



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-1898/2020-21/1857 Karachi, dated the 7th January, 2021

To,

Assistant Director (Admin),
Culture Tourism & Antiquities Department,
Government of Sindh,
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 Saif Enterprises) V/s Culture Tourism & Antiquities Department, held on 23.12.2020, for taking further necessary action in compliance of referred decision, under intimation to this Authority, at the earliest.


DEPUTY DIRECTOR (LEGAL)

A copy is forwarded for information and necessary action to:

1. The Secretary to Government of Sindh, Culture Tourism & Antiquities Department.
2. The Director General, Culture Tourism & Antiquities Department.
3. 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)
4. The Staff Officer to the Chairman / Members Review Committee.
5. The Appellants.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



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

Karachi, dated the December, 2020

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

(REVIEW APPEAL)

M/s Saif Enterprises

Versus

Culture, Tourism & Antiquities Department

(NIT ID #T01020-20-0001 DATED 02.09.2020)

FACTS AND BACKGROUND

The appellant, M/s Saif Enterprises, Shikarpur¹ lodged a complaint (vide letter dated 06.11.2020) addressed to the Director General, Antiquities & Archeology, Culture, Tourism, Antiquities & Archives Department Karachi / Chairman Complaints Redressal Committee (CRC)² – copy endorsed to this Authority and others – in respect of the Notice Inviting Tender (NIT) No. **T01020-20-0001** dated 02.09.2020 floated by the Assistant Director (Admin), Culture Antiquities Department Government of Sindh '*the procuring agency*' for procurement of Services/Goods for organizing Culture Activities, Printing & Publication and Establishment of Folk Studio³.

2. The appellant complaint was that despite the appellant being the lowest evaluated bidder in respect of item Fabrication & Decoration of stages at Hyderabad Division, Sukkur Division, Mirpurkhas Division, Larkana Division and Shaheed Benazirabad Division, the procuring agency had awarded procurement contract of these items to his blue-eyed bidders by tempering the appellant's bid. He added that this act of the Procuring Agency is the clear destruction of the objectives of open competitive bidding and violation of SPP Rule-2(q)(iv) of SPP Rules, 2010. The appellant, therefore, approached the Chairman CRC for redressal of his genuine grievances as well as to this Authority. In turn, this Authority (vide letter dated 11.11.2020) also forwarded the appellant's matter to the CRC with advice to redress the grievances and to take further necessary action in the matter as per Rule-31(3) & (5) *ibid*⁴, under

¹ Appellant having its office located at Teghani Mohalla, Kandhkot Road, Shikarpur: Mob: 0302-3697513

² Constituted under the Chairmanship of Mr. Manzoor Ahmed Kanasro, Director General Antiquities & Archaeology, Culture, Tourism, Antiquities & Archives Department, vide Notification SO(B)/CT&AD/ACCOUNTS/2020-21/749 dated 24TH August, 2020 issued by the Section Officer (Budget), Culture, Tourism, Antiquities and Archives Department.

³ Detailed description/ nature of the procurement works can be accessed via the Instant procurement's NIT available on the PPMS website at ID T T01020-20-0001 [<https://ppms.pprasindh.gov.pk/PPMS/pubiic/portaWnedcenvitfng-tender>]

⁴ 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

intimation to this Authority. However, the Complaint Redressal Committee (CRC) failed to furnish decision on aforementioned complaint within stipulated time period.

3. Subsequently, the appellant preferred an appeal with the supporting documents and review appeal fee⁵ (vide letter No. 506 dated 16.11.2020, received in this Authority on 16.11.2020) before this Authority 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, 2010. The Authority retrained the procuring agency from issuing procurement contracts till the final decision of the Review Committee in terms of Proviso of Rule-31(7) *ibid*⁶.

4. Accordingly, the appellant's case was processed and considered by the Authority's Review Committee for hearing in its meeting scheduled on 09.12.2020 at 12 p.m. and notices, in this regard, were issued to the parties concerned (vide this Authority's letter dated 02.12.2020) to appear before the Committee on the scheduled date, time, and venue in terms of Rule-32(6), (8) & (10) of SPP Rules, 2010⁷. In Compliance Mr. Abdul Razak Chandio '*representative of the appellant*' appeared before the Committee; whereas, the representative of the procuring agency did not attend the meeting, due to which the Committee decided to provide another opportunity to the procuring agency for appearing before the Review Committee in its next meeting, scheduled on 23.12.2020, for defending its position/ case and notices in this connection were again issued to the parties (vide this Authority's letter dated 21.12.2020). In compliance, Mr. Abdul Razak Chandio '*representative of the appellant's*' appeared before the Committee. However, the representative of the procuring agency did not attend the meeting on second time, due to which the Committee decided to hear the appellant and decide the matter Ex-parte.

