



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY
AUTHORITY



No.AD(L-II) SPPRA/CMS-2270/2020-21

Karachi, dated the, 03rd May,2021

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

REVIEW APPEAL

Between:

M/s. Amir Aftab Construction

VS

The XEN Southern Division Dadu (23-Irrigation & Power Department)

NIT ID Number T00684-20-0004 Dated: 11-12-2020

Facts and background

The appellant M/S Amir Aftab Construction lodged a complaint to the Director Design in Sindh Irrigation & Power Department, **Hyderabad** (copy endorsed to this Authority and others for necessary action) against NIT No. T00684-20-0004 Dated: 11-12-2020 floated by the XEN Southern Irrigation Division Dadu (23-Irrigation & Power Department) 'Left Over Essential Works Of Dadu Area (Construction Of Lift Channels Over RBOD System For Feeding Tail Reaches Of Dadu Canal) ADP NO. 968 / 2020-21.

2. The appellant therein complained that the procuring agency did not open the bid sent by the courier service. The complainant further submitted that the procuring agency did not follow the transparency in the bidding process.
3. Subsequently, the appellants preferred an appeal, along with the supporting documents and review appeal fee, before this Authority whereby the appellant stated that the CRC failed to decide the grievances within the stipulated time; hence, the appellant requested to place the case before the Review Committee in terms of Rule-31(5)¹ read with Rule 32(5) *ibid*².

² 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;

¹ The 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 of the Department and all supporting documents; (c) copy of the decision of procuring agency/ redressal committee, if any.

4. Accordingly, the appellants' case was taken up by the Review Committee for hearing in its meeting scheduled on **7.04.2021 & 15.04.2021 at 11.00 a.m.**, and in this regard, the Authority issued notices to the parties concerned to appear in person, or depute authorized representative, well conversant with the procurement in question, along with the relevant documents and evidence, if any, before the Committee on the scheduled date, time and venue to present and/ or defend the case in terms of Rules-32(6), (8) & (10) *ibid*³.

5. In compliance, the appellant appeared before the Review Committee whereas the procuring agency failed to appear before the Review Committee twice. Consequently, the Review Committee decided to hear the complaint *ex-parte*.

REVIEW COMMITTEE'S PROCEEDINGS

6. The Chairperson of the Committee commenced the meeting by welcoming all the participants of the meeting. Then, the chair asked the appellant to present the case/version over the instant procurement before the committee

The appellant's Version

7. The appellant submitted that the procuring agency Southern Irrigation Division Dadu received the appellant's tenders by TCS. The bidder further submitted that the procuring agency did not open the bids on the date, time and venue mentioned in the bidding documents

8. The bidder also submitted that the procuring agency failed to manage open competitive bidding in the bidding process and violated the SPPRA Rules & procedures in the bidding.

9. The bidder further submitted that as the procuring agency hoisted Bid Evaluation Report wherein his bid has been not shown by the procuring agency. The bidder claims that his bid was below than the bidder whose bid has been declared as lowest.

10. The bidder also submitted that the procuring agency has illegally managed the tender and has given the tenders to their favored person which is against the rules.

11. The bidder also submitted that the procuring agency has failed to follow transparency in the opening of bids.

⁴ On receipt of appeal, along with all requisite information and documents, the Chairperson shall convene 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 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.

12. The bidder also questioned the method adopted by the procuring agency. The bidder submitted that the procuring agency was required to call the bids on single stage single envelope bidding procedure instead of calling bids on Single Stage Single Envelope bidding procedure.

13. The bidder also complained that the procuring agency has affixed old CRC notification in order to misguide the aggrieved bidders. He submitted that whenever any aggrieved bidder approaches they ask that this is not right CRC notification and the right CRC may be approached. The complainant submitted that these steps have been taken to prevent the complainants to approach the right forum timely and accordingly.

14. The bidder also submitted that he had complained but his complaint has not been resolved accordingly. Therefore, he approached the Review Committee to get relief.

The procuring agency's version

The procuring agency twice failed to appear before the Review Committee. The Committee decided to take ex-parte decision.

Findings of the Review Committee

15. From the perusal of record, the statements of the bidder and the procuring agency, the arguments heard and from the scrutiny of available documents, the committee finds that there are six contentions of the parties:

16. It was contended that the Procuring agency has given an ambiguous evaluation criteria for the evaluation of bids which is against the rules.

