



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-2104/2020-21/

2070


Karachi, dated the 11th February, 2021

To,

Executive Engineer,
Education Works Division,
SUKKUR/GHOTKI.

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 Education Works Division Sukkur/Ghotki** held on 27.01.2021, 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, School Education & Literacy Department Karachi.
2. The Superintendent Engineer, School Education & Literacy 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 Appellant.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-2104/2020-21/ ²⁰⁷⁰ Karachi, dated the 10th February, 2021

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

(Appeal)

M/s Abdul Hafeez Kolachi(**Appellant**)

Versus

Executive Engineer, Education Works Division Sukkur (**Procuring Agency**)

NIT ID # T00959-20-0004 dated 12.10.2020

NIT ID # T00929-20-0003 dated 24.11.2020

NIT ID # T00929-20-0004 dated 13.10.2020

NIT ID # T00929-20-0005 dated 13.10.2020

Facts and Background

1. The appellant M/s Abdul Hafeez Kolachi Sukkur town ship Sukkur, lodged a complaint (vide letter dated 21.12.2020) addressed to the Superintendent Engineer, Education & Works circle Sukkur, Chairman Complaints Redressal Committee (CRC) against the above-mentioned NIT's floated by the Executive Engineer Education & Works Division Sukkur. The Procuring Agency for the procurement of works whereby the appellant raised concerns regarding the Single stage two envelope procedure, non-resolution of matter by CRC and the rejection of the bids of the appellant by the procuring agency absence of procurement committee and accused the engineers of asking 3% of poi amount. Meanwhile, This Authority forwarded a letter to the Superintendent Engineer, Education & Works circle Sukkur, Chairman Complaints Redressal Committee (CRC) and advised to redress the grievances of the bidder in terms of Rule 31(3) (5) of SPP Rules.
2. Subsequently, the appellant (vide letter dated 28.12.2020) preferred an appeal before the Review Committee and submitted review appeal fees 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 meetings of the Review Committee of SPPRA that were scheduled to be held on Wednesday, 20th January 2021 & 27th 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 32 SPP Rules, 2010(amended up-to-date).

3. Accordingly, the appellant's case was taken up by the Review Committee for hearing in its meeting scheduled on 20.1.2021 and 27.01.2021 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, Tanveer Ahmed Memon**, Chairman of the Procurement Committee and head of the Procuring Agency. Mr. Abdul Hafeez Kolachi attended the meeting being the appellant of the matter.

The Appellant's Version

4. The appellant submitted that the Procuring Agency called bids on Single Stage Two envelope procedure. The appellant claimed that the calling of bids on single stage two envelope procedure is against the SPP Rules. The appellant submitted that the works are of M&R and are small.
5. The appellant also claimed that the works are neither complex nor technical whereas the Procuring Agency has called the works on Single Stage two envelope procedure which is not fair. The appellant also submitted that the same works were called on Single Stage two Envelope Procedure by the procuring agency but were cancelled and now the Procuring Agency Furthermore, the appellant argued that and he requested to Chairman CRC to redress their complaint against the complaint and to redress it accordingly. However, CRC did not respond to their complaint. The complainant also claimed 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).
6. The Complainant submitted that the Procuring Agency rejected the bids of the firm with sound reasons for rejection of bids. The complainant also submitted that the Procuring Agency has violated the rules and has personally victimized the bidder.
7. The bidder furthermore submitted that it was compulsory 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.



8. Therefore, the complainant submitted that he preferred appeal before the Review Committee because CRC was failed to resolve the matter accordingly.