REVIEW COMMITTEE PROCEEDINGS

5. The meeting started with the recitation of verses from the Holy Qur'an. The Chairperson of the Review Committee commenced the meeting by welcoming all the participants of the meeting. The Chair then asked the appellant to present his case/ grievances before the Review Committee, as submitted to the CRC.

APPELLANT'S VERSION

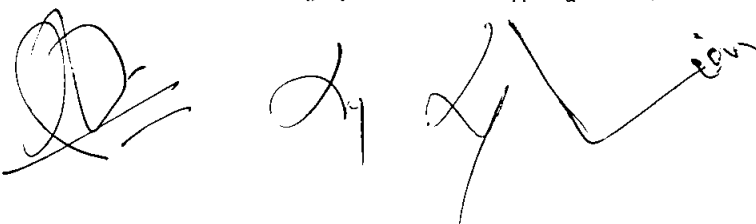
6. Mr. Abdul Razak Chandio '*representative of the appellant*' apprised the Committee that his firm namely, Saif Enterprises submitted a bid for *procurement of*

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 rule 32, if the aggrieved bidder files the review appeal within ten (10) days of such transfer;

⁵ This Authority's Office Order NO.O4r(A&FSPPR.4118-19/O325 dated 26.07.2019 [<https://ppms.pprasindh.gov.pk/PPMS/>]

⁶ 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

⁷ On receipt of appeal, [along with all requisite information & 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.



Services/Goods for Organizing Culture Activities, Printing & Publication and Establishment of Folk, in response to the above referred tender floated by the Procuring Agency. He added that bids were received/ opened by the Procurement Committee on 21.09.2020. The appellant claimed that he had quoted the lowest rates, whereas the Procuring Agency deliberately enhanced his quoted rates to award the contract to its blue-eyed/ favourite contractor showing them the lowest evaluated bidders. The appellant also submitted the copy of his bid submitted to the procuring agency along with the comparative statement of posted by the procuring agency on Authority's website⁸.

7. Moreover, the appellant informed the committee that the procuring agency issued item wise comparative statement which was illegal and not part of the bidding document but it was only to favor to their own specific firms.

8. The appellant further alleged that the Account Officer of the procuring agency is illegally supporting his specific/favored bidders / Companies, which are fake registered and involved in financial criminal activities which defeats the objective of open competitive bidding as reflected under Rules-15(1) of SPP Rules, 2010, and procuring agency, in instant procurement is failed to comply with the rules.

9. The chair asked the representative of the appellant regarding the response of CRC meeting and its decision. *Mr. Abdul Razak (appellant's representative informed the committee that the Complaints Redressal Committee (CRC) did not respond to redress the matter within the stipulated period in terms of Rule-31(5) as the Chairman of the CRC is under influence of Procuring agency.*

10. Syed Adil Gelani (Member of Review Committee) asked the representative(s) of Appellants about the current status of the instant procurement works;

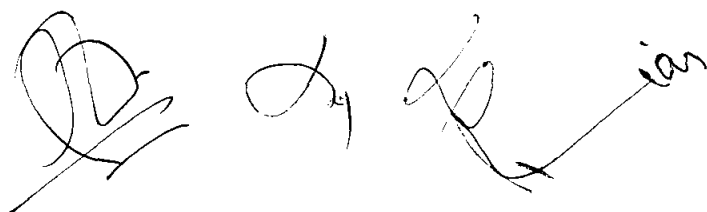
- ◆ *The representative(s) of the appellant confirmed that all the procurement contracts were awarded in pieces but were not posted on Authority's website in terms of Rules-50 & 10 of SPP Rules, 2010⁹.*

11. Mr. Manzoor Ahmed Memon (Member of Review Committee) requested the Authority to examine and investigate, whether the complainant's plea for enhancement of rate is correct or otherwise.

