



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-2004/2020-21/2000 Karachi, dated the 28th January, 2021

To,

Executive Engineer,
Highway Division,
Works & Services Department,
QAMBAR SHAHDADKOT.

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, Highway Division Qambar Shahdadt, 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, Works & Services Department.
2. The Superintendent Engineer, Highway Division Larkano.
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-2004/2020-21

Karachi, dated 24th January, 2021

(Appeal)

M/s Abra Construction Company (Appellant)
Versus

Executive Engineer High Division, Qambar/Shahdadkot (Procuring Agency)

(NIT T00821-20-0002 dated 18.11.2020)

Facts and background

1. The appellant¹ M/s Abra Construction Company, Larkana, lodged a complaint (vide letter dated 04.12.2020) addressed to the The Superintendent Engineer, Works & Services Department Kambar-Shahdadkot, assumed him as Chairman Complaints Redressal Committee (CRC) as well as copy endorsed to against the NIT T00821-20-0002 dated 18.11.2020 floated by the Executive Engineer High Division, Qambar/Shahdadkot. **the procuring agency** for the procurement of seven works² whereby the appellant filed complaint against the procuring agency and complained that the procuring agency has not followed the rules and the process of procurement is not accordance with transparency and fairness.
2. Subsequently, the appellant (vide letter dated 21.12.2020) preferred an appeal before the 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

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 # T00821-20-0002 [<https://ppms.pprasmhd.gov.pk/TPMS/£ubUc/portal/hotice-inviting-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 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

⁵Rule-32(1) provides that 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.

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 announce its decision within ten working days of submission of appeal.



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, Abdul QadeerSangi, chairman of the procurement committee and head of the procuring agency. Mr. Abrar Hussain Soomro and Rahamtullah Abro attended the meeting being the appellants 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

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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 High Division, Qambar/Shahdadkot.
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. 5564997938. Bidding documents were received by Mr. ABRasool.
7. The firm also argued that there was No Dropping NO opening and No competition in the tenders and procuring agency had mala-fide intention and alleged that the Executive Engineer had accumulated heavy loss to the government exchequer. The appellant also submitted that while procuring works, the procuring agencies has not ensured that procurement conducted in a fair and transparent manner and alleged that the object of procurement does not bring value for money to the agency and the procurement process is neither efficient nor economical.
8. The bidder also claimed that the all bids were not opened publicly in the presence of all the bidders, besides, the procuring agency neither opened at the given time and nor at the place announced in the invitation to bids.
9. The complainant also alleged that he had submitted the bids for 7 works. However, the procuring agency, Executive Engineer High Division, Qambar Shahdadkot, just showed only one bid of the bidder and the left over 6 has not been disclosed by the bidder.

However, In case of delay, reasons thereof shall be recorded in writing.

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10. Furthermore, the appellant submitted that the complaint redressal committee was required to announce its decision within seven days and intimate the same to the appellant and the Authority within three working days. However, the committee failed to arrive at the decision within stipulated time. Therefore, the complainant had approached to the Review Committee to adjudicate accordingly.
11. Mr. Manzoor Ahmed Memon, member of the review committee asked the firm to present the documentary evidence for the **No Dropping NO opening and No competition in the tenders** and asked to prove how the procuring agency had mala-fide intention and how the agency had accumulated heavy loss to the government exchequer. However, the complainant could not satisfy the committee regarding the allegation against the procuring agency.
12. Similarly, the bidder also required to **provide the documentary proof of his claim that the all bids were not opened publicly in the presence of all the bidders.** However he could not provide any documentary proof regarding his claim against the procuring agency.
13. The complainant was asked to prove **that he had submitted the bids for 7 works not for 1 works.** The complainant submitted that he had sent all the documents via TCS courier service and shared the documents of delivery. However from the perusal of record and scrutiny of TCS slip it seems that the bidder had not sent documents for 7 bids via TCS courier service.
14. Mr. Riaz Hussain Soomro, worthy chairperson of the Review Committee, asked the appellant that why did he address to Superintendent Engineer as chairman CRC committee although as per the notification of CRC, the Chief Engineer (Buildings) Sukkur is the head of the CRC committee. **The appellant submitted that he had presumed that Superintendent Engineer high way division Kamber-Shahdakot was the head of the CRC.**

