



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-2001/2020-21/1987

Karachi, dated the 27th January, 2021

To,

Executive Engineer,
Barrage Division,
Irrigation Department,
SUKKUR

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 **Abdul Hafeez Kolachi v/s Executive Engineer, Barrage Division Sukkur**, held on 07.01.2021, 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.**

(Appeal)

M/s Abdul Hafeez Kolachi

Versus

Executive Engineer, Barrage Division (Irrigation & Power Department) Sukkur.

(NIT T00048-20-0002 dated 09.11.2020)

Facts and background

1. The appellant¹ M/s Abdul Hafeez Kolachi Sukkur town ship **Sukkur**, lodged a complaint (vide letter dated 4.12.2020) addressed to the Special Secretary (Tech) Local Government Department Chairman Complaints Redressal Committee (CRC) as well as to the members of CRC against the **NIT T00048-20-0002** dated 09.11.2020 floated by the Executive Engineer Barrage Division (Irrigation & Power Department) **Sukkur**. *The procuring agency for the procurement of works² namely 1. Rehabilitation of Employees Residence Quarters including construction of compound Wall of Irrigation Colonies in Irrigation Department (ADP-970) 2. Renovation/Reconstruction of Regulator on Distries and minors in Sindh (ADP-991) whereby the appellant raised concerns regarding the absence of procurement committee and accused the engineers of asking 3% of pool amount. Meanwhile, This Authority forwarded a letter to the Director Design in Sindh, Hyderabad and advised to redress the grievances of the bidder in terms of Rule 31(3) & 5³ of SPP Rules and directed to not award contract before CRC decision.*
2. Subsequently, the appellant (vide letter dated **17.12.2020**) preferred an appeal before Review Committee and submitted review appeal fees⁴ and stated that CRC was supporting the procuring agency and did not call the appellant. Hence CRC was failed. Therefore, the Authority listed the matter in a meeting of the Review⁵ Committee of SPPRA that was scheduled to be held on **Wednesday, 6th 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 32⁶ SPP Rules, 2010(amended up-to-date). The same meeting was rescheduled on 7th January 2020. The appellant and Procuring agency were informed about the meeting vide letter NO.AD(L-II)/SPPRA/CMS-2001/2020-21/ 17 Karachi, dated the 1st January, 2021 and subsequent letter of even No dated 5th January 2021 for rescheduled⁷ meeting.

¹ M/s Abdul Hafeez Kolachi, Office # 21A, Kareem Plaza, Block-08, Sector #3, town ship Sukkur.

² Detailed description/ nature of the work can be accessed through instant procurement's NIT available on the PPMS website at ID # **T00048-20-0002** ppms.pprasmhd.gov.pk public portal/notice-inviting tender.

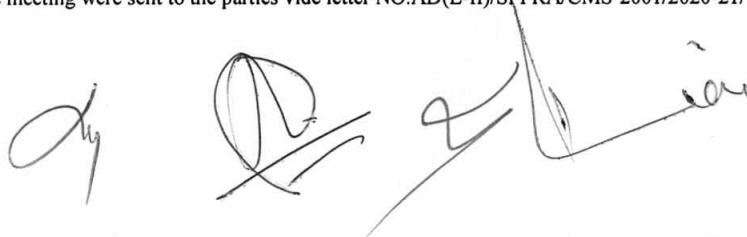
³ Rule-31(5) provides that the complainant shall announce its decision within seven days and intimate the same to the bidder and the Authority within three working days. If the committee fails to arrive at a decision within seven days, the complaint shall stand transferred to the Review Committee which shall dispose of the complaint in accordance with the procedure laid down in rule 32, if the aggrieved bidder files a review appeal within ten (10) days of such transfer.