17. Secondly, it was contended by the procuring agency failed to constitute Complaint Redressal Committee which is mandatory under Rule 31 of SPP Rules 2010(amended up-to-date)

18. Thirdly, the bidder claimed that the procuring agency did not follow the transparency in the opening, evaluation and extension of time period during the bidding process.

19. Fourthly, the appellant also claimed that the procuring agency failed to open the bid of the appellant received through courier service.

20. Fifthly, the bidder contended that the procuring agency extended the bid submission and bid opening but did not follow the rules and regulation.



21. Sixthly, the bidder contended that the procuring agency signed the contract and issued work orders without CRC decision and final adjudication by the Review Committee.

Observations of the Review Committee

22. The committee observed that the procuring agency failed to providing clear and an unambiguous Evaluation Criteria is legal requirements and violating the same is tantamount to the mis-procurement. The Rule 21(A) states that:

21(A). [Evaluation Criteria- The procuring agencies shall formulate an appropriate evaluation criterion, listing all the relevant information against which a bid is to be evaluated and criteria of such evaluation shall form an integral part of the bidding documents. The failure to provide a clear and unambiguous evaluation criterion in the bidding documents shall amount to mis-procurement.

23. In the instant procurement, it may be noted that the procuring agency called the bids on single stage Two envelope bidding procedure and adopted the scoring method for the technical evaluation of bids. The scoring method adopted by the procuring agency while evaluating the bids is as under

9. Sr No.	Criteria	Documents Available	Remarks	Eligibility
1	Valid PEC Registration in Specified category having specialization Codes (CE04,EC09,CE10,EE04,EE05)	Available	Missing	
2	Active Registration with FBR	Available	Responsive	
3	Active Registration with SRB	Available	Responsive	
4	Bid Security Technical Proposal as prescribed by procuring agency.	Available	Responsive	
5	Affidavit/ related Documents essentially by procuring agency.	Available	Responsive	
	<u>A-Successful Completion during last five years</u>			
Sr. No	Criteria	Mix Point	Obtained Points	Remarks
1	Successful Completion -1 project of similar nature amounting to Rs.25000 million or above.	60	40	
2	Successful Completion of 2 project of similar nature amounting to Rs.25000 million during last 5 years.	80	20	

3	Successful Completion of 2 project of similar nature amounting to Rs.25000 million during last five years.	100	20	
	<u>B-Ongoing Works of similar Nature</u>	100	80	
Sr. No	Criteria	Mix Point	Obtained Points	Remarks
1	01 Ongoing Project Of Similar Nature Amounting to Rs. 25.000 Million or above.	60	20	
2	02 Ongoing Project Of Similar Nature Amounting to Rs. 25.000 Million or above.	75	20	
3	03 Ongoing Project Of Similar Nature Amounting to Rs. 25.000 Million or above.	100	60	
	Sub-total	100	100	
	<u>C-Equipment Capabilities</u>			
Sr. No	Criteria	Mix Point	Obtained Points	Remarks
1	Excavator	8/4	8	
2	Dumper	16/12	10	
3	Tractor	8/4	8	
4	Browswers	8/6	8	
5	Transit Concrete Mixture	8/6	22	
6	Mobile Crane 20 Ton	22/20	20	
7	Dewatering Pumps 4'' to 6'' Section	10/8	10	
8	Concrete Pumps Static Mixtures	100	94	
	<u>D-Average Annual Turn Over</u>			
Sr. No	Criteria	Mix Point	Obtained Points	Remarks
1	UptoRs. 150.0 million	35	20	
	Rs. 150 to 200 Million	70	20	
	Rs. 250 Million or above	100	50	
		100	90	






Sr. No	Criteria	Mix Point	Obtained Points	Remarks
1	Manufacture Certificate Holder	50	50	
2	Electric Inspector License	50	50	
	Sub-Total	100	100	
	Total A+B+C+D+E	500	464	

24. Interestingly, the scoring method through which the procuring agency has evaluated the bids is neither mentioned in NIT nor in the bidding documents. However, the procuring agency was required to provide an unambiguous evaluation criterion. Therefore, evaluation of bids through scoring method which is already not mentioned in the bidding documents is against the rules and tantamount to mis-procurement.

