



GOVERNMENT OF SINDH  
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-3186/2021-22/ *1102*

Karachi, dated the 25<sup>th</sup> April, 2022

To,

- The Executive Engineer,  
Public Health Engineering Division,  
**Sukkur.**

Subject: **DECISION OF THE 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 The Executive Engineer, Public Health Engineering Division Sukkur held on 20.04.2022, for information & necessary action.

*[Signature]*  
ASSISTANT DIRECTOR (Legal-II)

**A copy is forwarded for information and necessary action to:**

1. The secretary to Government of Sindh, Public Health Engineering & Rural Development Department, Karachi.
2. The Chief Engineer, (Dev/O&M) Public Health Engineering Division Sukkur.
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 P.S to the Chairman / Members Review Committee.
5. The Appellant.



GOVERNMENT OF SINDH  
SINDH PUBLIC PROCUREMENT REGULATORY  
AUTHORITY



No.AD (L-II) SPPRA/CMS-3186/2021-22

Karachi, dated, 21<sup>st</sup> April, 2022

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

**Decision of the Review Committee Meeting held on 20.04.2022**

Appellant	M/s Abdul Hafeez Kolachi
Procuring Agency	XEN Public Health Engineering Division Sukkur.
PPMS ID # Reference No.	T00869-21-0002 No. TC/G-148/274 Dated 14-03-2022
Appeal Received in Authority Dated	06.04.2022
Complaint of the Appellant Addressed to the Chief Engineer Dev/O&M, Public Health Engineering Division Sukkur (CRC) Chairman	Dated:21.03.2022
Dated of Posting Notice Inviting Tender	18-03-2022
Date of Opening of Bids Opening Technical	08.04.2022,26.4.2022
Date of Opening of Bids Financial	
Date of Posting Bid Evaluation Report	Not posted as yet
Date of Posting Contract Documents	Not posted as yet
SPPRA Observations communicated on	29.03.2022
Estimated Cost of NIT Total	Around 110 Million
Total works in NIT	11 Works
Appellant Related work	Not mentioned in the appeal
Issue involved	Non-acceptance of Bid
Complaint of the Appellant Addressed to the Chief Engineer Dev/O&M, Public Health Engineering Division Sukkur (CRC) Chairman	Dated:21.03.2022
CRC Decision	Not Yet Received

**The appellant's Version:-**

1. The bidder has submitted that the procuring agency has called the bids on single stage ~~Single~~ two Envelope bidding procedure that the appellant considers against the rules.
2. The appellant submitted that the works in NIT were of simple and routine in Nature that required to be called on Single Stage Single Envelope Bidding Procedure in terms of

*[Handwritten signatures and initials]*

Rule 47(1) of the SPP Rules.

3. The appellant submitted that the Single Stage Two Envelope Bidding Procedure suffers serious disadvantages as described in the SPP Regulations such as
  - (i) Delay in opening of financial proposal, and longer the delay less is the perceived integrity.
  - (ii) Tender conditions and technical specifications may be deliberately or otherwise skewed in favor of some bidders.
  - (iii) Approving authority and auditors are prevented from knowing the additional price paid for a trivial or minor or unnecessary or avoidable requirement, as financial proposals of non-responsive bidders is returned unopened.
4. The appellant also claimed that even the procuring agency followed Single Stage Two Envelope Bidding Procedure but did not follow required manner and procedure for calling the bids on Single Stage Two Envelope Bidding procedure. The appellant complained that the procuring agency did neither provided Yes/No Qualification Criteria nor mentioned scoring Criteria that the appellant considered blatant violation of Rules, Regulations and procurement laws.

**The procuring agency's Version:-**

1. The procuring agency failed to appear before the Review Committee twice despite the Service of Notice for appearing before the Review Committee. The Review Committee decided to adjudicate the matter Ex-parte.

