



Government of Sindh  
Sindh Public Procurement Regulatory Authority



No.AD(Legal-II)SPPRA/RC-4/2018-19

Karachi, dated

November, 2018

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

(Appeal)

1. M/s Kashif Constructors
2. M/s Abdul Sattar Arbani & Company

Versus

Mr. Ghulam Shabbir Memon, Executive Engineer,  
Machinery Maintenance Division (Hyderabad), Digri @ Kotdiji

**Facts and background**

1 M/s Kashif Constructors and M/s Abdul Sattar Arbani & Company, hereinafter referred to as Appellants, have filed their appeals, on 28-10-2018 & 06.11.2018 respectively to the Review Committee (RC) of Sindh Public Procurement Regulatory Authority (SPPRA), stating therein that the appellants intended to participate in the tender bearing I.D No.T00653-18-0002 posted on SPPRA-PPMS Website dated 24.09.2018, for the work of widening & reconditioning of road from Ripri Regulator to Indus Bridge Road via Baharo Road mile 0/0 – 8/0 (12.87 km), invited by Executive Engineer, Machinery Maintenance Division (Hyderabad), Digri @ Kotdiji, hereinafter referred as Procuring Agency (PA). In the first instance the appellant lodged a complaint with the CRC as provided in Rule-31 of SPPRA, but CRC failed to give its decision. As such the instant complaint stood transferred to Review Committee in terms of Rule-31(5) of SPP Rules, 2010 (amended 2017). Accordingly, the Authority wrote letter No.AD(Legal-II)SPPRA/RC-2/2018-19/1524, dated 29.10.2018 to P.A not to award the contract as required under Rule-31(6) and proviso of Rule-31(7). Notices were issued to the parties i.e. Procuring Agency and Appellants for appearing before the Review Committee on 12.11.2018. The proceedings of Review Committee were held on 12.11.2018 at 11:00 am in the committee Room of SPPRA and both parties were heard at length.

**Appellant Version**

2. The Appellant (M/s Kashif Constructors, while arguing for his appeal apprised the Review committee that appellants intended to participate in the aforesaid tender invited by Procuring Agency. On the day of bid opening i.e. 12.10.2018 the appellant alongwith 37 other contractors were present in the office of Executive Engineer, Machinery Maintenance Division (Hyderabad), Digri @ Kotdiji, but he along with his team were not present without any intimation or notice. The appellant also produced some video clips recorded in the office of PA, depicting the above scenario. The appellant also produced his sealed bids which were not received by P.A as no one was present in the office. The appellant was surprised to know that without conducting formal bid opening, PA announced Bid Evaluation Report by hosting on SPPRA PPMS website on 22.10.2018. The Appellant apprised the committee that the appellant lodged a complaint for CRC on 17.10.2018 & 22.10.2018, but no response was given from Procuring Agency as yet.

*Mr. Ghulam Shabbir Memon*

3. The Appellants further stated before to Review Committee that Procuring Agency had previously invited NIT for the same work on 20.08.2018, the appellant was declared second lowest bidder in the said tender, and quoted rates was below 29.03% of estimated rates, but P.A cancelled the same NIT without assigning any reason and intimation to the bidders which is violation of SPPRA Rule No.25(a)(b) & (d).

4. M/s Abdul Sattar Arbani & Company, the other appellant informed the Review Committee that the appellant intended to participate in the aforesaid tender and prepared bids, but when appellant came to the office of Procuring Agency on the day of opening of bids, he found that no any officer / officials of the P.A was present. The meeting of Procurement Committee was not held on scheduled date, time and venue. Without bid opening the Bid Evaluation Report was hosted on SPPRA PPMS Website declaring Procuring Agency's favorite contractor as lowest bidder.