12. After scrutiny of the record provided by the appellant and the Bid Evaluation Report / Comparative Statement uploaded on Authority's website, the plea of appellant regarding enhancement of his quoted rate in respect of items referred above seems correct.

⁸ Bid evaluation reports at ID # BE01020-20-0001-1 to 4 [<https://ppms.pprasinidh.gov.pk/PPMS/public/portal/ber>]

⁹ 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. Within fifteen (15) days of signing of contract, [2] procuring agency shall publish on the website of the Authority and on its own website, if such a 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.



REVIEW COMMITTEE OBSERVATIONS / FINDING

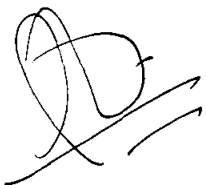
13. The Review Committee observed that the Authority conveyed various infirmities/observations to the procuring agency through Procurement Performance Management System (PPMS) website¹⁰ on 03.09.2020 and 02.12.2020 with the instructions to rectify or clarify the same on time; however, the procuring agency could not proceed accordingly to the given instructions. Besides, the Committee observed that the procuring agency failed to comply with the following procurement rules while undertaking the instant bidding process:

- (a) Despite providing two chances to PA for defending their case, the Procuring Agency, failed to attend the meeting of Review Committee, which is the violation of SPP Rule-32(8) of SPP Rules, 2010 (Amended 2019)¹¹
- (b) The procuring agency was required to finalize and announce its CRC decisions within seven days and intimate the same to the appellant/complainants and the Authority within three working days in terms of Rule-31(5) of SPP Rules, 2010 (Amended Up to date), but the CRC failed to redress the grievances of the complainant;
- (c) The procuring agency was required to post contract document on the Authority's website within fifteen (15) days of the award of contract in terms of Rule-50 read in conjunction with Rule-10 of SPP Rules, 2010; however, the procuring agency has failed to post the documents on the Authority's website [as yet], violating the aforementioned rules;
- (d) Moreover, the scrutiny of the record produced by the Appellant reveals that the Procuring agency has enhanced the rates quoted by the appellant to award the contract to his favourite / blue eyed firm. Hence, the procuring agency has not only violated principles of procurements i.e. Transparency and fairness defined in Rule-4 but has also indulged in fraudulent practice defined in Rule-2 (q)(iv) of SPP Rules, 2010¹².
- (e) The instant procurement is prima facie is a case of mis-procurement, as the procuring agency did not bother to attend the meetings of the Review Committee and failed to observe the mandatory provisions of SPP Rules, 2010 in letter and spirit.

¹⁰ The NIT and BERs' observations can be accessed in respective comments section.

¹¹ It shall be mandatory for the Appellant and Head of Procurement 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";

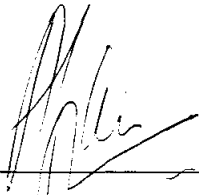
¹² "Fraudulent Practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;



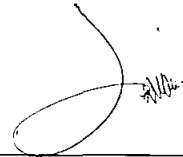
REVIEW COMMITTEE DECISION

18. In view of the above foregoing findings/observation and after due deliberation, the Review Committee unanimously declared the instant procurement as “**Mis procurement**” in light of Rule-32(7)(g) of SPP Rule, 2010 read with section -2(i) of SPP Act 2009¹³ and decide to refer the matter to the Competent Authority for initiating disciplinary proceedings against the officer(s)/official(s) responsible for mis-procurement in term of Rule-32(A)(2) of SPP Rules, 2010¹⁴.

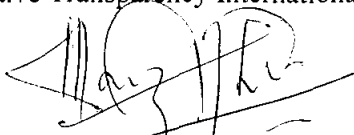
19. Matter is also referred to Chief Secretary and Anti-corruption Establishment Sindh for immediate action.



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



(Member/ Independent Professional)
Engr. Munir Ahmed Shaikh
Independent Professional



(Member)
Mr. Manzoor Ahmed Memon
Private Member SPPRA Board



(Chairman)
Mr. Riaz Hussain Soomro
Managing Director
Sindh Public Procurement Regulatory Authority

¹³ [the Review Committee may] declare the case to be one of mis-procurement if material violation of Act, Rules, Regulations, Orders, Instructions or any other law relating to public procurement, has been established. "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;

¹⁴ 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.