Procuring Agency's Version

15. The procuring agency argued that the bid submission and bid opening was carried out in a transparent manner as per rules. The bids were opened within one hour of the deadline for submission of bids. The procuring agency submitted that all bids were opened publicly in the presence of all the bidders, or their representatives at the time and place announced in the invitation to bid.
16. The procuring agency further submitted that the procurement committee read aloud the name of the bidder and total amount of each bid. All bidders signed an attendance sheet which may be perused by the record and the same is available at PPMS website. The official chairing of the procurement committee encircled the rates and all the members of procurement committee signed each and every page of financial proposal of bidders.



The procuring agency submitted that the procurement committee issued the minutes of the opening of the tenders and the same are available at PPMS website.

17. The procuring agency further submitted that the appellant had sent one tender for the work **“M&R Reconditioning of road from Kamber-shahdaskot road to village Darga Miskeenpur mile 0/0-1/0 UC mirokhan Tauluka Mirokhan” through courier service.**
18. The procuring agency also said that when the tender was opened by the Procurement Committee it was found that no rates/premium was quoted therein by the appellant, which was **sine qua non for the consideration of bid.** Thus the tender was rejected on the ground of non-submission of rates/premiums and the same read loudly by the procurement committee before all the bidders/representatives of bidders and
19. The procuring agency also pointed out that there is contravention in the statement of the bidder at one hand he claimed that he sent tender through courier service and he was not present at the time of bid opening and on the other hand the appellants claims that his representative was present which shows self-contradictory statement of the appellant.
20. Similarly, the Procuring Agency denied that the bidder did not lodge a written complaint and the complaint redressal committee did not receive any complaint from the bidder. However, the bidder **has approached the Review Committee** directly which is against the Rule 31(3) of SPPRA Rules 2010 according to which complaint redressal committee is the first remedy for any bidder aggrieved by any of act of the procurement committee.
21. Procuring agency believed that the bidder has not submitted bidding documents for 7 works but the bidder had submitted only one document and the same was rejected due to non-submission of rates.
22. The procuring agency requested review committee to dismiss the review appeal of the bidder because the **bidder is a habitual complainant and he is trying to get undue favor from the procuring agency** and he is using the impairing tactics to impair and harm, directly as well indirectly, to influence the procuring agency to get favors.
23. Syed Adil Gilani,,member of the review committee, asked the Executive Engineer, whether he was aware of the complaint of the bidder.The Executive Engineer informed that he was aware of the complaint of the bidder and he had written a letter to the bidder and asked to approach the right forum for the complaint.

Findings of Review Committee

24. The chronology of the procurement process/ record shows that the procuring agency called the bids in terms of SPPRA Rules for seven works:

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25. The bidder claimed to have sent the bidding documents via TCS and the same were received by the Procuring Agency. Both the appellant and the procuring agency have consensus on the receiving of documents by TCS courier services **but the point of difference is how many bids were received 7 or only 1.**
26. The procuring agency submitted that the appellant had sent one tender for the work **“M&R Reconditioning of road from Kamber-shahdadkot road to village DargaMiskeenpur mile 0/0-1/0 UC mirokhanTaulukaMirokhan” through courier service.** The procuring agency also claimed that it was found that no rates/premium were quoted therein by the appellant, which was **sine qua non** for the consideration of bid. **whereasthe complainant alleged that he had submitted the bids for 7 works. However, the procuring agency, Executive Engineer High way Division, Qambar/Shahdadkot, just showed only one bid of the bidder and the left over 6 have not been disclosed by the bidder.**
27. The appellant and the procuring agency have difference of views on the bid submission and bid opening. **The firm argued that there was No Dropping NO opening and No competition in the tenders and procuring agency had mala-fide intention and alleged that the Executive Engineer had accumulated heavy loss to the government exchequer. Whereas the procuring agency argued that the bid submission and bid opening was carried out in a transparent manner as per rules.**
28. The appellant submitted that the complaint redressal committee was required to announce its decision within seven days but it failed to do so whereas **the Procuring Agency has submitted that the bidder neither lodged a written nor CRC has received the comlaint of the bidder and the bidder has directly approached the review comitee.**