The Procuring Agency's Version

9. The Procuring Agency submitted that previously the bids were invited for the same tenders on single stage one envelope method, but non-serious and non-professional contractors made groups and created law and order problem in the office which resulted in cancelation of tenders. Later the tenders were invited as per single stage two envelop method.
10. The procuring agency further submitted that since the building work is very typical, critical and contains numerous items of works. The contractors having the experience of roads, drains and expertise of other non-structural works, tend to participate in bidding of works and at later stage could not deliver the required quality and progress of works. Besides, the Procuring Agency submitted that the contractors exert undue pressure tactics from different corners to obtain the contract and create hindrance in tendering process and the different contractors make group and jeopardize the bidding process.
11. Furthermore, the Procuring Agency claimed that non-professional and non-serious contractors quote the non-realistic and unworkable rates, which ultimately affects the quality and progress of works and, the lowest rates for works are announced at the time of opening of bids and evaluation criteria is to be verified later, which creates unnecessary disputes, which become unmanageable some times.
12. In addition to this Procuring Agency claimed that many engineering departments and Agencies are observing Single Stage two envelop method regularly and successfully, achieving better results. Public Health Engineering Department is entirely observing single stage two envelop method for their NIT's / bids.
13. The Procuring Agency also contended that in NIT No. EF/EWD/T/ 279 Dated: 13.10.2020 and Dated: 24.11.2020, tenders were invited in accordance with SPPRA Rules by observing all codal formalities. The NIT's were duly published in the various newspapers and hoisted on PPMS website (Copies are Enclosed). The NIT's were called on Single Stage Two Envelope Method (Rule 46).
14. The Procuring Agency informed that technical proposals of the respective NIT's NO.EE/EWD/TC/279, 280 & 536 were opened on **05.11.2020**, **09.11.2020** & **16.12.2020** respectively. The technical proposals were opened as per standard procedure in presence of all participating contractors / contracting firms.



15. The Procuring Agency shared the copy of attendance sheet and minutes of meeting as documentary evidence.
16. The procuring agency also submitted that the Procurement committee had scrutinized & evaluated the technical proposals of the contractors / contracting firms as per eligibility criteria and other terms and condition set forth in the bidding documents (Rule 42), The qualified firms were duly informed and called for the opening of financial proposals. Financial proposals of NIT No.EE/EWD/T/279 & 280 were opened on **08.01.2021**. The disqualified contractors were also intimated & directed to collect their financial proposals and bid security. The Procuring Agency shared the copy of attendee sheet and minutes of meeting. The BER's of the NIT's were hoisted on PPMS website as per rule 45.
17. The Procuring Agency submitted that M/s Abdul Hafeez Kolachi filed a complaint-to-Complaint Redressed committee and was called to appear before committee on 06.01.2021, but he didn't appear before the committee. The minute of the meeting of complaint Redressal committee (CRC) were sent to SPPRA and the complaint as well.
18. The Procuring Agency also submitted that the complainant M/s Abdul Hafeez Kolachi is a habitual complainant, he always adopts corrupt and fraudulent practices to hinder and obstruct the bidding process with malafide intentions and for demand of illegal favors and gratification and that M/s Abdul Hafeez Kolachi is already involved in the collusive and fraudulence practices in various department.
19. The Procuring Agency also submitted that It is further to add that the complainant was awarded the work of **up-Gradation of Primary School To Middle School in District Sukkur 2013-14 program** @ GGPS Maindad Khoso Taluka New Sukkur by this office in year 2014 vide No. 321 Dated: 02.04.2014. Beside of many notices, he has failed to complete the work till date.
20. It was also submitted by the Procuring Agency that the complainant firm did not participate in the bidding of NIT No. EE/EWD/TC/ 536 Dated: 24.11.2020, but he lodged complaint only to obstruct procurement process and to hinder development activity and he has furnished the bid security money in the form of 20 No's all deposit for Rs, 99000/- each for NIT No.EE/EWD/T/279 and 10 No's all deposit for Rs, 99000/- each NIT No. EE/EWD/TC/ 280. This clearly indicates his malafide intentions to complicate the bidding process.

Findings of the Review Committee

21. Both of the parties have been listened at length. From the perusal of Record Statements and arguments of both parties, three major points of disagreement have been observed.



