

MINUTES OF THE MEETING OF COMPLAINT REDRESSAL COMMITTEE OF RURAL DEVELOPMENT DEPARTMENT HELD ON TUESDAY THE 24TH JANUARY, 2017 TO ADDRESS THE GRIEVANCES/COMPLAINT OF M/S WADOOD ENGINEERING SERVICES (PVT) LTD, KARACHI , HELD IN THE OFFICE OF THE DIRECTOR GENERAL, RURAL DEVELOPMENT DEPARTMENT SINDH HYDERABAD

The following attended the meeting

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| 1 | Engr. Anwar Ali Charan,
Executive Engineer (L&TR) Hyd
Exercising power of Director General,
RDD Sindh, Hyderabad. | Convener |
| 2. | Engr.Ghulam Sarwar Soomro,
District Officer (Technical)
Rural Development Department, Hyderabad | Member |
| 3. | Engr.Akhtar Ahmed Almani,
Assistant Engineer, Public Health Engg.
Hyderabad | Member |
| 4. | Mr.Abdul Rasheed Channa,
Divisional Accounts Officer,
Representative of A.G.Sindh | Member |
| 5. | Mr. Muhammad Ismail Memon,
Section Officer(Tech.)
Public Health Engineering &
Rural Development Department
Government of Sindh, Karachi | Member/ Secretary |

The meeting commenced with the recitation from Holy Quran by Engr. Anwar Ali Charan. He welcomed all the participant Members of the Redressal Committee.

The Complaint Redressal Committee called the complainant M/S Wadood Engineering Services (Pvt) Ltd., Karachi and M/S Star Link Activities Pvt. Ltd (JV) and read the queries made in the complaint regarding opening of Financial Bid.

1	It is most respectfully submitted that the Financial Proposal Opening of the afore said tender was held on the January 17, 2017. In that regard it is brought to your knowledge that by fully complying with the SPPRA Rule of "Single Stage Two Envelope" and on 16/12/2016 we had submitted our bid in a duly sealed master envelope wherein, two separate proposals titled as 'Technical' & 'Financial' in two sealed envelopes were enclosed. These two sealed envelopes were duly submitted by us, duly collected and confirmed by the Procuring Agency. At that stage if there was any irregularity on our part then our bidding documents would have been out-rightly rejected / returned
2	At this juncture, it is pertinent to submit that according to the Procurement Laws and Rules for province of Sindh, we are fully eligible and further entitled as bidders in regard to the above said tender and have at all times complied with the relevant rules and procedures in their entirety. Moreover, we were the only firm which has submitted the sample as per the specifications and provided a demonstration in the presence of the procuring agency, procurement committee and the participants
3	It is imperative to mention that the final date for submission and evaluation of the Technical proposal was scheduled for the December 16, 2016 while in fact the time for submission of the tender documents for the bidding process for the above said tender was 11:00 AM and the subsequent opening of the technical proposal was 12 Noon. Accordingly, we had submitted our bid through our Master Envelope within the time prescribed by the Procurement Agency
4	For purposes of our grievances, it is imperative to set forth the relevant facts leading to the instant complaint, which are as follows: <ul style="list-style-type: none"> ▪ That bidding process of the XEN Karachi Division began on 16/12/2016 in presence of the procurement committee, the participant bidders and a few media/press representatives. ▪ That in presence of above mentioned all, our sealed Master Envelope was duly opened, and as per the agency settled practice only the Technical Proposal was initially reviewed. Whereas, the Financial Proposal was kept aside separately in a sealed envelope. Our Pay Order for the earnest money was also submitted with our bidding documents. ▪ That upon scrutiny, our technical bid was cleared and accepted by the respective committee.