⁴ This Authority's Office Order No. Dir (A&F) SPPRN18-1910325 dated 26.07.2019

⁵ The bidder shall submit the following documents to the Review Committee: - (a) a letter stating the bidder's 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

⁶ Rule-32(1) provides that if a bidder is not satisfied with the decision of the procuring agency's complaints redressal committee, he may lodge an appeal to the Review Committee within ten (10) days of the announcement of the decision provided that he has not withdrawn the bid security, if any, deposited by him.

⁷ Notices of the meeting were sent to the parties vide letter NO.AD(L-II)/SPPRA/CMS-2001/2020-21/ 17 Karachi, dated 5th January 2021.



3. Accordingly, the appellant's case was taken up by the Review Committee⁸ for hearing in its meeting re-scheduled on 07.01.2021 at 11.00 a.m. and notices, in this regard, notices were already issued to the parties concerned as mentioned above. The meeting was attended by the Chairman and the members of the Review Committee. Besides, the procuring Agency sent Iftikhar Ahmed Langah, AEN as nominee of in the instant matter. Ashfaque Ahmed was also accompanied with AEN. Abdul Hafeez Kolachi attended the meeting being the appellant of the matter.

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 claimed that he visited the office on 3.12.2020 and there was no one available at office neither chairman nor procurement committee members. The appellant had downloaded documents from SPPRA website. He further explained that there were many contactors but one came to them and asked them for 3% of pool amount and he had a page in his hand. The appellant also claimed that the person who was asking them to write the names, if someone wanted to get the contract and he claimed that the engineer was in his contact. In addition to this, the appellant submitted that CRC was supporting the procuring agency and did not call the appellant. Therefore, he preferred appeal and submitted review appeal fees and CRC was also failed to resolve the matter.
6. Mr. Mazoor Ahmed Memon, Member of the Committee asked the appellant to present the evidence for the claims and allegations. The appellant said that he had video proofs and he will share the same with the committee. Besides that he submitted that all the documents are fabricated. Secondly, he also apprised the committee of the fact that the same tender was already declared as mis-procurement vide review committee decision NO.AD(II)/SPPRA/RC/1609(83)/ 2019-20 Karachi, dated 09th October 2020. He further informed that the tender has been awarded to the same contactor who was already declared 1st lowest and the procurement was cancelled by the Review Committee⁹. Besides, he submitted that contactor is relative of the Staff of the Office of the Executive Engineer Barrage Division Sukkur.

Procuring Agency's Version.

⁸ 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 announces Its decision within ten working days of submission of appeal. However, in case of delay, reasons thereof shall be recorded in writing.

⁹ The Review committee declared the procurement as mis-procurement vide decision NO.AD (LII)/SPPRA/CMS/1609-2019-20 Karachi, dated the October, 2020. The same may be accessed at <http://e.pprasindh.gov.pk/reviewcommittee>.



