Government of Sindh
Sindh Public Procurement Regulatory Authority

SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY

No.AD(Legal-II)SPPRA/RC-8/2018-19 Karachi, dated December, 2018

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

(Appeal)
M/s Abdul Malik Khan
Versus
Executive Engineer, Education & Works Division, Thatta

Facts and background

M/s Abdul Malik Khan, hereinafter referred to as Appellants, have filed a C.P No.4607 of 2018 Versus Province of Sindh & Others in the Honourable High Court of Sindh Karachi. The Honourable Court has ordered on 29.11.2018 that Review Committee to hear the appeal of the appellant and decide the matter within 07 days (Annexure-A). The appeal is against tender bearing No.XEN/EWDT/NIT/3803 (ADP Scheme No.245) for up-gradation of Schools, hosted on SPPRA Website on 03.04.2018 at Sr. No.37487 invited by Executive Engineer, Education & Works Division, Thatta hereinafter referred to as Procuring Agency (PA).

2. As per record available with SPPRA and also hosted on SPPRA website the appellant participated in the said tender and was declared 2nd lowest. In the said NIT published in newspapers and hosted on SPPRA website, the bid opening dates were mentioned as 24.04.2018 (First Attempt) and 04.05.2018 (Second Attempt). Subsequently, a corrigendum was issued by Procuring Agency on 26.04.2018 for giving details of works and estimated cost with corresponding PEC registration categories for each work. The appellant lodged a written complaint with the complaint Redressal Committee of Procuring Agency on 09.05.2018 stating therein that he visited Procuring Agency's office on 24.04.2018 (i.e bid opening date first attempt), but he was told that there was no bid opening that day, and that he was not informed about another date of opening of bids. On receiving the endorsed copy of said complaint, SPPRA forwarded the same to Procuring Agency, vide letter No.AD(Assest)/SPPRA/EWD/37487/17-18/3004, dated 11.05.2018 (Annexure-B) for taking action as per rules and to furnish detailed report alongwith specific view/comments to the complainant under intimation to the Authority. Procuring Agency did not respond to the said letter of SPPRA.

3. On 22nd June, 2018, the appellant filed a constitutional Petition C.P N0.4607 of 2018 in the Honourable High Court of Sindh, raising the issue of inappropriate PEC Category which was not part of his complaint lodged with the Complaint Redressal Committee. Another letter dated 31.08.2018 was sent to Procuring Agency by SPPRA asking them to furnish the details of action taken under Rules-31 on the complaint of the appellant (Annexure-C), but this letter was also ignored by Procuring Agency.

4. In compliance to the aforementioned orders of Honourable Sindh High Court the matter was placed before the Review Committee. Accordingly, notices were issued to the parities i.e. Procuring Agency and Appellants as well as Mr. Muhammad Amin, Successful Bidder (Respondent No.10 in the C.P) for appearing before the Review Committee on 05.12.2018. The proceedings of Review Committee were held on 05.12.2018 at 11:00 am in the committee Room of SPPRA and both parties were heard at length.

Appellant Version

5. The Appellant, while arguing for his appeal apprised the Review committee that appellant participated in the aforesaid tender invited by Procuring Agency. On the day of bid opening i.e. 24.04.2018 and 04.05.2018 the appellant alongwith other contractors visited the office of Executive Engineer, Education & Works Division Thatta, but they informed the petitioner that there is no bid opening today, neither they informed another date of opening of bid nor anything else. The petitioner then approached to Complaint Redressal Committee (CRC) for his grievances on 09.05.2018, but he did not receive the decision of CRC as of today.

6. Petitioner has further stated that on 06.06.2018 it came to his knowledge that Procuring Agency with the collusion of some private persons prepared back dated Bid Evaluation Report and published on SPPRA website without conducting bid opening meeting. Appellant informed to Review Committee that PA mentioned C-5 category for PEC in NIT which was wrong and the correct category was C-4 and the 1st lowest bidder was not eligible for the aforesaid tender as he was as C-5 category contractor.

Procuring Agency Version:-

7. Syed Muhammad Shees, Engineer, Education & Works Division, Thatta and Mr. Muhammad Hanif Shaikh, the then Executive Engineer, Education & Works Division, Thatta representing the procuring agency apprised the Review Committee that the date for opening of bids was fixed on 24.04.2018 and 04.05.2018 for second attempt and was opened on 04.05.2018 on second attempt. The bid of the appellant was received through TCS and was considered in the meeting of Procurement Committee and declared as 2nd lowest. P.A has further apprised the Review Committee that the complaint of the appellant was not placed before the Complaint Redressal Committee (CRC), because the bid of appellant was opened and considered and as such his grievance was redressed. As regard the PEC category C-5 instead of C-4 it was the human error due to shortage of staff specially non-availability of Tender Clerk. The complainant, however, had not raised this issue before the Complaint Redressal Committee.