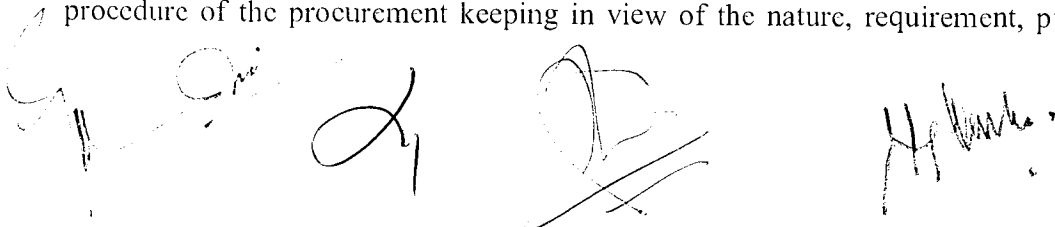
**Findings of the Review Committee:-**

**From the perusal of record available and submission of the appellant ,the Review found that the Review Committee has to decide the following questions:**

1. **Whether the bids** called on Single Stage two Envelope bidding procedure are against the rules or as per the SPP Rules?
2. **As to whether the disadvantages** of single stage two Envelope bidding procedure as mentioned in the SPP Regulation create any bar on the procuring agency for adopting single stage two Envelope bidding procedure?
3. As to whether the procuring agency has favored or disfavored any bidder while framing the evaluation Criteria?
4. As to whether the procuring agency has mentioned the evaluation Criteria in the bidding documents or not?

**Observation of the Review Committee:-**

1. The Review Committee observed that the SPP Rules have provided different methods and procedure of procurement. The procuring agency has been fully authorized to choose any of the methods and procedures of procurement in accordance with the SPP Rules. Every method and procedure may have advantages and disadvantages associated with it. Therefore, the SPP Rules and Regulations have authorized the procuring agencies to adopt any of the procedure of the procurement keeping in view of the nature, requirement, purpose, needs,



conditions, aims and objectives of the procuring agency. The decision of the procuring agency regarding the adoption of any of the methods cannot be interfered except when the procuring agency does any favor or disfavor or insert any discriminatory condition which may restrict the competition. In the instant matter the appellant could not prove any malafide or discrimination in adopting the Single stage two Envelope bidding Procedure.

2. The Review Committee observed that the SPP regulations of works have delineated, discussed and described the disadvantages and advantages of single stage two Envelope bidding procedure in order to make easiness for the procuring agency in deciding the adoption of procurement procedure. The Regulation quoted by appellant also has discussed the advantages of the procedure. The SPP Regulations of work is produced as under:-

#### 7.9.5 Conditions for use of various Procedures Rule 47 (merits and demerits)

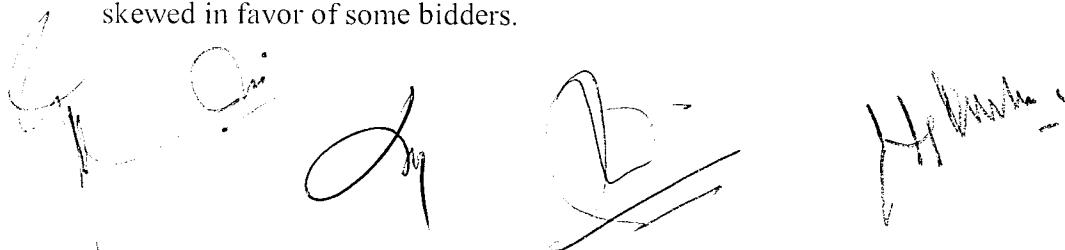
(2) Single stage two envelope bidding procedure: The purpose of introducing this procedure was to obviate any pressure to consider non-conforming attractive bids or bidders and this system theoretically assured a perfect evaluation. This shall be used when bids are to be evaluated on technical/qualification and financial grounds and price is taken into account after technical/qualification evaluation which determines the eligibility of bidders by verifying the documents and analyzing the technical proposals received in response to evaluation criteria mentioned in NIT and bidding document. However the procedure suffers from serious disadvantages:

(i) Delay in opening of financial proposal, and longer the delay less is the perceived integrity;

(ii) Tender conditions and technical specifications may be deliberately or otherwise skewed in favor of some bidders;

(iii) Approving authority and auditors are prevented from knowing the additional price paid for a trivial or minor or unnecessary or avoidable requirement, as financial proposals of non-responsive bidders is returned unopened

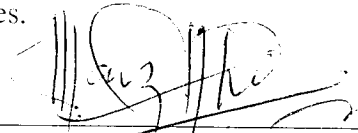
3. Hence the above quoted regulation describe the following benefits and advantages
  - i. Obviate any pressure to consider non-conforming attractive bids.
  - ii. Assurance of a perfect evaluation.
  - iii. Determines the eligibility of bidders by verifying the documents.
  - iv. Fine and Fair evaluation of technical proposal.
4. Besides the advantages, the regulation has also mentioned the disadvantages of the procedure as submitted by the appellants:
  - i. Delay in opening of financial proposal, and longer the delay less is the perceived integrity.
  - ii. Tender conditions and technical specifications may be deliberately or otherwise skewed in favor of some bidders.