25. Regarding the notification of CRC, the Review Committee observed that Rule 31(2) describes the composition of CRC:

The procuring agency shall constitute a Complaint redressal committee comprising of odd number of persons,with appropriate powers and authorizations, to address the complaints of bidders that may occur during the procurement proceedings(prior to award of contract)

26. The Rule 31(1) mentioned above makes clear that it is mandatory upon the procuring agency to form a complaint redressal committee which is aimed at the redressal of complaints. In the instant case it was observed that the procuring agency did not notify or get notified the CRC for the procurement in question. The CRC notification which the procuring agency has hoisted for the **instant** procurement is not applicable. The operative para is reproduced as under

Government of Sindh is pleased to re-constitute a Complaint Redressal Committee for ADP/PSDP/M&R schemes 2019-2020 of irrigation Department Government of Sindh.

27. It may be noted that the notification of CRC is applicable for the ADP schemes 2019-2020 whereas the procuring agency is bidding for financial year 2020-21. As such notification which has ceased to be existing cannot be applicable for FY 2020-21. One of the most important issue that is created by such documents is that the bidders go here and there for the grievances of their complaints but their complaints are not received, entertained, disposed of and are not decided by the old CRC. This situation leads to the infringement of Right of Complaint to the aggrieved bidder which is otherwise given in the SPP Rules.

Extension in time for the opening of bids

28. It was observed by the Review Committee that the procuring agency extended the date for the submission and opening of bids twice. However, the extension in time was not done in accordance with the rules and regulation.

4.10 Extension of Dead line/Time Period for Submission of bids (Rule 22). Procuring agency may extend the dead line for submission of bids, as per conditions mentioned in Rule 22.

Provided that advertisement of such extension in time shall be done in a manner similar to the original advertisement, in which case all rights and obligations of the procuring agency and bidders previously subject to the original dead line will thereafter be subject to the dead line extended.

In case, corrigendum or addendum is issued, following points be taken into consideration:-

- i. notice of corrigendum or addendum is issued prior to expiry date of submission of bids or at least published within 3 days of expiry date/opening date and hoisting on the same date.

29. It may be noted that the procuring agency was required to extend the bids and notice for the corrigendum shall be hoisted on the same date i.e. expiry or opening date. In the instant matter the procuring agency fixed the date for opening on 29.12.2020. The date was extended till 6.1.2021 but the corrigendum was not hoisted on the same day as required under the regulation. Similarly, on 6.1.2021 another corrigendum was issued wherein the date was again extended but the corrigendum was not hoisted on the same date as required under the regulations. In such circumstances it is evident the procuring agency failed to follow the regulations and rules in the extension of time for the opening and submission of bids.

Not opening of bid received through courier service.

30. The committee observed that the bidder sent his bid via courier service and the same was received at the office of the Executive Engineer. However his bid was not opened nor was returned back. The action of the procuring agency violates the SPP Rules and Regulation of works by SPPRA.

24. Submission of Bids:

- (1) Bids shall be submitted on the place, date and time and in the manner specified in the tender notice and bidding documents and any bid submitted late due to any reason whatsoever, shall not be considered by the procurement committee;



- (2) [The Bidders may submit bids on the bidding documents issued by the procuring agency or downloaded from the Authority's website along with tender fee if any by mail or by hand.]'

31. The Rule 24 makes clear that the procuring agency shall open all bids received by hand or by mail. Nevertheless, in the instant the instant matter the procuring agency received the bid by courier but did not open the bid of the bidder which is clear violation of SPP Rules 2010(amended up-to-date).

Issuing work orders without Decision of CRC

32. The complainant also contended against the signing of contract and issuing of work orders by the procuring agency without decision of CRC and during appeal period. The committee of the view that the rule 31 describes the way of signing the contract if the complaint has been lodged.

- (3) The Procuring Agency shall award the contract after the decision of the complaint redressal committee;

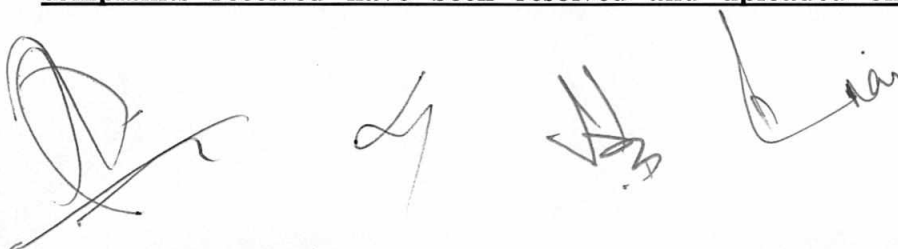
- (4) Mere fact of lodging of a complaint shall not warrant suspension of the procurement proceedings;

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.]

