



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-2024/2020-21/1986

Karachi, dated the 27th January, 2021

To,

Executive Engineer,
East Division,
Irrigation Department,
KHAIRPUR.

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 **Abra Construction Company v/s Executive Engineer, East Division Khairpur**, held on 13.01.2021, for taking further necessary action in compliance of referred decision, under intimation to this Authority, at the earliest.


ASSISTANT DIRECTOR (LEGAL-II)

A copy is forwarded for information and necessary action to:

1. The Secretary to Government of Sindh, Irrigation & Power Department.
2. The Director Design in Sindh, Irrigation Department Hyderabad.
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 Appellant.

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

NO.AD (L-II)/SPPRA/CMS-2024/2020-21

Karachi, dated 20th January, 2021

(Appeal)

M/s Abra Construction Company (Appellant)

Versus

The Executive Engineer East Division (Irrigation & Power Department) **Khairpur (Procuring Agency)**

(NIT T00896-20-0001 dated 22.11.2020)

Facts and background

1. The appellant ¹M/s Abra Construction Company, Larkana, lodged a complaint (vide letter dated 11.12.2020) addressed to the Director Design, Irrigation Department, Hyderabad, Chairman Complaints Redressal Committee (CRC) as well as addressed to the Superintendent Engineer, Irrigation Circle, Sukkur against the **NIT T00896-20-0001** dated **22.11.2020** floated by the Executive Engineer Irrigation East Division (Irrigation & Power Department) **Sukkur.** *“the procuring agency”* for the procurement of four works² whereby the appellant filed complaint against the procuring agency due to the **refusal of the procuring agency to accept the bids via TCS courier service.**
2. Subsequently, the appellant (vide letter dated 23.12.2020) preferred an appeal before Review committee and submitted review appeal fees³ and stated that **CRC was failed to resolve the matter** and further requested to **restrain the procuring agency for further proceedings.** Therefore, the Authority listed the matter in a meeting of the Review⁴ Committee of SPPRA that was scheduled to be held on **Wednesday, 13th January 2021 at 11.00 a.m.** under the Chairmanship of Managing Director, SPPRA in Committee Room of Sindh Public Procurement Regulatory Authority, Barrack No.8, Sindh Secretariat Block-4-A, Court Road, Karachi, **for hearing of the appeal of the appellant** in terms of Rule-31(5) read with 32⁵ SPP Rules, 2010(amended up-to-date).
3. Accordingly, the appellant's case was taken up by the Review Committee⁶ for hearing in its meeting scheduled on 13.01.2021 at 11.00 a.m. and notices, in this regard, were already issued to the parties concerned as mentioned above. The meeting was attended by the Chairman and members of the Review Committee. Besides, The Procuring Agency was represented by the Executive Engineer, Sharafud-din-Bhanbhan, chairman of the procurement committee and head of the procuring agency. Mr.Abrar Hussain Soomro and Rahamtullah Abro attended the meeting being the appellant of the matter.

¹M/s Abra Construction Company, Larkana.

²Detailed description/ nature of the work can be accessed through instant procurement's NIT available on the PPMS website at ID # **T00896-20-0001** [<https://ppms.pprasmdh.gov.pk/TPMS/£ubUc/portal/hotice-invitm-g-teiider>]

³This Authority's Office Order No. Dir(A&FVSPRN18-1910325 dated 26.07.2019 [<https://fpms.pprasindh.gov.pk/PPMS/>]

⁴The bidder shall submit (following documents) to the Review Committee: - (a) a letter stating Ns 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

⁵Rule-32(1) provides that **foe a bidder not satisfied with decision of foe procuring agency's complaints redressal committee may lodge an appeal to foe Review Committee within ten (10) days o f announcement of foe decision provided that he has not Withdrawn the bid security, if any, deposited by him.**

⁶On 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 announces. Its decision within ten working days **of** submission of appeal. However, In case **of delay**, reasons thereof shall be recorded in writing.



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 appellant to present the case/ version, on the instant procurement before the committee.

Appellant's Version

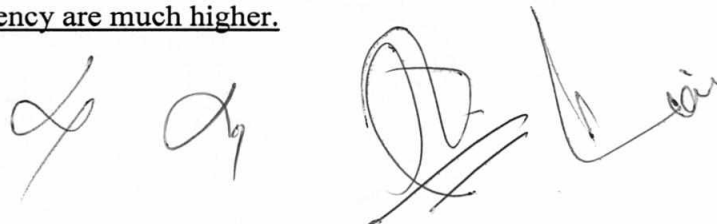
5. The appellant submitted that his firm is registered with PEC in C-2 (1000 million) category and is qualified for the participation in instant tenders which were called by the Executive Engineer irrigation East division, Khairpur.
6. The appellant stated that he downloaded the bidding documents from the SPPRA website and attached original call deposits for bid security and pay orders for Tenders fees and properly sealed in envelope with complete required documents and sent to be participated in the above mentioned NIT through TCS courier Service NO.5564998144.However, bidding documents were **refused to accept** by the procuring agency which is against the rules.
7. Furthermore, the firm argued that they requested to Chairman CRC to redress their complaint against the refusal of bidding documents. However, CRC did not respond to their complaint. Therefore, the complainant submitted that he preferred appeal before the Review Committee
8. Mr. Manzoor Ahmed Memon, member of the review committee asked the firm to present the documentary evidence for the **refusal of accepting** of the bidding documents by the procuring agency. The firm presented the tracking report of TCS courier service wherein it is clearly mentioned that the **procuring agency refused to accept the bidding documents on dated 7.12.2020.**The TCS delivery report was verified by the committee through TCS online tracking and verification validated the statement of the bidder.
9. Similarly, the bidder also provided the documentary proof of bid security payment and tenders' fee payment wherein the bidder has submitted bid Security for the tenders in J.S Bank, Larkana. The bidder also provided the documentary proof of the receipt of CRC application at the office of procuring agency. The same was verified and it is found correct that application of bidder for CRC was received at the office of Superintendent Engineer.

