08.2020 at 02.00 p.m.) as prescribed under Clause-2 of the NIT¹⁷; however, the same could not be opened on the scheduled date/ time (10.08.2020 at 03.00 p.m.) on account of the engagement of the PC Chairman. Due to which, the procuring agency issued a corrigendum (vide letter dated 10.08.2020)¹⁸ by affixing it on the notice board for information of bidders to attend the bids' opening meeting on 11.08.2020 at 03.00 p.m. As per the revised schedule, the PC opened bids in the presence of bidders' representatives those who wished to attend. Then the PC undertook the post-qualification procedure, based on the available documents submitted along with the bids, to determine eligible and responsive bids from where the PC recommended ten (10) bidders as responsive/ qualified and three (03) bidders, including the appellant, as non-responsive due to non-conformance with essential criteria (three years' experience in relevant field)¹⁹.

- Syed Adil Gilani (Member of Review Committee) asked the procuring agency's representatives to update/ confirm the current status of instant procurement;
 - ◆ The procuring agency's representatives confirmed that they have not awarded any procurement contract so far as per relevant rules. The procuring agency's representative also submitted a WRITTEN STATEMENT that is reproduced verbatim herewith 'the NIT called vide office letter No.SKP/G-148/363 dated 20.07.2020, the date of opening was fixed as 10.08.2020 but due to out of headquarter by the Chairman, the date of opening was re-fixed on 11.08.2020. Till to date the contracts have not been awarded [Sd/- Abdul Majeed Khaskhell, Assistant (Executive Engineer/ Secretary Procurement Committee), Ali Hassan Behrani (Accountant) Thatta Drainage Division Thatta dated 16.09.2020].

REVIEW COMMITTEE'S FINDINGS

11. After hearing the parties at length and upon going through the available procurement record, the Review Committee observed that the appellant's entire case rests on two main issues, which include submission and opening of the bids on a different schedule, and (the appellant's) unjustified disqualification under eligibility criteria. In this regard, the appellant approached the CRC, which could not decide the matter; therefore, the appellant preferred an appeal before this forum in which he has sought a declaration that the acts of the procuring agency be decided as null and void. *The Review Committee examined the issues exhaustively within the spectrum of the available record and applicable rules and concluded their findings in the following paragraphs.*

12. Turning towards the first issue, whereby the appellant contended that the procuring agency received the bids on 10.08.2020 and opened the same on 12.08.2020 (after two days of the submission of bids) without issuing any corrigendum for extending the bidding process. Per contra, the procuring agency's representatives asserted that the bids' opening schedule was extended up to 11.08.2020 at 03.00 p.m. through issuing a corrigendum (vide letter dated

¹⁷ Bids must be delivered to the above office on or before 10.08.2020 at 02.00 p.m. and must be accompanied with a bid security of 5% in shape of call deposit PKR 450,000/- Issued by a Scheduled Bank of Pakistan and will be opened on the same day at 03.00 p.m.

¹⁸ The corrigendum stated the reason for rescheduling of the opening of bids due to the Pre-PAC meeting in Irrigation Department fixed on 10.08.2020 at 03.00 p.m. – copy of the corrigendum was not posted on the Authority's website

¹⁹ Refer to the bidders' eligibility/ qualification report posted along with the bid evaluation report

10.08.2020) affixed on the notice board and the PC opened the bids publicly as per the revised/ extended schedule. The Committee noted that there are exceptional circumstances where the procuring agency may extend the bidding process provided that such extension, whenever made, should cover the schedule for THE BIDS' SUBMISSION AND OPENING ALTOGETHER, as per provisions laid down under Rules-22, 41(1) & (3) read with Clause-4.10(ii) of the Authority's Procurement Regulation (Works)²⁰. It is apparent here that the procuring agency received the bids on 10.08.2020 and opened the same on the next day through issuing a corrigendum while blatantly violating the referred rules and regulations read with Clauses-g & aa of Sub-Rule(2) of Rule-1 *ibid*²¹, which eventually supports the appellant's plea to the extent of this particular issue.