OBSERVATIONS OF THE REVIEW COMITEE

29. The committee is of the view that bidder claims that he has submitted the bids for 7 works and procuring agency says only one was received. **From the perusal of record it shows that bidder sent the documents via TCS courier services and TCS record shows that bidder sent the documents of 1.5 kg but for seven bids the weight needs be much more than the sent weight. Therefore, the claim of the bidder is vague and unproved.**
30. Mr. Riaz Hssain Soomro, Chairman Review Committee, was of the view that although bidders **are allowed to send the bids via mail services and the same are accepted in order to have wide competitiveness, yet the bidders should prefer to attend the meeting of bid submission and bid opening.** He further clarified that fairness is one of the biggest benefits of public bidding. The bidders have an equal chance of participation. **The participation of bidders in the meeting of bid submission and bid opening is better not only for the bidder but also for the procuring agency because it eradicates the chances of manipulations, mis-happenings corruption, nepotism, favoritism and violation of rules.** Furthermore, he was of the view that the presence

The image shows three handwritten signatures or initials in black ink. The first is a large, stylized signature on the left. The second is a smaller signature in the middle. The third is a simple, stylized initial on the right.

of bidders at the time of bid opening encourages transparency, fairness and first hand resolution of complaints. Therefore. The opening of bids should offers a public event and all bidders should be motivated to attend and should be permitted to witness the event, if they so desire.

- 31. Regarding the difference of views on the bid submission and bid opening**, the committee finds that the bidder's statement is self-contradictory **at one hand he claimed that he sent tender through courier service and he was not present at the time of bid opening and on the other hand the appellants claims that his representative was present which shows self-contradictory statement.** Besides, the meeting minutes and the attendance sheet of bidders are documentary evidence for the fair and transparent opening of the bids. Hence, the perusal of record and the statement of executive engineer make clear that the bid submission and bid opening was held an a transparent way and as per rules and committee does not find any evidence that may prove the violation of rules was committed by the procuring agency.
- 32. The appellant also contended regarding the failure of CRC to decide the matter within stipulated time.** The committee notices that the bidder had submitted the application before the Superintendent Engineer and assumed him as the Chairman Complaint redressal committee whereas the Chief Engineer (Buildings) Sukkur is declared chairman of CRC committee. The Notification of the CRC was uploaded by the procuring agency on the website of the Authority and the notification can be seen on website till now. The appellant did not approach the right forum and CRC was not bound to decide without approaching of the complainant. **Hence, the review committee does not find any material violation of rules by the procuring agency nor by the CRC.**
- 33. The appellant also contended that a copy of the complaint was endorsed to the procuring agency. Therefore, the procuring agency should have taken efforts for the meeting of the CRC.** The committee is of the view that it is mandatory upon a complainant that the complainant must be vigilant, active, diligent ,well-aware of the rights, duties, responsibilities and should approach the right forum, at right time and in a right manner as specified in the rules. Merely endorsing a copy of the complaint does not absolve the complainant of the approaching the right forum for his complaint. **Therefore, the committee is not satisfied with the contention of the complainant regarding non-action of the procuring agency on the endorsed copy.**



Review Committee's Decision

34. Given the proceedings findings/observations as at Para 30 to 34 and after due deliberation, the review committee, In the exercise of statutory powers conferred upon it under Rule 32(7)(a) ibid read with Sub-Section(1) Section-2 of SPP act 2009 declares the instant review appeal dismissed and allows the procuring agency to continue the Procurement process as per Rules.

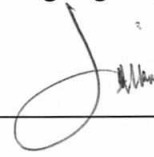


(Member)

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