



GOVERNMENT OF SINDH  
SINDH PUBLIC PROCUREMENT REGULATORY  
AUTHORITY



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

Karachi, dated 03 May 2021

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

**REVIEW APPEAL**

*M/S Mansoor Engineering Services (Appellant)*

VS

*The Karachi Development Authority (Procuring Agency)*

(NIT#T00612-20-0002, T00612-20-0003, T00612-20-0004, T00612-20-0005 Dated 10.03.2021)

**FACTS AND BACKGROUND**

1. M/S Mansoor Engineering Services "*the appellant*", through his advocate RMA&CO lodged a complaint to the Chairman Complaint Redressal Committee vide letter No. Nil dated 25.03.2021 against above mentioned NITs floated by the Executive Engineer, Engineering Department, Karachi Development Authority, Karachi "*the procuring agency*".
2. The bidder submitted that the procuring agency has inserted a condition in the NIT under Eligibility Criteria at Serial No. 12(d) i.e. "*the firm should maintain an account balance of at least 40% of the tender / bid cost. Attach Bank statement of Feb, 2020 to Feb, 2021*" which is illegal. He further submitted that the procuring agency has not mentioned the estimated cost in NIT's which is violation of Clause No. 4.2 (C) of SPPRA Regulations for Procurement of Works.
3. According to the appellant, his complaint was taken up by the Complaint Redressal Committee (CRC), which decided the complaint of the bidder within time period and the

decision was intimated to the Authority and the complainant as per rules. The Complaint Redressal Committee unanimously dismissed the application of the bidder. The operative part of Complaint Redressal Committee is reproduced as under:

Keeping in view of above, after due detailed scrutiny and comparison of complaints, it was concluded that action of Procurement Committee is according to set procedure & law and in the light of SPPRA Guidance and complaints do not sustain. Hence, the procurement Committee is allowed to proceed further and complete the process accordingly as per law with the permission of Chairman Complaint Redressal Committee.

4. Meanwhile the appellant approached the Honorable High Court @ Karachi. The Honourable High court had been pleased to pass the following order dated 01.04.2021 in C.P NO.D-2223 of 2021;


The representative of SPPRA is present. He is directed that if any appeal is preferred the same shall be decided within ten days as per statutory period mentioned in Rule 32 and communicate the decision to the petitioner. Petition is disposed of accordingly along with pending application.

5. Subsequently, being aggrieved and dissatisfied with the decision of CRC dated 29.03.2021 the Appellant preferred the instant appeal before the Review Committee. The appeal was received on 05.04.2021. Accordingly, the appellant's case was taken up by the Review Committee for hearing in its meeting scheduled on 14.04.2021, 21.4.2021 and 3.5.2021 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 matter 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*.

6. In compliance, on 21.4.2021 Mr. Tarique Rafi, XEN, KDA attended the meeting being the representatives of the procuring agency whereas Mr. Mansoor Munawar and Mr. Maaz Waheed 'the appellant' attended the meeting and appeared before the Review Committee.

#### **REVIEW COMMITTEE'S PROCEEDINGS**

7. 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 matter of blacklisting in question before the committee.



### The appellant's Version

8. The appellant further submitted that on 10.03.2021, the Procuring Agency (KDA) Engineering Department, through the office of the Executive Engineer issued four (04) Notice Inviting Tenders bearing reference No.EE/ED/KDA/2021/60, EE/ED/KDA/2021/61, EE/ED/KDA/2021/62 and EE/ED/KDA/2021/63, whereby inviting bids for construction of ten (10) pedestrian bridges at different locations across Karachi.