	<ul style="list-style-type: none"> ▪ That We alongwith two other bidders were declared technically qualified. ▪ Thereafter, on 17/1/2017 at the time of opening of the Financial Proposals, it was discovered that our financial proposal for the XEN Karachi Division was missing from the bid box. ▪ However, the concerned representatives of the XEN Karachi Division clarified that he had mistakenly kept our sealed financial proposal in his custody while scrutinizing/evaluating the Technical Proposal.
5	<p>It should be noted that our financial proposal was found in a sealed envelope and hence was not opened before Procurement Committee until the XEN Karachi Division presented our financial proposal. However, due to an objection raised by a competitor bidder our financial proposal was not accommodated in the financial opening.</p>
6	<p>In light of the aforesaid narrations, it is pertinent to state that Rule 30 of the Sindh Public Procurement Rules, 2010 sets forth the criterion whereby, a bidder can be disqualified from the bidding process. The said rule is quoted herein below for your kind perusal:</p> <p>30. Disqualification of Suppliers, Contractors and Consultants (1) The procuring agency shall disqualify a supplier, consultant or contractor, whether already pre-qualified or not, if it finds at any time, that the information submitted by him concerning his qualification and professional, technical, financial, legal or managerial competence as supplier, consultant or contractor, was false and materially inaccurate or incomplete; or</p> <p>(2) At any stage has indulged in corrupt and fraudulent practices, as defined in these rules;</p> <p>(3) A supplier, contractor or consultant being aggrieved by the decision of the procuring agency regarding disqualification may seek relief through the mechanism of grievance redressal, as provided under Rule 31.</p>
7	<p>From a bare perusal of the above quoted statutory provision, it is unequivocally clear that a respective bidder can only be disqualified if it is seen to have been fraudulently indulged in corrupt practices of submitting inaccurate, false and/or incomplete details in either of its technical or financial proposals.</p>
8	<p>Nevertheless, in light of the abovementioned facts, it is categorically submitted that at the time of submission of our Master Envelope, the same did in fact contain both the technical and financial proposals. However, it was only because of the oversight on part of the XEN Karachi Division authorities that our financial proposal was not found with other financial bids. This assertion is substantiated by the fact that our Financial Proposal was found to be in a sealed envelope at the time when it was later presented to the procurement agency for opening and purposes of evaluation.</p>
9	<p>Moreover, it is settled law and practice that no party can be made to suffer for the negligence and/or carelessness of public functionaries. In fact, public functionaries are always under a corresponding obligation to exercise the same fairly and justly, and where the Authority did not find it appropriate to exercise its discretion, it still had to provide reasons for inaction on its part. Accordingly, a failure to exercise discretionary power under a statute without legal justification was not acceptable as it significantly impairs the due process of law to be treated in accordance with the law. Consequently, it is most respectfully prayed that the Procurement Committee being the custodian of the proposals submitted must diligently exercise caution when evaluating any bids submitted to it and thus, any mismanagement of the same cannot result in disqualifying us from the bidding process.</p>
10	<p>Therefore, considering the facts and reasons recorded hereinabove, it is categorically submitted that we cannot be held responsible to any measure for the negligence / careless conduct / oversight of the relevant authorities. Even otherwise, it is reiterated that for purposes of actively participating in the bidding process we had submitted our Master Envelope wherein, we had enclosed our Technical Proposal and Financial Proposal. This is evident from that fact that in the other Five (05) Division tenders with the same nomenclature, our Technical and Financial Proposals were duly found in the master envelopes submitted thereof. It is also relevant to mention that, our banking instrument amounting to 2% as earnest money for the total consideration was also found in the master envelope, which is strict proof our intention, willingness and ability to contest the bidding process for the above quoted tender(s).</p>
11	<p>Moreover, it is further pertinent to state that, in total there were Six Division Tenders with identical classifications as categorized by the Rural Development Department. It is would also not be prejudicial to our interests to state that we have participated in all Six tenders and in fact, have been ranked as possessing the Bid with the lowest evaluated cost in all other five divisions ie. excluding the Karachi Division. Nevertheless, our proposal/bid submitted for the Karachi Division is more or less the same as what submitted for the other Five (5) Division tenders, which will be evident when the same proposal is perused by the procurement committee.</p>
12	<p>Furthermore, it is self-explanatory that we have offered the lowest price and subsequently, have won (5) Five of the Six (6) division tenders. Out of the six (6) tender divisions, it was only in the Karachi Division Tender that the problem of the missing Financial Proposal from box has occurred. In fact, it is also reiterated that the concerned officer of the XEN Karachi Division has already clarified that our financial proposal was in his possession for reasons unknown to him. Once the bidding documents were in the custody and care of the procuring agency, then the bidders cannot be saddled to suffer for failure to act on part of the authorities.</p>
13	<p>The fact that the financial proposal subsequently found was sealed and was present in the same manner as it was submitted by us goes to show that we had always possessed a clear and unequivocal intention and/or ability to acquire the Karachi Division Tender as well as complete the transaction with the utmost efficiency and diligence.</p>
14	<p>It is most humbly prayed that the Learned Procurement Committee may kindly be pleased to consider our financial proposal for the Karachi Division by strictly adhering to the relevant and applicable rules, witnesses, proof in a</p>