Review Committee observations:-

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

- Procuring Agency failed to deal with the complaint dated 09.05.2018 in accordance with the laid down procedure and issued Award of Contract in violation of Rule-31(5), 31(6) & 31(7) of SPP Rules, 2010 (amended 2017).

- P.A demanded the PEC category C-5 instead of C-4 in the NIT which is violation of clause - 2.12 of SPPRA Regulations on works, which reads as under:-

  "Firms Individuals registered with Pakistan Engineering Council (PEC) are allowed to participate in tenders/bids of value, whose amount does not exceed the limit of the category in which it/he is registered".

- P.A failed to provide contract document to this Authority for hosting on website hence violated Rule-50 of SPP Rules, 2010 (amended 2017).
- The Review Committee observed that appellant could not provide any evidences to prove the allegation for not conducting the bid opening meeting by the Procuring Agency. On the other hand, Procuring Agency furnished attendance sheet of bid opening meeting which reflected 04 bidders or their representatives were present at the time of bid opening (Annexure-D). Mr. Muhammad Amin Brohi, the successful bidder (Respondent No.10 of CP) also testified before the Review Committee that bid opening meeting was conducted as per rules.

Decision:-

9. In view of the violation mentioned in 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 in term of Rule-32(A) (2).

(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)

Not attended

(Member)
Director (Audit)
Nominee of Director General Audit
Sindh

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

ORDER SHEET
HIGH COURT OF SINDH, KARACHI

C.P. No.D-4607 of 2018

Date	Order with signature of Judge

Present
Mr. Justice Muhammad Ali Mazhar.
Mr. Justice Agha Faisal.

Abdul Malik Khan.....Petitioner

Versus

Province of Sindh & others .....Respondents

Date of hearing 29.11.2018

Mr. Abid Akram advocate for the petitioner.

Syed Masood Ahmed Shah Bukhari advocate for the respondent No. 10 & 12 a/w Mr. Ghulam Akbar advocate.

Mr. Miran Muhammad Shah, Addl. A.G.

Javed Sabghatullah Mehar, Director (A&F), SPPRA.

Ali Imran Qadri, Procurement Specialist, SPPRA.

Qamar Zaman Shah, Assistant Director, SPPRA.

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Muhammad Ali Mazhar, J: The order dated 22.06.2018 shows that while issuing pre-admission notice by the learned Division Bench of this court, the respondents were directed to pass appropriate order on the complaint of the petitioner in accordance with law after providing opportunity of being heard to the petitioner and submit compliance report. Learned counsel for the petitioner pointed out page No.215 of the petition which is a complaint dated 09.05.2018 submitted to the Chairman Redressal Committee but their complaint has not been decided which fact has been admitted by Jawed

Sabghatullah Mehar, Director (A&F), SPPRA. According to sub-Rule (5) of Rule 31 of Sindh Public Procurement Rules, 2010, it is the responsibility of the Complaint Redressal Committee to announce its decision within seven days and intimate the same to the bidder. It is further provided in this Rule that if the Committee fails to decide the complaint within seven days, the complaint shall stand transfer to the Review Committee who will dispose of the compliant in accordance with procedure laid down in Rule 32. Rule 32 of the Sindh Public Procurement Rules, 2010 germane to the appeal to the Review Committee which can be invoked when the bidder is not satisfied with the decision of the Procuring Agency's Redressal Committee then he may lodge the complaint to the Review Committee provided that he has not withdrawn the bid security, if any, deposited by him. Though under Rule 32 there is an independent mechanism of appeal to the Review Committee but it should be read with sub-Rule (5) of Rule 31 in that eventuality if the Committee fails to announce the decision within seven days, the complaint shall be automatically transferred to the Review Committee to dispose of the same in accordance with procedure laid down in Rule 32. In this case, admittedly, the complaint has not been decided, therefore, by fiction of law, this should have been transferred to the Review Committee for their decision which has not been done in this case. However, the officers present in court undertake that the complaint of the petitioner will be decided by the Review Committee within seven days positively

without any fail and communicate the decision to the petitioner and the procuring agency. On this statement learned counsel for the petitioner is satisfied. Petition is disposed of with the directions to the officers present in court to decide the complaint of the petitioner after providing ample opportunity of hearing and at the time of hearing the opportunity shall also be provided to the respondent No.10 and 12 to place their point of view.