33. The sub rule 7 of 31 describes the condition for the signing of contract in case of lodging of complaint. It is necessary that condition of CRC decision must be fulfilled before the signing of Contract. Hence, 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 without CRC decision and final adjudication by SPPRA which is clear violation of SPP rule 32(8).

34. The Procuring agency was also intimated by SPPRA that the procuring shall not proceed the procurement process until the complaints are resolved. The observation of SPPRA is as under:

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.

35. However, the procuring agency did not stop the procurement process and continued and signed the contract which is against the rules.

36. Furthermore, the Review Committee observes that it is the duty of the procuring agency to ensure that the Sindh Public Procurement Regulatory Authority Act, 2009 read with Sindh Public Procurement Rules, 2010, are adhered to strictly to exhibit transparency. Hence, it was necessary 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.

37. It may be noted that in section 5 of the Sindh Public Procurement Regulatory Authority Act, 2009, the functions and the powers of the Authority have been defined, according to which the Authority may take such measures and exercise such powers as may be necessary for improving governance, management, transparency, accountability and quality of public procurement of goods, services and works in the public sector, as well as in collaboration with the private sector. Therefore, the words „transparency“ and accountability are of high importance and cast a duty upon the Authority to ensure openness of the transaction without withholding any information

38. The committee also observed that not only SPPRA act 2009 but also SPP Rules 2010 also clearly define that the complete process of the procurement shall be carried out in a transparent manner. Rule 4 of SPP Rules states the principles of the procurement

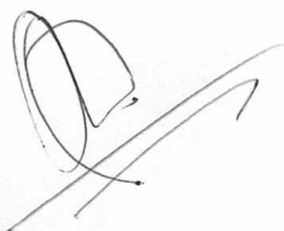
Principles of Procurements - While procuring goods, works or services, procuring agencies shall ensure that procurements are conducted in a fair and transparent manner and the object of procurement brings value for money to the agency and the procurement process is efficient and economical.

39. The committee also observed that the procuring agency did not follow the” **Open Competitive Bidding**” in the procurement of works. The SPP Rules 2010 defines the “**Open Competitive Bidding**”

Open Competitive Bidding" means a fair and transparent specified procedure defined under these Rules, advertised in the prescribed manner, leading to the award of a contract whereby all interested persons, firms, companies or organizations may bid for the contract and includes both National and International Competitive Biddings;


40. The procuring neither followed transparency nor adopted proper procedure. The extension of the bids was not done in a proper manner under specified procedures. The procuring agency violated the rules and failed to conduct an open competitive Bidding.

Decision of the Review Committee



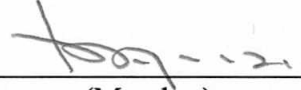
41. Given the proceedings, findings/observations and after due deliberation, the review committee, in the exercise of statutory powers conferred upon it under Rule 37(7)(g) ibid read with Sub-Section (1) Section-2 of SPP act 2009 takes the following decision:

- i. Declares the instant Procurement as **Mis-procurement for works (Serial # 7 & 8) of NIT for the violation of SPP Rules 4,2aa,21,&31(7).**
- ii. The matter shall be referred to the Secretary Irrigation & Power Department for the initiation of disciplinary action against the officials of the procuring agency.
- iii. The contractor and procuring agency have incurred loss to the exchequer by violating the rules therefore according to the commitments of Integrity Pact ten times amount of loss shall be recovered from the contractor.
- iv. The matter shall be referred to the Sindh Enquiries and Anti-Corruption Establishment for initiating action against such officials in terms of-Rule 32A (2) ibid.



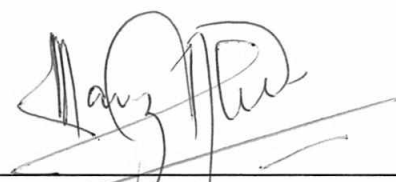
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