9. Being the interested bidder, the appellant upon receiving the NIT's and the bidding documents, proceeded to collect all the relevant documents for the purposes of submitting his bids in the Tenders in question. However, whilst the appellant was cross checking his documents with the list of documents as mentioned under Clause 12 of the NIT (Eligibility Criteria) of the the appellant came across Clause 12 (d), which demanded that against each Tender, in addition to the bid security and performance security, **the bidder is supposed to maintain an account balance of at least 40% from Feb'20 to Feb'21, and in order to validate the same the bidders were required to submit bank statement for the sake of convenience Clause 12(d).**

10. The appellant also contended that the method of bidding in the Tenders in question was set as open competitive bidding, **the NIT'S in question did not mention the estimated cost of work against each tender, which as a matter of fact is a violation of the Regulation 4.2(c) of the Regulation for Procurement Works, SPPRA.**

11. The appellant also informed that being aggrieved of the above, the appellant filed Complaints dated **24.03.2021** against all the NIT's in question, under Rule 31 of the SPP Rules, 2010, before the Complaints Redressal Committee, Karachi Development Authority.

12. The appellant also informed that subsequent to the above, the complaints were fixed and headed by the CRC chairman on 29.03.2021 and announced the decision and submitted that the appellant was dissatisfied with the decision of CRC because CRC was not well informed about the matter.

13. The appellant also informed that his firm has credit line facility amounting to Rs.30,000,000/ (Rupees Thirty Million Only) from Allied Bank Limited vide letter Ref. No. IBG/ BFL/KHI/003/2020 dated 10.08.2020 and the Procuring Agency would have considered it but they limited it to the availability of cash in bank account on a specific date.

14. The appellant also argued that being aggrieved of the above, and so no adequate and alternate remedy was available to the appellant, the appellant had filed the instant appeal on the grounds that the CRC erred in taking the decision. He further submitted that the instant NIT's are called in violation of SPP Rules and the procuring agency has violated Rule-4, 44, 2(aa) and Regulation 4.2 (c) of the Regulations for Procurement of Works, 2013. He sought relief from the Review Committee under Rule 32 of SPP Rules, 2010.



### The Procuring Agency's Version

15. The procuring agency submitted that the tenders for pedestrian bridges at various locations in Karachi were called as per SPP Rules, 2010 after the approval of the competent authority in fair and transparent manner. He informed that more than one hundred bidding documents were sold by the PA for these works.

16. The procuring agency further submitted that NIT's advertisement appeared in three widely circulated leading dailies of English, Urdu and Sindhi languages and the same was also hoisted on SPPRA-PPMS website.

17. The representative of procuring agency replied regarding insertion of condition for cash balance in NITs that works of **pedestrian bridges are sensitive in nature and these works required the availability and management of steel related items which require availability of cash in hand, otherwise, the bidders will not be able to complete the instant works. Hence, the condition of the availability of 40% of cash equivalent to bid / estimated price was inserted in the NIT and the same is not against the Rules and transparency.**


18. Mr. Tariq Rafi, XEN, KDA further added that the Review Committee has already decided in a Review Appeal earlier submitted by M/s Shahzad Yousufzai and Anor against NIT Nos. EE/EE/KDA/2019/210, 224, 227, 228, 253 and 254 dated 25.11.2019, 03 & 13.12.2019 respectively with same objection i.e. insertion of condition regarding availability of cash balance equivalent to 25% of bid price in bank account. He produced decision of the RC issued vide letter dated 11<sup>th</sup> August, 2020 before the Committee for perusal wherein Review Committee dismissed the appeal.

19. The procuring agency further submitted that it is the prerogative of the Procuring Agency to prepare NIT and conditions of contract subject to Rule-44 of SPP Rules, 2010 and stated that there is no any discriminatory condition mentioned in NIT / Bidding Documents. He informed that the process has been completed in accordance with the rules and denied any kind of ambiguity and mala-fide intention in the process of procurement.

20. The representative of procuring agency also denied any kind of illegal favor to any of the bidder in the process of procurement.