7. Mr. Iftikhar Ahmhed AEN Barrage Division Sukkur, authorized nominee of the procuring agency Executive Engineer Barrage Division, Sukkur attended the meeting. He submitted that he was neither the member of the procurement committee nor attended the submission/opening meeting of the tenders. He was nominated to attend the meeting because Executive Engineer Barrage Division, Sukkur was busy in the some urgent office work. He submitted a written statement of the Executive Engineer regarding the matter. It was submitted by the procuring agency that only 8 bidders bought bidding document and the bidding process was carried out as per SPP Rules.
8. The procuring agency vehemently denied the allegation of absence of procurement committee. It was stated that procurement committee was available and sealed bids were dropped before the committee by the participating bidders, also committee opened the bids on same day before them. Furthermore it was stated that the aggrieved bidder neither purchased bidding documents till deadline of purchasing nor dropped/submitted his bid by hand or by mail in the tender box/office of the procuring agency on 03-12-2020 (Last date for submission).
9. The procuring agency also denied the allegation of 3% of pool money. Furthermore, it was submitted that on 03-12-2020 the chairman procurement committee and members were available in the office of XEN for opening of bids. The sealed bids were dropped by the bidders in the tender box in presence of the committee, and same were opened at 01:00 PM on same day. The complainant did not attend the office of the XEN on 03-12-2020 up-to 12:00 PM for submitting/dropping his bids by hand or by mail. In addition to this, the agency informed that the aggrieved bidder is a habitual complainant and has given same statement as given in previous complaint which later he had withdrawn from the allegations/statement.
10. As per SPP rule, the procurement agency retained to issue the work order/sign the contract documents till the decision of the CRC¹⁰. In the meantime, the chairman complaint redressal committee called the meeting on 24-12-2020 vides his letter No: SAC/G-148/5176 dated 21-12-2020. The aggrieved bidder M/s Abdul Hafeez Kolachi was also called and present before the committee. The aggrieved bidder was heard by the CRC committee and CRC committee reached at corollary decision that no substantial anomaly/ambiguity was done in the instant procurement by the committee and there was no ambiguity in the validity the procurement process of this office.
11. Furthermore, after receiving decision of the CRC by the procuring agency and findings therein that no anomaly in the instant procurement process was done, the procurement agency issued the Work order to the lowest bidder M/s Hidayatullah Kaladi vide this office No: TC/G-55/4212 dated 28-12-2020 and signed contract documents copy with the firm and posted all these contract documents via PPMS website on 30-12-2020¹¹ in order to fulfill SPP rule # 50¹² and to complete the procurement's cycle in the best interest of public's money.

¹⁰ SPP Rule 31(5) The Procuring Agency shall award the contract after the decision of the complaint redressal committee;

¹¹ The same may accessed via https://ppms.pprasinhd.gov.pk/PPMS/public/portal/contract_list

¹² Rule 50 of SPP 2010 Publication of the Award of Contract - Within seven days of the award of contract, 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) Evaluation Report;(2) Form of Contract and Letter of Award;(3) Bill of Quantities or Schedule of Requirement

12. Mr. Adil Gilani, member of the Review Committee, pointed out that **the attendance sheet of the bidders did not mention the date of the meeting.** The representative of the procuring agency could not satisfy the committee for not mentioning the date of meeting. Furthermore, it was also enquired that why the Complaint redressal committee did not resolve the matter within time limit mentioned in SPPRA rule. The Procuring agency could not satisfy the committee of the delay. It was also questioned that Procuring agency bid not hoisted the CRC decision on website with specified time limit as per SPP Rules. The Procuring agency was not successful in providing the reasons of not hoisting the same on SPPRA website.

13. It was also pointed out that the CRC decision was only signed by the chairman not by the other members of the CRC. The procuring agency confirmed that the same firm has been awarded the contract that was already selected and later on the bidding was described as mis-procurement by the review committee. The procuring agency also confirmed that work order has been issued and the firm has started the work. *“After receiving decision of the CRC by this procuring agency and findings therein that no anomaly in the instant procurement process, the procurement agency issued the Work order to the lowest bidder M/s Hidayatullah Khaldi vide this office No: TC/G-55/4212 dated 28-12-202” stated the procuring agency.*

Findings of Procurement Committee

14. The chronology of the procurement process/ record shows that the procuring agency called the bids in terms of SPP Rules for two works:

Sr.No	Name of work	Bid Amount	Earnest Money	Bid Fees	Completion period
1	Rehabilitation of Employees Residence Quarters including the construction of compound wall of Irrigation Colonies in Irrigation Department(ADP-970)	182.053 million	5% of the quoted Price	5000/	2 years
2	Renovation/Reconstruction of Regulator on Distries and Minors in Sindh(ADP-970)	23.996 Million	5% of the quoted Price	5000/	2 years

15. The bidder claimed to have submitted the bid and bid opening did not take place and alleged that 3% pool money has been asked.

16. The bidder claimed to have submitted the application before CRC on 3.12.2020 whereas, the procuring agency said the bidder had approached the CRC on 11.12.2020.