Procuring Agency's Version

10. The procuring agency submitted that the bid submission and opening was scheduled on **8.12.2020.** However, it was not possible for the Executive Engineer to attend the meeting and to open the bids because he was **called by the Honorable High Court of Sindh @ Sukkur to appear before the bench in C.P No-D-857/2020.**Therefore, the procuring agency extended the date of bid submission and bid opening till **24.12.2020.**



11. Procuring agency believed that the bidder neither purchased the bidding documents nor attended the office, on the date of bid submission and bid opening, dated 24.12.2020. The procuring agency also argued that the bid submission and bid opening was carried out in a transparent manner as per rules.
12. Similarly, the Procuring Agency denied that the bidder did not approach the agency for the CRC and **has approached the Review committee** directly which is against the Rule 31(3) of SPPRA Rules 2010.
13. Furthermore, the procuring agency submitted that BER was prepared on 30.12.2020 and the same was hoisted on the website of the Authority and claimed that a healthy, fair and transparent competition was conducted by the procurement committee.
14. In addition to this, the procuring agency submitted that on the recommendations of the procurement committee, the work orders have been issued to the lowest evaluated bidder on **12.01.2021**. The procuring agency has requested to review committee to dismiss the review appeal of the bidder because the bidder is a habitual complainant and he is trying to get undue favour from the procuring agency.
15. Mr. Adil Gilani, member of the review committee, asked the Executive Engineer, whether the extension of date in bid submission and bid opening, was published in News papers and the same was hoisted on the PPPMS as per SPPRA rules. The Executive Engineer submitted that the Corrigendum Order was affixed at the office of the Executive Engineer but **it was neither published in the newspapers nor hoisted on PPMS**. However, it was attached with Bid Evaluation Report on 31.12.2020.
16. Mr. Manzoor Ahmed Memon, member of the review committees, asked the Executive Engineer whether the CRC application was received at the office of the Executive Engineer and at the Office of the CRC chairman or not. Procuring Agency denied that the bidder did not approach to the agency for the CRC. The executive engineer also confirmed that he received the review meeting notice on 05.12.2020, but the procuring agency signed the work signed the contract and issued work orders.
17. Executive Engineer also confirmed that the person who refused to take the bidding documents is in staff of the office of the Executive Engineer East Division, Sukkur.
18. Executive Engineer also admitted that he was aware of the fact of the instant matter had been listed for the review committee meeting before he issued the work orders for the works/signing of the contract. Minutes of the meeting issued by the procuring agency are incomplete.
19. The Executive Engineer also confirmed that the rates which have been accepted by the procuring agency are much higher.

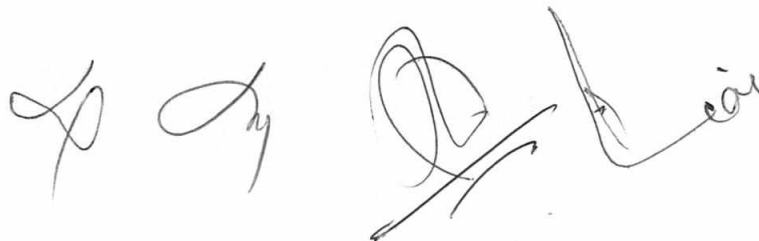


Findings of Review Committee

20. The chronology of the procurement process/ record shows that the procuring called the bids in terms of SPPRA Rule for four works:

Sr.No	Name of work	Bid Amount	Earnest Money	Bid Fees	Completion period
1	Repair of X-Regulator/Head Regulator Gates in Irrigation East Division Khairpur	0.472 million	5% of the quoted Price	2000/	12 Months
2	Rehabilitation of Employees Residence Quarter Including Construction of compound wall of Irrigation Colonies in Irrigation Department	50.167 Million	5% of the quoted Price	2000/	12 Months
3	Renovation/Re-Construction and Improvement of landhies on all Canal System of Sindh (Phase I)	36.298	5% of the quoted Price	2000/	12 Months
4	Renovation/Re-Construction and Improvement along office Block (AXEN) Mirwah Sub-Division at Thari in Irrigation	15.101	5% of the quoted Price	2000/	12 Months