22. The appellant claims that the method of procurement adopted by the procuring agency "single stage single envelope" is against the SPP Rules because the works are neither technical nor require any innovation whereas the procuring agency maintains that the works are technical, typical, experienced bidder. Therefore, the method of selection accordingly "Single stage two envelope has been adopted by accordingly.
23. Secondly, the bidder complains that the procuring agency did not convene the meeting of the complaint Redressal Committee. Hence, the Procuring agency has violated the SPP Rule 31. On the contrary to this statement, the procuring agency claims that the meeting of complaint Redressal Committee was convened but the bidder did not appear.
24. Thirdly, the bidder submit that his bids have been rejected unlawfully and the procuring agency has not followed the principle of transparency in the procurement process. Whereas, the procuring agency claims vice-versa.

Observations of the Review Committee

25. After hearing the parties at length and close scrutiny of the procurement record, the Review Committee observed that:
26. The procuring agency is empowered to choose any method of procurement by observing SPP Rules. The appellant submits that works are of low cost, therefore, they may be procured on single stage single envelope instead of single stage two envelope. The committee is of the view that the complexity, technicality and particularly of the works is determined by the nature and objectives of the works. Merely low cost is not the touchstone for any work to be classified as simple or complex
27. The appellant also contended that the same works were earlier called on single-stage single envelop but later on procuring agency cancelled the works and were re-tendered on Single Stage two envelope. The Committee is of the view that the discretion lies with the procuring agency to take decision regarding the method of procurement according to the nature of work, circumstance and needs of the procuring agency. Therefore, it is not binding upon the procuring agency to adopt the same procedure continuously.
28. Regarding the issue of complaint Redressal Committee, the appellant submitted that the procuring agency called on the same date when he was called for the Review Committee meeting on 06.01. 2021. The Committee observes that meeting of the review Committee was postponed one day before the scheduled date and it was rescheduled on 07-1-2-2021. Therefore, the appellant had a sufficient chance to appear before the Review committee. However, he did not appear before the complaint Redressal Committee decided the matter Ex-Partee. The Ex-parte decision of the Complaint Redressal Committee was as per rules because the appellant did not appear before the Review Committee.




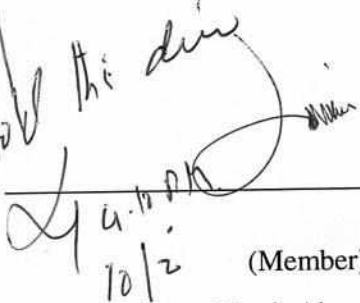
29. Regarding the Rejection of bids, the committee observes that complainant firm did not participate in the bidding of NIT No. EE/EWD/TC/ 536 Dated: 24.11.2020, but he lodged complaint and he furnished the bid security money in the form of 20 No's all deposit for Rs, 99000/- each for NIT No.EE/EWD/T/279 and 10 No's all deposit for Rs, 99000/- each NIT No. EE/EWD/TC/ 280 whereas, the firm did not mention the name of works for which he had applied for.


30. The committee is of the view that without mentioning names of the works applied for makes ambiguity for the procuring agency to decide accordingly. It is the responsibility of the bidder to clearly mention the name of works for which he had applied for. Hence, the Review Committee is satisfied with the decision of the procuring agency in rejection of bids of the firm due to the ambiguity.

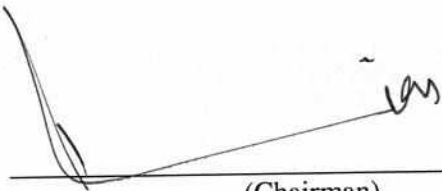
Decision of the Review Committee

31. 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

Kindly hold this dir

(Member)
Engr. Munir Ahmed Shaikh
Independent Professional


(Member)
Manzoor Ahmed Memon
Member SPPRA Board


(Chairman)
Riaz Hussain Soomro
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Sindh Public Procurement Regulatory Authority