17. Meanwhile, The Procuring agency announced the bid evaluation report on 21.12.2020.

S.No:	Bidder's name	Quoted bid	Remarks
1.	M/s Hidayatullah Kaladi	29.020	1st lowest offered bid
2.	M/s Abra Construction Company	30.299	2nd lowest offered bid
3.	M/s Agha Muhamad Khan & Co.	30.637	3rd lowest offered bid
4.	M/s Ghulam Murtaza	30.894	4th lowest offered bid
5.	M/s Nawab Khan & Brothers	31.056	5th lowest offered bid
6.	M/s M.Z Baloch	31.369	6th lowest offered bid
7.	M/s AM&MJ Builders	31.650	7th lowest offered bid
8.	M/s Shaikh Abdul Qayoom	32.137	8th lowest offered bid

18. The CRC was convened after **13 days** of the submission and as per the claim of the bidder the same was convened after the **21 days** of the submission of the application.
19. The procuring agency signed the contact on 28th December 4 days after the decision of CRC.
20. On 27th of December SPPRA also intimated the Procuring Agency that **Contract should not be signed until** all codal formalities are complied with letter and spirit and the below comments were given by SPPRA on bid evaluation report.

Preliminary Assessment /Observations/Findings:

The Procuring Agency is required to upload certificate duly signed by the Procurement Committee and head of the Procuring Agency certifying therein that complaints received have been resolved and uploaded on the website of the Authority or the Procuring Agency /complaint redressal committee has not received any complaint related to the instant procurement process, as the case maybe.

It is the responsibility of Procuring Agency (PA) to strictly observe the SPP Rules. 2010 in letter and spirit. Violation of any SPP Rule/Act/Instruction will tantamount to mis-procurement.

OBSRVATION OF THE REVIEW COMITEE

21. **The attendance sheet of the bidders did not mention the time and date of the meeting which is clear violation of SPP rule 41(4) which speaks that** “All bids shall be opened publicly in the presence of all the bidders, or their representatives, who may choose to be present in person, at the time and place announced in the invitation to bid;”
22. **Complaint Redressal Committee did not resolve the matter with in specified time limit which is mentioned under SPP rule 31(5) of SPP rules** “The committee shall announce its decision within seven days. The decision shall be intimated to the bidder and the Authority within three working days by procuring agency. In case of

failure of the committee to decide the complaint, the Procuring Agency shall not award the contract;”

23. **The Procuring was bound to intimate its decision of CRC within three working days as mentioned in SPP rule 31(5).** Whereas, the procuring agency intimate neither to the bidder nor to the Authority. Hence, it is obvious that the violation of the rule has been done by the Procuring agency.
24. The Procuring Agency claimed that CRC meeting was convened the CRC announced its decision. Whereas, from the perusal of the CRC decision it seems that the 13/21 days late decision was only signed by the Chairman and not by remaining members. whereas, it is incumbent upon the CRC that decision must be signed by the all members and chairman as well. The unsigned CRC decision shows the non compliance of the proper Procedure as per SPP Rules by the CRC.
25. The Procuring Agency was required to upload certificate duly signed by the **Procurement Committee and head of the Procuring Agency certifying therein that complaints received have been resolved and uploaded on the website of the Authority vide the Authority’ s comments dated 27.12.2020.However,the Procuring agency claimed to have convened the CRC meeting but did not hoist its decision before the signing of the contract.**

Review Committee’s Decision

26. Given the proceedings findings/observations as at Para 21 to 25 and after due deliberation, the review committee, 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 instant Procurement as **Mis-procurement** and decides to refer the matter to the Competent Authority i.e Administrative Department for initiation of disciplinary action against the officials of the procuring agency responsible for mis procurement in terms of-Rule 32A(2)ibid.



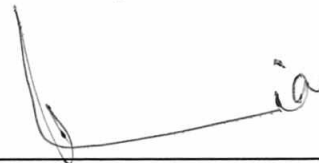
(Member)
Syed Adil Gilani
Private Member SPPRA Board
Representative Transparency International



(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