21. The bidder claimed to have sent the bidding documents via TCS and the same were refused by the Procuring Agency on 7.12.2020.
22. The Procuring Agency has submitted to have issued the Corrigendum for the extension of date and time for the submission of bids on 8.12.2020 and the same was affixed on the board by the procuring agency wherein the date for the submission and opening of the bidding documents was extended till 24.12.2020. The corrigendum was neither published in the newspapers nor was hoisted on PPMS website.
23. The bidder claimed to have submitted the application before CRC on 12.12.2020. whereas, the Procuring agency said the bidder had not approached the CRC. The bidder approached the Authority for the Review of the matter on 23.12.2020. The Review committee decided to hear the matter in the meeting of the Review committee scheduled to be held on 13.12.2020 and the notices in this regard were sent on 5.12.2020.
24. Meanwhile, The Procuring agency announced the bid evaluation report on 30.12.2020 and the same was hoisted on the PPMS website Besides BER, the Procuring Agency issued the work order on 12.1.2021, one day prior. The works were awarded to the four different contractors. The details of the contact are given below.



Sr.No	Name of work	Name of the Contractors	The amount of contract	Comparison with scheduled and estimated cost	Completion period
1	Repair of X-Regulator/Head Regulator Gates in Irrigation East Division Khairpur	M/S AGK & Co Government Contractor	535698/	45.10 % above scheduled rate and 14.46% above estimated rate	12 Months
2	Rehabilitation of Employees Residence Quarter Including Construction of compound wall of Irrigation Colonies in Irrigation Department	M/s Kolachi & Co Govt Contactor	56028192/	43.30 % above scheduled rate and 14.52% above estimated rate	12 Months
3	Renovation/Re-Construction and Improvement of landhies on all Canal System of Sindh (Phase I)	M/s Abbasi& Co Govt Contractor	41159516/-	43.30 % above scheduled rate and 14.52% above estimated rate	12 Months
4	Renovation/Re-Construction and Improvement along office Block (AXEN) Mirwah Sub-Division at Thari in Irrigation	M/S New Pak Engineering Govt. Contactor	17155592/	46.10 % above scheduled rate and 14.83% above estimated rate	12 Months

OBSERVATIONS OF THE REVIEW COMITEE

25. The appellant submitted its bid through TCS courier Company vide No. 5564998144 dated 4.12.2020 and the same was refused in the office of XEN on 7.12.2020 **well before the last date and time of submission of bids i.e. 08.12.2020. which is violation of Rule-24(2) of SPP Rules, 2010. Aamended (up-to-date).**
26. Although the extension of bid process due to the appearance in The Honorable Court of Sindh seems to be reasonable. Nevertheless, the way adopted by the procuring agency is unreasonable. The procuring agency did not follow the procedure that was necessary to be adopted for the extension of bid submission and opening date and time for more 16 days. **Hence, the Procuring Agency has not complied with the procedure as laid down under rule 22 of SPP Rules for extension of bid submission and opening time.**
27. Procuring Agency denied that the bidder did not approach the agency for the CRC. However from the perusal of record it is obvious that the CRC application was received in the quarters concerned and they were well aware of the complaint of the bidder. **Therefore, it is clear that the Procuring Agency has also failed to convene meeting of**

CRC and issued work orders without disposing of the complaint which is violation of Rule-31(6).

28. Similarly, it was incumbent upon the procuring agency to maintain the transparency in the complete process of bidding. However, the procuring agency failed to carry out the process in a transparent manner by not disclosing the extension of bid submission and bid opening date which is apparent violation of Rule 10 of SPP rule 2010.
29. The procuring agency was called for the review committee meeting on 5.12.2020. Therefore, it was mandatory upon the procuring agency to not sign the contract until the final adjudication by SPPRA review committee. However, the procuring agency signed the contract one day prior to the review committee meeting which is clear violation of SPP rule 32(9).

Review Committee's Decision

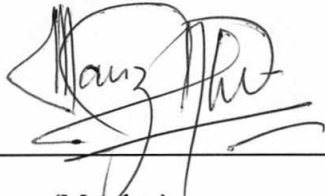
30. Given the above proceedings findings/observations and after due deliberations, the Review committee decides that the Procuring Agency has violated the Rules 10, 22, 24(2) and 31(6) of SPP Rules 2010 (amended up-to-date). In the exercise of statutory powers conferred upon it under Rule 37(7)(g) ibid read with Sub-section (1) Section-2 of SPP act 2009, declares the Procurement as Mis-procurement and decides to refer the matter to the Competent Authority for initiation of disciplinary action against the officers/officials of the procuring agency responsible for mis-procurement in terms of-Rule 32(2) ibid.



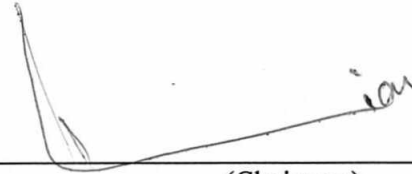
(Member)
Syed Adil Gilani
Private Member SPPRA Board
Representative Transparency International



(Member)
Engr. Munir Ahmed Shaikh
Independent Professional



(Member)
Manzoor Ahmed Memon
Member SPPRA Board



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