**Procuring Agency Version:-**

5. Mr. Agha Zarar Khan, Executive Engineer, Machinery Maintenance Division (Hyderabad), Digri @ Kotdiji representing the procuring agency apprised the Review Committee that he has recently been posted as Executive Engineer, Machinery Maintenance Division (Hyderabad), Digri @ Kotdiji. All the proceedings of the subject procurement was carried out by his predecessor XEN, he only awarded the contract after the approval of Competent Authority. He further informed the Review committee that the instructions for not awarding the contract by SPPRA until the decision of Review Committee were received to Procuring Agency on 01.11.2018, whereas contract was awarded on 02.11.2018. Procuring Agency further apprised the Review Committee about the cancellation of NIT dated 20.08.2018 that there were sufficient reasons to believe that the lowest bidder would not able to perform the work.

**Review Committee observations:-**

6. After hearing the parties at length and perusal of record the Review Committee observed that:-

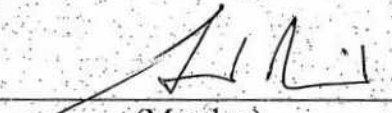
- Procuring Agency completely ignored the advice / comments of this Authority posted on PPMS website on 11.10.2018 at NIT stage, through which the compliance of Rule-17(3)(c), 31(2)(b) of SPP Rules, was advised, but P.A failed to comply and violated the said rules.
- Procuring Agency failed to place the grievances of appellants before the Complaint Redressal Committee (CRC) and issued award of contract which is total violation of Rule-31(6) and proviso of Rule-31(7) of SPP Rules, 2010 (amended 2017) and despite timely instructions of SPPRA, through comments posted on PPMS Website of this Authority dated 23.10.2018 and this Authority's letter dated 29.10.2018.
- The tender dated 20.08.2018 was cancelled by procuring agency which may have caused loss of public funds as the quoted rates of the second lowest bidder of same tender were below 29.03% of estimated cost, whereas as per Bid Evaluation Report hosted on PPMS of SPPRA Website for the Re-invited tender, the quoted rate of the lowest bid is above 14% (Average) of estimated cost.

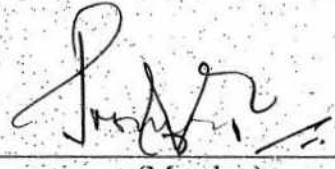


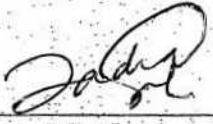
- Although the evidence produced by the appellants for absence of procurement committee during the bid opening was inconclusive, the undue haste in awarding the contract despite clear and timely instruction of the Authority and in blatant violation of Rule 31 (6) and provision of Rule 31(7) suggests malpractice on the part of procuring agency.

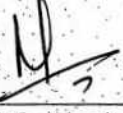
**Decision:-**

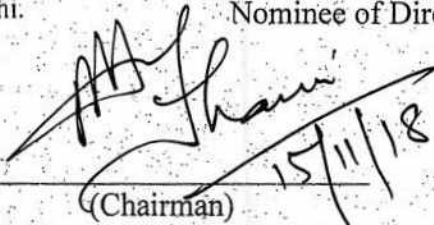
7. In view of the above stated observations and after detailed deliberations, the Review Committee, unanimously declared the said procurement as **MIS-PROCUREMENT** in exercise of powers conferred by Rule-32(7)(g), read with Section 2((i) of SPPRA Act 2009. As a consequence, the Competent Authority / head of Administrative Department shall initiate disciplinary proceedings against the officer(s) / Official(s) of the Procuring Agency responsible for Mis-procurement and the matter is hereby referred to the Sindh Enquiries and Anti-Corruption Establishment for initiating investigation and further action against such officials / officers in term of Rule-32(A) (2).

  
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(Member)  
Engineer Saad Rashid  
Representative of Transparency  
International Pakistan  
Member on SSPRA Board

  
\_\_\_\_\_  
(Member)  
Asadullah Soomro  
Member SPPRA Board

  
\_\_\_\_\_  
Member  
Engineer Sadia Jabeen Asim  
Sr. Civil Engineer  
H.E.J Institute University of Karachi.  
(Independent Professional)

  
\_\_\_\_\_  
(Member)  
Nabiya Sohail  
Director (Audit)  
Nominee of Director General Audit  
Sindh

  
\_\_\_\_\_  
(Chairman)  
Muhammad Aslam Ghauri  
Managing Director  
Sindh Public Procurement Regulatory Authority