13. The second issue, in this case, relates to the appellant's disqualification under eligibility criteria against which the appellant contended that his disqualification based on the given reason for the relevant experience was unjustified as he got qualified by the same procuring agency under a similar nature of procurement in 2016. In support of his claim, the appellant submitted photocopies of the evaluation report and minutes of the meeting of the referred procurement. Per contra, the procuring agency's representatives overwhelmingly emphasized that the appellant did not submit any document, in support of the relevant experience, along with the bid submitted to the procuring agency; hence, the PC disqualified the appellant as per Rule-46(1)(c) *ibid*²². The Committee examined the issue in hand by taking into account the appellant's documentary record and concluded that the appellant's qualification within a specific procurement does not warrant his qualification in the subsequent procurements, as the criteria under each procurement may vary depending on the particular type, nature, market conditions and complexity of what is being procured²³. Secondly, a mere submission of the bid evaluation report and minutes of the meeting showing the appellant as third lowest bidder does not fulfill requirements against the relevant experience. Thirdly, a valid document against the referred criterion could include, but not limited to, contract agreement/ award, experience/ completion certificate, and so on. Hence, the PC's recommendation to the extent of the appellant's disqualification seems plausible based on the record placed before this forum.

REVIEW COMMITTEE'S DECISION

14. Given the preceding observations/ findings, as mentioned under para-12, and after due deliberation, the Review Committee unanimously decides that since the procuring agency has not awarded or signed any contract (as confirmed by the procuring agency's representative); therefore, the procurement proceedings against instant procurement shall be terminated in


²⁰ The procuring agency may extend the deadline for submission of bids only, if one or all of [the following] conditions exist; (1) fewer than three bids have been submitted and procurement committee is unanimous in its view that wider competition can be ensured by extending the deadline. In such case, the bids submitted shall be returned to the bidders un-opened. If the procuring agency is convinced that such extraordinary circumstances have arisen owing to law and order situation or a natural calamity that the deadline should be extended; provided that the advertisement of such extension in time shall be made in a manner similar to the original advertisement. The date for opening of bids and the last date for the submission of bids shall be the same, as given in the bidding documents and in the notice inviting tender; the bids shall be opened within one hour of the deadline for submission of bids. Notice is to be advertised in a manner similar to the original advertisement. Affixing of corrigendum on notice board of office of the procuring agency cannot substitute to the requirement of publication in newspaper or hosting on SPPRA website as the case may be.

²¹ Bidding process means the procurement procedure under which sealed bids are invited, received, opened, examined and evaluated for the purpose of awarding a contract. Open competitive bidding means a fair and transparent specified procedure defined under these rules, advertised in the prescribed manner, leading to the award of a contract whereby all interested persons, firms, companies or organizations may bid for the contract and includes both national and international competitive biddings.

²² *Ibid*.

²³ Refer to the *M/s Shehzad Yousuf Zal and Anor v. Karachi Development Authority* (Review Committee's findings at para-9) [<http://www.pprasinhd.gov.pk/rpdecisions/83RCKDA13082020.PDF>]

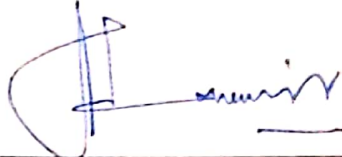
terms of Rule-32(7)(f) ibid.²⁴, and fresh tenders be floated in terms of Rule-26 ibid. read with the Section-2(i) of SPP Act, 2009²⁵. Compliance of the decision shall be submitted to this Authority within fifteen (15) days of issuance of this decision.



(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

- ²⁴ The Review Committee may direct that the procurement proceedings may be terminated, in case the procurement contract has not been signed.
- ²⁵ 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 exists: (i) such an infirmity in the bidding documents has surfaced that the procuring committee recommends to the competent authority that the bids have to be invited afresh, (ii) The case has been declared as one of mis-procurement in pursuance of Rule 32 and 33A. 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.