### Review Committee Proceedings:

21. The Committee asked from representative of the Procuring Agency (KDA) to justify that why the estimated cost was not mentioned in the NIT as required under Clause No. 4.2(C) of SPPRA Regulation. The procuring agency replied that the tenders are invited on market rates instead of scheduled rates therefore; estimated cost is not mentioned in the NIT. He explained that estimated cost has been clearly mentioned in annual procurement plan hosted in advance on PPMS website and details of works has been mentioned in Bill Of Quantities (BOQ) part of the



bidding documents. He further added that it is common practice among procuring agencies to mention offer rates in NIT instead of estimated cost while inviting NITs on market rates.

22. Syed Adil Gilani, Member Review Committee explained that in the earlier decision of Review Committee dated 11.8.2020 regarding insertion of cash requirement in the eligibility criteria the appeal was dismissed on some other grounds but not as claimed by the Procuring Agency. He read aloud the operative para of Sub Para 2 of Para 11 of the decision. The operative para is reproduced below;

*"The Committee examined the appellants' record, bank statement / accounts maintenance certificate as submitted by the Procuring Agency and observed the appellants' bank statement reflected their closing balance below the required amount (percentage of the estimated cost as detailed below) and secondly, it was observed that the appellants' credit line facility was subject to the bank's internal credit department approval and prevalent loss that was construed as a conditional / un-qualified and cannot be accepted to qualify the criterion; hence, the Committee endorsed the procuring agency's decision to disqualify the appellants against the work in question based on this sole reason".*

23. The Committee asked about the current status of the procurement from the representative of Procuring Agency who informed that all formalities have been completed however; work order has not been issued due to pending review appeal.

#### Observations of the Review Committee

24. The committee observed that the procuring agency did not observed clause No. 4.2(C) of SPPRA Regulation of works in the preparation of NITs. The regulation of works 4.2(C) reproduce below; *and asked for offered price in this column.*

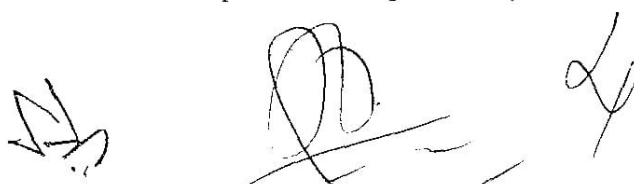
**4.2: NIT Shall contain the following information;**

**(C): title/name and cost of work**

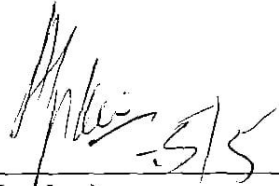
25. Further Procuring Agency did not consider the the credit line facility issued by the bank to qualify the requirement of 40% cash balance equivalent to bid price in bank account.

#### Decision of the Review Committee

26. Given the proceedings, findings, observations and after due deliberation, in exercise of power conferred by the Rule 32(g), decides that as such the procuring agency has violated clause 4.2(C) of the Regulations of Procurement of Works by not mentioning the estimated cost in the NITs therefore; the committee unanimously decided that the Procuring Agency shall terminate the procurement process of all four NITs (T00612-20-0002, T00612-20-0003, T00612-20-0004, T00612-20-0005 Dated 10.03.2021) and initiate afresh procurement process by considering the

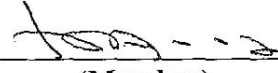


unconditional credit line facilities issued by scheduled Bank in Pakistan as Cash Balance and following SPP Act, 2009, SPP Rules, 2010, Regulations, Instructions and Orders in letter and spirit.



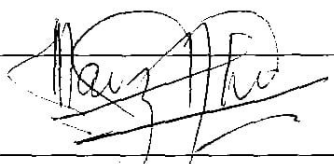
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**(Member)**  
Syed Adil Gilani  
Member SPPRA Board



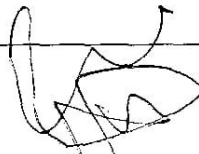
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**(Member)**  
Chief Engr®. Haji Parpio  
Independent Professional



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**(Member)**  
Manzoor Ahmed Memon  
Member SPPRA Board



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**(Chairman)**  
Aijaz Ahmed Memon  
Managing Director  
Sindh Public Procurement Regulatory  
Authority