JUDGE

JUDGE

Aadil Arab

"SAY NO TO CORRUPTION"

No. AD(Assest)/SPPRA/EWD/37487/17-18/ 3004
GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY
Karachi, dated the 11th May, 2018

THE EXECUTIVE ENGINEER,
Education Works Division ,
@Thatta

SUBJECT: REQUEST FOR REDRESSAL OF GENIUNE GRIEVANCES (37487)

The undersigned is directed to forward a complaint received from **M/S ABDUL MALIK KHAN ,** Govt. Contractors vide letter ref: NIL, dated: NIL, on the subject cited above **(Copy enclosed)**, contents of which are self-explanatory.

2- You are hereby, advised to take appropriate action as per rules and furnish the detailed report along with your specific views / comments to the complainant under intimation to this Authority at the earliest.

3- It may be noted, that it is the sole responsibility of procuring agency to ensure compliance of SPP Rules 2010 (amended 2017) in letter and spirit.

(SAJJAD HUSSAIN MAHAR)
Assistant Director (Assessment)

Copy forwarded for information to: -
- The Superintending Engineer, Education Works Division, Thatta
- M/S Abdul Malik Khan, Shah Latif Colony Makli District Thatta Cell No. 0321-3059755
- The Staff Officer to Managing Director, SPPRA, Karachi.
- Master File

NOTE: *"SPPRA has developed and launched new website 'Procuring Performance Management System (PPMS)'. Procuring Agency is advised to use this website for uploading their NIT, BER and Contract Documents by themselves. For any query please contact at 021-99205356-99203287."*

REMINDER-I

Government of Sindh

Sindh Public Procurement Regulatory Authority

SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY

No. SPPRA /AD(Legal) /37487/2018-19/ 663 Karachi, dated 31 August, 2018

The Executive Engineer
Education Works Division
Thatta

Subject: REQUEST FOR REDRESSAL OF GENIUNE GRIEVANCES (SPP S# 37487)

I am directed to refer to this Authority's earlier letter dated 11th May, 2018 whereby the complaint of M/s Abdul Malik Khan, Government Contractor was forwarded to you for taking an appropriate action as per rules and furnish the detailed report along with your specific views/comments to the complainant (Copy enclosed).

2. It is informed that upon receipt of complaint from any aggrieved bidder Procuring Agency is required to redress the grievances through its Complaint Redressal Committee (CRC) within 7 days and intimate the decision to the bidder and this Authority within 03working days in terms of SPP Rule-31 (5). It may also be noted that contract shall be awarded after decision of Complaint Redressal Committee (CRC) as per requirement of Rule-31(6).

3. In view of the above it is advised to intimate action taken on the above complaint in terms of Rule-31 of Sindh Public Procurement Rule 2010

4. It may also be noted that compliance of SPP Rules 2010 (amended 2017) is the sole responsibility of procuring agency; therefore, it is advised to ensure the compliance of SPP Rules in letter & spirit.

5. This may be treated as the most urgent as the matter is sub judice before the Honourable High Court, Sindh Karachi.

Assistant Director (Legal)

Copy forwarded for information to:-

- ✓ Secretary to Government of Sindh, Education Department
- ✓ Superintendent Engineer (Education Works)/Chairman Complaint Redressal Committee, of concerned Education Works Circle, Education and Literacy Department it is advise to take necessary action at the earliest.
- ✓ M/s Abdul Malik Khan, Government Contractor.

ADDRESS: BARRACK NO.8, SINDH SECRETARIAT 4-A, COURT ROAD, KARACHI.PHONE No 021-99205369, 99205356 FAX No 021-99206291
EMAIL: info@pprasindh.gov.pk WEB www.pprasindh.gov.pk

OFFICE OF THE
EXECUTIVE ENGINEER
EDUCATION WORKS DIVISION THATTA

ATTANDANCE

NOTICE INVITING TENDERS NO: XEN / EWDT / NIT / 3802, Dated: 30-03-2018

The Bidding documents has been opening on 04-05-2018 in the presence of following contactors.

S .No	Name of Agency	Name of Contactors	Signature
1.	M/s Muhammad Ameen Brohi		
2.	M/s. Moro Construction		
3.	M/s. Yar Muhammad Jamoo		
4.	M/s. Muneer Javed Bhatti		