	judicious manner. Furthermore, it is also requested that this Procurement Committee may be pleased to initiate/conduct an inquiry against the officer responsible for such mismanagement and investigate upon the real reasons as to why our Financial Proposal not lying with the other bidding envelopes, as the same amounts to unfair discrimination being exercised against us and our business interests and opportunities.
15	Furthermore, we being the lowest evaluated bidders in all the other five districts of Sindh, goes to show that we are qualified and capable of serving the interest of our Province esp. Rural Areas of Karachi at the most compatible rates and this will also safe national exchequer from unnecessary expenditure.
16	That we are available to assist the respectable committee and / or clarify any query raised by the said Committee.

Proceedings of Complaint Redressal Committee

Mr. Talat a representative of the complainant firm M/S Wadood Engineering Services (Pvt) Ltd, and M/S Star Link Activities Pvt. Ltd (JV) appeared before the Complaint Redressal Committee, he submitted that their firm had submitted one Master envelope, duly sealed, containing two separate envelopes, one marked as "Technical Proposal" and the other marked as "Financial Proposal". The Master envelope was opened by the Procurement Committee on 16.01.2017, in presence of all the participant Bidding Contractors or their representatives. The envelope containing Technical Proposal was opened for evaluation while the other envelope marked "Financial Proposal" was kept a side.

Their Technical Proposal was opened by the Procurement Committee and after scrutiny, it was accepted. Their proposal was declared as technically qualified.


On 17th January, 2017, the opening day of the Financial Proposals, it was told that their Financial Proposal was missing from the Tender Box. The Executive Engineer, RDD, Karachi who is procuring agency had clarified that the envelope carrying "Financial Proposal" was in his custody. There was objection from other participating Contractors, so their Financial proposal was not included in the 'Financial Opening process' for no fault on their part.


He further added that they had presented 'sample' and give details regarding its operation, robot control system and give full details of understanding of the project and the Procurement Committee after their being satisfied declared them qualified.


On 17th January, 2017, the Financial Bid opening day, their sealed envelope "Financial Proposal" was produced by the Executive Engineer, Rural Development, Karachi from his office.


Decision

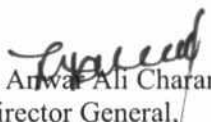
The facts elaborated by M/S Wadood Engineering Services (Pvt) Ltd., & M/S Star Link Activities Pvt. limited (JV) are considerable as the mistake occurred in the office as such their grievance is considered as genuine and the same may be accepted. The Procurement Committee for Karachi Contract is therefore hereby required to reconvene and include the Financial Bid of M/S Wadood Engineering Services (Pvt) Ltd., & M/S Star Link Activities Pvt. limited (JV) in evaluation process of the pending procurement process. Consequently they may decide to recommend the lowest evaluated bid of award of contract as per law.


(Engr. Ghulam Sarwar Soomro)
District Officer (Technical)
Rural Development Department
Hyderabad
Member Redressal Committee


(Engr. Akhtar Ahmed Almani)
Assistant Engineer, PHE
Hyderabad
Member Redressal Committee


(Abdul Rasheed Channa)
Divisional Accounts Officer
Representative of A.G.sindh
Member Redressal Committee


(Muhammad Ismail Memon)
Section Officer (Technical)
Public Health Engg: &
Rural Development Deptt:
Govt. of Sindh, Karachi
Member/Secretary


(Engr. Anwar Ali Charan)
Director General,
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