8. It may be noted that the regulations makes clear that when requirement for responsive bidder is based on the minimum technical requirement then responsiveness is decided on Yes/No basis. In the instant matter, the procuring agency has required minimum technical requirement which is evident that the bids will be evaluated on Yes or No basis.
9. The Review Committee also observed that, under Rule 32(8), it was necessary for the head of the procuring agency or his nominee not below the rank of BS-19 to appear before the Review Committee. However, the head of the procuring agency did not appear before the Review Committee nor nominated any person to appear in terms Rule 32(8) which is blatant and open disregard to the SPP rules and also shows the irresponsible behavior of the Executive Engineer Public Health Engineering Division Sukkur (34-Public health Engineering Department).

**Decision of the Review Committee:-**

1. Given the proceedings, findings, observations and after due deliberation, in exercise of power conferred by the Rule 32(7)(a) of the SPP Rules, the Review Committee rejects the appeal of the appellant as the appellant could not prove any kind of violation in the bidding process.
2. The Review Committee decided to refer the matter to the Secretary to Government of Sindh, Public Health Engineering & Rural Development Department for taking strict disciplinary action against Executive Engineer Public Health Engineering Division Sukkur (34-Public health Engineering Department) who despite service of letters and personal calls twice failed to appear before the Review Committee in violation of the SPP rules.



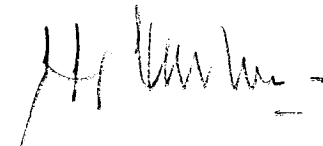
Member  
(Manzoor Ahmed Memon)  
Member SPPRA Board



Member  
(Munir Ahmed Shaikh)  
Independent Professional



Member  
(G. Mohiuddin Asim)  
Representative of P & D Board, P &  
Development Department Karachi



Chairman  
(Abdul Haleem Shaikh)  
Managing Director  
(Sindh Public Procurement Regulatory  
Authority)

- iii. Approving authority and auditors are prevented from knowing the additional price paid for a trivial or minor or unnecessary or avoidable requirement, as financial proposals of non-responsive bidders is returned unopened.
5. The Review Committee was of the view that such discussion is suggestive, advisory and informative in nature. There is no mandatory or restrictive requirement in the regulations. Therefore, the disadvantages relied upon by the bidder are not restrictive in nature rather are advisory and suggestive in nature in order to guide the procuring agency in making reasonable choices, rational actions and logical decisions.
6. Regarding the Evaluation criteria, the appellant can't be said that the procuring agency neither mentioned yes/no criteria nor mentioned scoring criteria in the bidding documents. The review Committee perused the bidding documents and NIT and it was observed that the procuring agency had mentioned the Technical Evaluation criteria in the bidding documents. The same is reproduced as under:

**11.2 The bidder has the financial, technical and constructional capability necessary to perform the Contract as follows:**

- i. **Financial capacity: (must have turnover equal of estimate Cost).**
  - ii. **Technical capacity: (Must have registration along with 2021-22 license must have PEC in Category as per requirement and above having specialization codes CE-09 also mention qualification and experience of the staff);**
  - iii. **Construction Capacity: (mention the names and number of equipments required for the work).**
  - IV. **Registration with FBR & SBR with activated position.**  
**Last financial Year bank statement having balance 10% of Estimate Cost.**
  - II. **Technical / financial joint venture (If any).**
7. The appellant contended that the same evaluation criteria did not mention yes/ no clearly. The review committee observed that close reading of Regulations reveals that evaluation criteria is considered to be yes/no except otherwise provided as scoring criteria. The Regulations is reproduced as under:

**7.9.2 Single stage – Two Envelope Bidding Procedure (46.2)**

**Technical evaluation is based on any one of the following methods:**

- (i) **when requirement for responsive bidder is based on the minimum managerial capacity, experience of similar projects/assignments, experience of professional persons and financial statement/annual turnover; then responsiveness shall be decided on Yes/No basis;**
- (ii) **When Marks are assigned to each criteria/sub criteria then minimum threshold is to be mentioned in the document/NIT, bidders obtaining score less than threshold shall be treated non-responsive. In either case the least cost bid shall be accepted.**

